

To: UN High Commissioner for Human Rights, Ms. Navanethem PILLAY

Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to be appointed on the 20th session

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Calin GEORGESCU

Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de ALBUQUERQUE

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand GROVER

Special Rapporteur on the right to food, Mr. Olivier De SCHUTTER

Special Rapporteur on extreme poverty and human rights, Ms. Maria Magdalena SEPÚLVEDA CARMONA

Working Group on the issue of human rights and transnational corporations and other business enterprises, Chair-Rapporteur, Ms. Margaret JUNGK

Special Rapporteur in the field of Cultural Rights, Ms. Farida SHAHEED

Date of Appeal: 3 July 2012

Urgent appeal on the Issue of Teghut copper-molybdenum mining project

1. Alleged incident description

This Appeal raises the issue of serious human rights violations with regard to copper-molybdenum mining in Teghut, located in the northeastern region of Lori in Armenia. The Appeal is submitted on behalf of Save Teghut Civic Initiative, Armenian and international NGOs, and a human rights expert. A complete list of signatories is hereby attached.

Teghut is a region prone to earthquakes and landslides. It is a picturesque and complex landscape covered with forests and engraved by gorges of the Shnogh River and its tributaries - Krunk, Pakasajur (Kharatadzor) and Duqanadzor. These rivers are the main water sources for the Shnogh and Teghut villages. They use the water for drinking as well as irrigation. The Shnogh River itself is a tributary to the transboundary Debed River flowing to Georgia. This area is also home to historical and cultural sites that go back to antiquity and the middle ages.

Teghut forest is one of the best-preserved forest areas in the country¹ with rich biodiversity, including about 200 species of plants, 55 species of mammals, 86 species of birds, 10 species of vermigrades and 4 species of amphibians. Many of these species are rare and endangered—6 plant species and 29 animal species are included in the Red Lists of Armenia.

The village communities of Shnogh and Teghut, with an aggregate population of 3600, are adjacent to the forest area. Favorable climatic and soil conditions allow for the cultivation of a large number of crops, which the residents of these villages have traditionally engaged in. After the collapse of Soviet Union and dismantling of collective farms, people in this area have survived on subsistence agriculture and forest products.

The Teghut copper-molybdenum deposit was discovered in 1972. In 2001, the Government of Armenia granted a license for exploitation of the mine to the Armenian Copper Programme (ACP)² Closed Joint Stock Company, a subsidiary of Vallex F.M. Establishment registered in Lichtenstein. In 2004, in connection with changes in legislation, the ACP license was renewed with a term until 2025. In April and November 2006, ACP received approval from the Ministry of Nature Protection of the Republic of Armenia to operate the mine based on the submitted environmental impact assessment reports. In November 2007, the Government of Armenia adopted a decision to allocate 1,491 hectares (ha) of land for mining without competition, with a term of 50 years to develop an open-pit mine. All the above-mentioned decisions related to exploitation of Teghut mine were adopted with numerous and serious violations of national laws and international conventions.

About 82.6% (or 1,232 ha) of the territory allocated to ACP for mining is covered with forests. The mining project proposes clear-cutting of 357 ha of forests and preserving about 756.2 ha - as a sanitary zone.³ A 600 meter deep pit will replace the forested mountain and the dumping tails will be disposed in the gorge of Duqanadzor River. Mine exploitation will also result in 500 million tons of tailings (toxic waste) and about 600 million tons of other kinds of waste.

Exploitation of the mine threatens particularly the rights to life, health, water and food of these two communities. Inhabitants of Shnogh and Teghut villages, however, are not the only victims of violations caused by this mining project. The project will affect the whole population of the Northern regions of Armenia and eventually the entire population of the country, as the constitutional rights of the population to live in a healthy and safe environment and the right of property as well as the the right to cultural heritage and right to participate in decision-making are being violated. In case these violations of human rights are not stopped urgently, similar

¹ It should be noted that forest cover in Armenia has already decreased over the past 20 years from 11% to about 7% of the territory of the country. According to experts, at the current rate of deforestation the country will become a desert within 50 years.

² www.vallex.com

³ RA Government Decision N 1268-N does not make clear for what purposes shall ACP use the rest 118.426 ha of allocated forests.

rights of indefinite number of people living outside of Armenia will be violated, too. High profile experts claim that as a result of Teghut mine exploitation, transboundary Debed River has a high risk of being polluted.

The case of Teghut mining is one of the most vivid examples of irresponsible mining in Armenia. The problem is larger in scale and is rooted in the economic policy of the Armenian Government which starting in 2007 has announced mining and export of raw materials as a key economic priority without instituting adequate measures to protect the natural environment and public health.

The alleged perpetrators are (a) the Armenian Government, including the Ministry of Nature Protection and the Ministry of Energy and Natural Resources, which have approved documents allowing mining in Teghut in violation of national and international laws and (b) Armenian Copper Program CJSC, which has presented false and incomplete documents for approval of mining project in Teghut.

2. Environmental concerns

The expediency of the project has been challenged by international as well as local experts. Strathcona Mineral Services Ltd., commissioned in 2001 by Armenian Copper Programme itself to review the mining project, questioned the environmental safety as well as the economic viability of the project against the environmental costs. According to Strathcona, “Given the mountainous terrain around the deposit, and the location in an area prone to severe earthquakes, there is a considerable technical and, therefore, financial challenge to deposit 500 million tones of tailings and 600 million tones of various waste categories in a safe and environmentally acceptable manner.”⁴

Local experts in their turn conducted an analysis of the potential environmental impacts - deforestation, water pollution, and loss of biodiversity, grounding their judgments on the baseline data collected by ACP.⁵ According to them, the clear cutting of the planned 357 hectares of mountain forests and development of the mining infrastructure will likely be accompanied by drying of water sources and soil erosion and result in the actual destruction of

⁴ Strathcona Mineral Services Limited, Scoping Review: Teghut Copper-Molybdenum Project Region of Lorri, Armenia for Maney Vallex, Toronto, 2001, p.10.

⁵ Independent Expert Opinions, 2008, Yerevan, Armenia: (A) Geological expertise by Dr. Hrachik Avagyan, architect-geologist, PhD in geological-mining studies, Institute of Economics after Kotanian, National Academy of Sciences of the Republic of Armenia; (B) Ecology of water resources expertise by Dr. Knarik Hovhannisyan, ecologist of water resources, engineer of hydro techniques, PhD technical sciences; (C) Flora expertise by Dr. Pavel Ghambaryan, PhD of biological sciences; (D) Fauna expertise by Dr. Martin Adamyan, PhD of biological sciences, leading specialist of the National Academy of Sciences of the Republic of Armenia, Institute of Zoology, Director of the Museum of Zoology, (E) Economic assessment of environmental damage by Dr. Edita Vardgesyan, Economist, Lecturer at the Nature Management Dean of the State University of Economy.

more than 1000 hectares of forests.⁶ Entire ecosystems, including habitats of endangered plants and animals will be jeopardized. Likelihood of landslides will increase.

According to the Teghut mine exploitation project, there are numerous systems of tectonic faults in the mine area. Following the norms of the Republic of Armenia for seismic resistance construction, the above mentioned area is located in the first zone (a high risk of earthquakes, up to eight points on the Richter Magnitude scale, which classifies an earthquake as “Great” and means that it can cause serious damage in areas several hundred kilometers across.) This poses a risk of failure of the enormous tailing reservoir, in which case the entire region will be affected, including the valley of Debed River that crosses into the neighboring Republic of Georgia. Armenian legislation has clear requirements concerning economic activity in active seismic zones. Article 5 of the Environmental Impact Assessment (EIA) Law of the Republic of Armenia (RA) reads: “During assessment of the planned activity a possible impact on the environment is estimated during construction, operation, liquidation and after liquidation, and also in the emergency situations.” Moreover, based on Article 12 of the RA law "On Seismic Protection" and RA Government Resolution 237-N of March 13, 2003, an expertise of seismic risks would be obligatory for mining activity in Teghut. However, the data on the results of the evaluation of seismic danger and seismic risk are not presented in the mining project. The project only states the fact that the mine is located in an extremely active seismic zone, while the issue of seismic risks as a result of explosions or exploitation of the mine has not been subject to expertise.

The environmental impact assessment (EIA) of the project, conducted by ACP and approved by the Government of Armenia, has failed to fully consider the above-cited threats and consequences. The EIA did not do a serious analysis of the loss of ecosystems and *completely disregarded* risks to human health and emergencies. It made most of its environmental cost estimations based on 15-year old methodologies of the Russian Federation based on 1984 prices (in rubles) disregarding the requirements of the national legislation and its respective methodologies for calculation of costs of damage on air, water and soil caused by economic activities.⁷ Environmental damage was considered only for the first 8 years of the 50-70 year project. As a result, the costs of mining were underestimated against the benefits and the project was presented to the public as having critical importance to the national economy.

⁶ It should be noted that forest cover in Armenia has already decreased within 20 years from 11% to about 7% of the territory of the country. According to experts, at the current rate of deforestation the country will become a desert within 50 years.

⁷ “Order of assessment of impacts of economic activity on land resources”, developed in accordance with the decision of the Government of Armenia N92-N, dated 25.01.2005; “Order of assessment of impacts of economic activity on water resources”, developed in accordance with the decision of the Government of Armenia N1110-N, dated 14.08.2003; “Order of assessment of impacts of economic activity on air”, developed in accordance with the decision of the Government of Armenia N91-N, dated 25.01.2005.

Governmental authorities in charge of the review of the EIA ignored the miscalculations and false data provided by ACP. Risks for trans-boundary impacts and emergency situations as well as adherence to Armenia's international obligations were disregarded completely. The call of NGOs and civil society initiatives (CSI) to arrange for an independent and impartial environmental impact assessment by international experts was rejected by the Armenian government.

3. Health Concerns

Dumping tails containing silver, rhenium, lead, arsenic, copper, molybdenum, zinc, sulfurous compounds, and various chemicals used in extraction and ore processing will contaminate the nearby pristine valleys of Shnogh River and its tributaries, affecting food safety and human health.

These substances pose serious threats to the affected population. Industrial exposure to copper fumes, dusts, or mists may result in metal fume fever with atrophic changes in nasal mucous membranes. Chronic copper poisoning results in Wilson's Disease, characterized by a hepatic cirrhosis, brain damage, demyelization, renal disease, and copper deposition in the cornea; molybdenum prevents the formation of bones in the embryo; it causes a series of disorders with nervous system, liver, kidney, lungs, teeth, as well as cardiovascular diseases. Sulfur is mutagen and endorses the decline of soil fertility. Arsenic causes the tissue respiration, skin cancer, psychos, memory and speech disorders. Zinc causes a dry cough, nausea, noise in ears, insomnia, respiratory and lung diseases. Lead reduces the measure of micro-organisms in the soil and negatively impacts mental development of children.

Although mining has not started in full scale now, local population already alerts about pollution with dust of rivers, which supply much of the drinking and irrigation water of the local villages. As mentioned earlier, the risks of pollution and health impacts may extend to the territory beyond Teghut and Shnogh villages, reaching neighboring Georgia.

4. Right to Property

The property rights of community and individuals were violated in the process of decision-making of allocation of lands to ACP.

Based on the RA Government decision 1278-N of 01.11.2007⁸, the Government of Armenia allocated 1,491 ha for exploitation of the mine to ACP. Part of these lands were owned by private citizens and were taken away through eminent domain according to RA Government

⁸ RA Government's decision 1278N of 01.11.2007 on Changing the Status of Lands and on Provision of Lands for Operation of the Teghut Copper-Molybdenum Mine

Decision 1279-N of 01.11.2007. The villagers received miserable compensation – about 10-20 cents per square meter of land– paid by ACP for their fertile lands and crops. Some villagers lost their property, while others’ property will be largely affected by and eventually degraded through contamination caused by mining.

Currently, there are 10 pending cases brought by residents of Shnogh and Teghut communities to the European Court of Human Rights complaining against violation of their right to property (Parsadanyans case N 5444/10; Mashinyans N 65124/09; Davit Ghumashyan N67888/10; Harutyunyans N 65200/09; Mher Alikhanyan N 4413/10; Ramazyans N 54769/10; Levon Alikhanyan N 6818/10; Osmanyans N 71306/11; Vardanyans N 4178/10; Alikhanyan and Meliksetyan N 4168/10).

5. Threats to Historical and Cultural Heritage

According to the Article 11 of the EIA Law, historical and cultural monuments and other cultural assets are under the care and protection of the state. According to Article 5 of the EIA Law of Armenia: “During assessment of the planned activity, social and economic, environmental and historical and cultural features of the given territory are to be taken into account.” Decision-making on exploitation of copper-molybdenum reservoir did not take into account availability of cultural monuments.

The area allocated for mining is home to about 20 historical and cultural sites. Since 2009, on the territory of around 1500 hectares archeologists discovered artifacts as old as 5000 years and remnants of early Bronze Age settlements.⁹ Excavation efforts and new discoveries are still in progress. A number of valuable historical monuments and artifacts are to be destroyed and lost as a consequence of mining in Teghut. Mining activity will result in violation of people’s right to cultural heritage.

6. Violation of the Right to Participate in Decision-Making

The process of adoption of documentation approving mining in Teghut was carried out without timely and effective public awareness and participation. To-be-affected communities were not adequately informed about the potential environmental impacts on their livelihoods. To the extent that any public participation did take place, they were perfunctory and unproductive as all the major decisions were already made before-hand. This violated Armenia’s EIA Law, as well as the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, ratified by Armenia in 2001. According

⁹ Interviews of Dr. Suren Hobosyan, leader of the archaeological expedition in Teghut, Institute of Archaeology and Ethnography of the National Academy of Sciences of Armenia (NAS): <http://www.yerkir.am/am/news/19101.htm>, <http://mediagid.am/am/news/hushardzannery-vtangvac-en-245503>, <http://www.aravot.am/en/2012/01/26/31166/>

to Article 6 of the Armenian Constitution, all international treaties ratified by the Armenian Parliament, are part of the national legal system and in case they contradict with national legal norms, those of international treaties shall prevail.

The Government of Armenia failed to implement the Convention and violated several key articles in case of Teghut mining project. The Government solicited public participation only in 2006 after the actual decision (issuance of license) on mine exploitation was made still in early 2001. According to findings and recommendations of the Compliance Committee of the Aarhus Convention with regard to communication ACCC/C/2009/43 concerning compliance by Armenia in respect with decision-making on Teghut mining, "...the Party concerned failed to inform the public early in the environmental decision-making process and in a timely manner, as required by article 6, paragraph 2, of the Convention."¹⁰ In particular, in relation to Article 6, paragraph 4, the Aarhus Convention Compliance Committee states, "Providing for public participation only after the license has been issued reduced the public's input to only commenting on how the environmental impact of the mining activity could be mitigated, but precluded the public from having input on the decision on whether the mining activity should be pursued in the first place, as that decision had already been taken. Therefore, the Committee finds that the Party concerned failed to provide for early public participation as required in article 6, paragraph 4, of the Convention."¹¹

The 3rd Meeting of Parties to the Aarhus Convention (Supreme body of the Convention) held on 29 June–1 July 2011 in Chisinau affirmed the decision of the Compliance Committee, which states that the Armenian Government failed to comply with:

- Article 3, paragraph 1, of the Convention, which requires to maintain a clear, transparent and consistent framework for implementation of the public participation provisions, and
- Article 6, paragraphs 2, 4 and 9, of the Convention, which requires public participation in the decision-making process.¹²

7. Human Rights Violations

In the opinion of experts, operation of the Teghut mine is in breach of the principles of the UN Framework Convention on Climate Change, UN Convention on Biodiversity, UN Convention

¹⁰ Findings and recommendations with regard to communication ACCC/C/2009/43 concerning compliance by Armenia, par 69, available on http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/ece_mp.pp_2011_11_eng_add1.pdf

¹¹ Ibid. para. 76

¹² "Findings and recommendations with regard to communication ACCC/C/2009/43 concerning compliance by Armenia" (adopted by the Compliance Committee on 17 December 2010) with provisions of the Convention in connection with the issuance and renewal of licenses for the exploitation of the Teghut deposit (Ref. ACCC/C/2009/43) available on http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/ece_mp.pp_2011_11_eng_add1.pdf, para.83

on Combating Desertification, UNESCO World Heritage Convention, European Landscape Convention, UNECE Convention on Environmental Impact Assessment in a Trans-boundary Context (Espoo Convention) and UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)—all signed and ratified by the Republic of Armenia (RA).

In addition, the decisions related to Teghut mining violate provisions of the RA Constitution and a number of national laws, including RA Land Code, RA Water Code, RA Mineral Code, RA Law on Environmental Impact Expertise, RA Law on Allocation of Mineral Resources for Exploration and Exploitation (RA Law on Concession), RA Law on Flora, and RA Law on Fauna.

Given that the mining will pollute water resources, land and air in the area, people's **right to health** and **right to water** will be violated.

The right to health is recognized in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, to which Armenia is a signatory. Article 25 of the Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health, and wellbeing of himself and his family [...]". The Preamble to the World Health Organisation's (WHO) (Armenia is a member since 4 May, 1992) constitution also declares that it is one of the fundamental rights of every human being to enjoy "the highest attainable standard of health". Several international human rights conventions signed and ratified by Armenia, state provisions which could amount to an explicit recognition of the right to water. Three of these international conventions are as follows.

- 1) 1989 Convention on the rights of the child (CRC) states: "Article 24 1. States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health ... 24.2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, [...] the provision of adequate nutritious foods and clean drinking water [...]". Armenia has ratified CRC on July 27, 1993.
- 2) The 1979 Convention on the Elimination of Discrimination against Women (CEDAW) also states: " Article 14 (2) States parties shall take all appropriate measures to eliminate discrimination against women in rural areas to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular shall ensure to women the right: [...] (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications." Armenia has ratified CEDAW on June 9, 1993.
- 3) The most detailed definition of the content of the right to water came in 2002 from an expert body (CESCR) assessing the implementation of the ICESCR (International

Covenant on Economic, Social and Cultural Rights), a treaty only recognizing "implicitly" the right to water. This definition is detailed in General Comment 15, in which the Committee asserts: "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. Armenia has ratified ICESCR on 13 Sep 1993.

The entire population of the surrounding villages and beyond will suffer from mining—with women and children suffering most—because mining jobs are mainly taken by men (construction, driving, etc), and women who traditionally collect fruit, herbs, berries from the forest will be deprived of their occupation, and children face high health risks. Moreover, jobs created in mining, provide no health insurances to the workers and their families. The mining jobs will last from 25 to 80 years (as per mining project documents), while permanent agricultural jobs will be destroyed, people's health and livelihood will be substantially harmed. Moreover, mining jobs are taken by relatively few people, while all the population of the villages is deprived of their agricultural jobs.

Our research shows that in cases comparable to Teghut where there is mining, pollution of water, toxic waste and health issues, the European Court of Human Rights (ECHR) has extended Article 2 (Right to life) and Article 8 (Right to respect of private life and family life) of the European Convention on Human Rights: [Dubetska and Others v. Ukraine \(application no. 30499/03\)](#), [Lopez Ostra v. Spain \(application no. 16798/90\)](#), [Fadeyeva v. Russia \(application no. 55723/00\)](#), [Tatar v. Romania \(application no. 657021/01\)](#), etc.¹³

Again, we would like to emphasize, that inhabitants of Shnogh and Teghut villages are not the only victims of violations caused by this mining project. The project will affect the whole population of Armenia and in case the violations of human rights are not stopped urgently, similar rights of indefinite number of people living outside of Armenia, mainly in neighboring Georgia will be violated, too, through further pollution of trans-boundary Debed River.

8. RA Laws and Policies that Establish Human Rights Violations

The forgoing documents establish human right violations:

- a) CONSTITUTION OF THE REPUBLIC of ARMENIA (RA): According to Article 33.2 of the RA Constitution, each person has the right to live in the environment contributing to his/her health and welfare. As seen from this constitutional norm, the condition of the environment is valued especially in terms of its impact on person's health and welfare. Contrary to the RA

¹³ See European Court of Human Rights, Factsheet-Environment related cases in the Court's case law, January 2012

Constitution, while carrying out the expertise on the impact on the environment, the impact of the planned activity on a person's health was not studied, assessed and subjected to expert review.

According to Article 10 of the RA Constitution, the state shall ensure the protection and reproduction of the environment and the reasonable utilization of natural resources. Contrary to this statement of the Constitution, the Government of Armenia failed to consider any alternative economic activity to mining in Teghut (which is also a requirement of law).

According to Article 31 of the RA Constitution the right to property shall not be exercised to cause damage to the environment or infringe on the rights and lawful interests of other persons, the society and the state. The property rights of community and individuals were violated in the process of providing mining license. As mentioned earlier, many private land owners are now contesting the actions of the Government in the European Court of Human Rights.

According to 48 article of the RA Constitution, the basic tasks of the state in the economic, social and cultural spheres include “(10) to pursue the environmental security policy for present and future generations.” According to expert analyses (see footnote 1), the economic costs to the environment were underestimated and presented to be about 300 times lower than they would be in case estimated in accordance with national legal standards. The tailing dump of Teghut, to be the largest in the South Caucasus, will result in the addition of serious seismic risks. These risks have not been assessed despite requirement of The Law on Seismic Security.

- b) AARHUS CONVENTION: As mentioned above, in the section 6. Violation of the right to participate in decision-making, by approval of Teghut mining project the Government of Armenia violated the Aarhus Convention. The Compliance Committee found that Armenia failed to inform the public in advance or in a timely manner for the purpose of environmental decision making, as required by the Convention. Moreover, presently Ecodar Armenian NGO is contesting in the Aarhus Convention Compliance Committee Armenia's failure to ensure public's access to justice in environmental decision-making, which is one of the major requirements of the Convention (see details in section 10. Steps to achieve justice).
- c) ESPOO CONVENTION: The impact of the planned activity extends further across the RA border¹⁴, which is regulated by the “Convention on Environmental Impact Assessment in a Trans-boundary Context.” Trans-boundary impact assessment of the mine has not been carried out. The Government even disregarded the concerns of Georgian NGOs who expressed their worries related to likely trans-boundary impacts of mining and applied to

¹⁴ Shnogh river flows into Debed River, which is a transboundary river flowing from Armenia to Georgia

the Armenian Embassy in Georgia with concrete request to arrange for a new environmental assessment in accordance with the requirements of the Espoo Convention and international best practices. Response received by Georgian NGOs merely declared that “the possibility of transboundary impacts is excluded.”

9. Social Resistance and Concerns

The environmental NGO community has raised its concerns over the environmental impact of the Teghut mining project since March 2006. Despite these concerns, ACP has been granted all the necessary permits and concurrences by the respective governmental agencies. Since the adoption of the ill-grounded November 2007 decision by the Armenian Government to launch the project, public opposition has intensified. The Save Teghut Civic Initiative, mobilizing NGOs, other civil society groups and concerned individuals, has held numerous demonstrations, petition drives, rallies, public hearings, press conferences, etc. Many of these were joined by the members of communities directly affected by the mine.

Public concern and activism attained RA Government's reaction and a series of meetings of NGOs were held with the Prime Minister in May-September 2008. Those, particularly, resulted in an instruction addressed to ACP to develop EIA for 25 years instead of the conducted 8 and the expression of readiness to arrange for environmental assessment by international independent experts.¹⁵ Also, there were instructions to the Ministry of Nature Protection (MNP) related to the development of methodologies for assessment of economic costs of environmental impacts, of legislation related to environmental payments as well as of a strategy document for the mining sector. Most of these instructions were planned to be done by the end of 2008, however they have never been accomplished. Armenian government acted as the blind advocate of Teghut mining project, completely ignoring the problems highlighted by civil society initiatives, NGOs and experts.

Public organizations are allowed no legal standing: Interested public and CSI-NGOs are not allowed to claim against the decisions of administrative bodies in the court. The Decision of the Administrative Court dated 24 March 2010 stated: “The Administrative Court interpreted the law in such manner, which does not provide access to justice for the public organizations, even if their statutory goals include protection of the environment.” The same legal position is held by the court of Cassation Court (the supreme court of Armenia).

Despite the great potential in this area for economic development, most of the population lives below the poverty line. In general, Armenia's poverty rate increased significantly in 2009 due to

¹⁵ Protocol N 50-88 from June 20, 2008 on the Consultation held at RA Prime Minister's office, available in Armenian.

the economic crisis, having a particularly devastating effect on populations outside of the capital city.¹⁶ This economic vulnerability pressures communities to make critically important decisions in a situation where there are few alternatives. In Teghut, where there are no alternative workplaces, the mine has become the only means to earn a living. At the same time, according to the Final Report on the Green Economy in the Eastern Partnership of 2011¹⁷, “Armenia has opportunities for green growth especially in the field of ... agriculture (organic farming) [... and] tourism (ecotourism, eco agro tourism) could be targeted as well.” Teghut forest particularly is unique, as nearly 40 percent of the trees are fruit-bearing. The pristine nature of this area and recently discovered rich cultural heritage (about 20 historical and cultural sites from antique and middle age eras) create favorable conditions for creation of green economic development projects as mentioned in the Eastern Partnership report. At the same time, the government does not wish to implement adequate resource use policies for this area, ultimately forcing the local population to take the mining jobs for minimal pay as there are no alternatives.

It is also a requirement of Armenia’s EIA Law, Article 5 that: “The [environmental impact] assessment at least should include alternative decisions, including alternative of zero action (exclusion of the planned activity), their comparative analysis and the choice of the most acceptable variant.” This requirement of the law was completely ignored by respective authorities.

10. Steps to Achieve Justice

Appealing to Executive Bodies:

In 20.06.2008 and 12.09.2008 during the meetings with RA Prime Minister the legitimacy of the Teghut mine exploitation has been disputed. The Prime Minister and the Government members agreed on the fact of this problem. Moreover, as mentioned earlier, the Prime Minister instructed the RA Ministry of Nature Protection to take necessary steps on this issue, which still remain unaddressed. The lack of government responses and legal violations, forced the concerned organizations and individuals to raise the problem with international organizations requesting respective intervention.

Appealing to the Armenian Courts and International Bodies:

In addition, for more than a year, Armenian NGOs have strived to achieve justice in the Armenian justice system. The following chronicles these efforts:

1. On 8 June 2009, *Transparency International Anti-corruption Center, Ecodar and Helsinki Citizens Assembly Vanadzor* NGOs applied to the Administrative Court of Armenia against the

¹⁶ Poverty rising in Armenia after economic crisis <http://www.cacianalyst.org/?q=node/5480>

¹⁷ http://ec.europa.eu/environment/international_issues/pdf/report_green_economy_en.pdf

Armenian Government, Ministry of Nature Protection, Ministry of Energy and Natural Resources, with a demand to consider invalid documents approving mine exploitation in Teghut.

2. On 9 June 2009, the Administrative Court (verdict VD/3275/05/09) rejected the appeal. This verdict was justified with a statement that Armenia's legislation provides access to justice for persons whose rights have been violated directly. According to the verdict of the court "the rights of appealing organization were not only not violated, but not even touched with the mentioned appeal."

3. This verdict of the Administrative Court was appealed to higher instances, and on 30 October 2009, the Cassation Court (Supreme Court of Armenia) made a verdict partially in favor of the appealing organizations. It allowed legal standing for "Ecodar" NGO. The case was returned to the Administrative Court for a new consideration.

4. On 24 March 2010, the Administrative Court applied an accelerated procedure of examining the case and made a verdict to reject "Ecodar's" appeal, stating that a physical or legal person can only apply to the court when his/her subjective rights have been violated.

5. On 1 April 2011, the Cassation Court of Armenia rejected "Ecodar's" appeal and decided to remain in force the 24 March 2010 verdict of the Administrative Court.¹⁸

Appealing to International Bodies:

On September 2009, *Transparency International Anti-corruption Center, Ecodar and Helsinki Citizens Assembly Vanadzor* NGOs addressed a communication to the Compliance Committee of the Aarhus Convention in Geneva claiming about violations of requirements of the Aarhus Convention.¹⁹ In March 2010, the case was discussed at the Compliance Committee's meeting in Geneva with the participation of communicants and the Armenian Government. In draft "Findings and recommendations" from December 2010, the Compliance Committee recognized the failure of the Republic of Armenia to ensure effective public participation with respect to decisions regarding the operation of Teghut mine. The document particularly noted the non-compliance to Article 3, paragraph 1 and Article 6, paragraphs 2, 4 and 9 of the Convention, which requires public participation in the decision-making process.²⁰ These conclusions were adopted by the 3rd Meeting of Parties to the Aarhus Convention held on June 29 – July 1, 2011 in Chisinau.²¹

¹⁸ The brief analyses of legal procedures in Armenia bring to the conclusion that Administrative and Cassation Courts of Armenia have consistently made efforts to jeopardize any legal procedures against mine exploitation in Teghut, have made every effort to avoid public court hearings which would publicize vast violations of law. This once again demonstrates that Armenian public has been totally isolated from decision-making on public property issues, as well as from access to justice in order to protest illegal decisions of state officials.

¹⁹ See <http://www.unece.org/env/pp/compliance/Compliancecommittee/43TableArmenia.html>

²⁰ "Findings and recommendations with regard to communication ACCC/C/2009/43 concerning compliance by Armenia" (adopted by the Compliance Committee on 17 December 2010) with provisions of the Convention in connection with the issuance and renewal of licenses for the exploitation of the Teghut deposit (Ref. ACCC/C/2009/43) available on http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/ece_mp_pp_2011_11_eng_add1.pdf, para.83

²¹ Decision IV/9a on compliance by Armenia with its obligations under the Convention available on http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9a_Compliance_by_Armenia_e.pdf

Currently there is the second communication on Teghut mining by *Ecodar* NGO pending in the Aarhus Convention Compliance Committee that challenges the Armenian government's failure to provide access to justice to the concerned community of environmental NGOs.²²

11. Larger Picture of Mining Hazards

The impunity in the case of Teghut mining project has become a precedent and allows Armenian government to launch similar projects with major human rights violations and threat to the environment: (a) iron mining in Hrazdan, in the stage of exploration, which, if started, will affect Hrazdan River – the main source of irrigation water for agricultural lands of Ararat Valley where the vast majority of country's agricultural products are produced; (b) gold mining in Sotk on the shores of Lake Sevan, which is the biggest freshwater reservoir in the Caucasus region; (c) gold mining in Amulsar, near Jermuk mineral resort; (d) expanding of the copper-molybdenum mine area in Kajaran, where 6 villages will be fully destroyed and abandoned for mining (villagers have been resisting this decision for months already), and many others. Based on the court precedent of Teghut, in a number of other matters, including appeal against uranium mine exploration in Lernadzor, the southern region of Syunik in Armenia, public organizations were rejected legal standing.

Since 2007, Armenian government has announced mining as one of the leading directions of economic development. This resulted to a situation, where dozens of new mining licenses are provided to private companies annually without any strategic planning or cost-benefit analysis with consideration of externalities. Presently, out of 650 around 490 mines are being exploited in Armenia, of which more than 20 are metal mines. Impacts of those are devastating and there is no practice of restoration and re-cultivation of mining areas.

The South of Armenia, region of Syunik, is polluted from decades of molybdenum mining in Kajaran, Kapan, Agarak towns. The land and waters are contaminated, high rate of cancer and birth defects are recorded. Research of the National Academy of Sciences Center for Ecological-Noosheric Studies revealed an extremely high level of heavy metals (mercury, cadmium, etc) in the skin and hair of all children who underwent analyses in Syunik region²³. According to 2005 report of World Health Organization (WHO), Armenia has the second highest rate of birth defects in the post soviet area²⁴.

²² See <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envpppubcom/armenia-acccc201162.html>

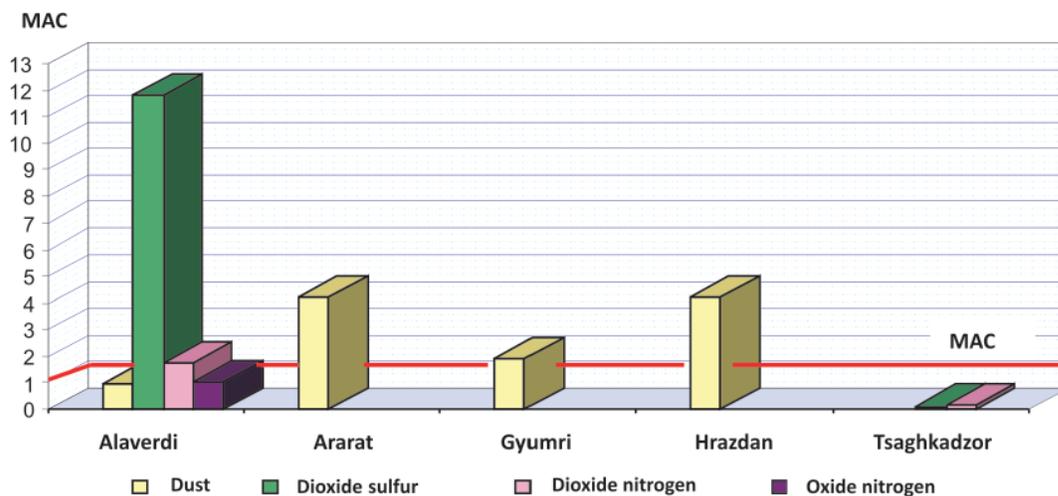
²³ "Ecologo-geo-chemical assessment of the environment near Kajaran town", Armen Saghatelyan, National Academy of Sciences of the Republic of Armenia, Yerevan, 2008

²⁴ Annual report of the Human Rights Defender of the Republic of Armenia, 2011

In the North of the country, one of the major polluting industries is the copper processing plant in Alaverdi town. It is operated by ACP, the same mining company in preparation of exploiting Teghut deposit. ACP has been exploiting copper factory since 1997. It has become famous for largely irresponsible business, general disregard of environmental norms and continuous failure to install new technologies to alleviate serious environmental impacts and deterioration of human health. According to the 2007 data permissible records of pollution quantity, 25,2 thousand tones of emissions were released into the ambient air from the static pollution sources. In 2008, the average annual concentration of sulphur dioxide in the ambient air exceeded the maximum allowable concentration (MAC) 11,8 times, and nitrogen 1,7 times. There were no significant changes in these concentrations compared to the previous year.²⁵

Diagram 1 shows that Alaverdi is in the first place by the concentrations of sulphur dioxide, nitrogen dioxide and nitrogen oxide compared to other four cities of Armenia.

Diagram 1. Comparison to the air pollution levels in five cities of the Republic, 2008



Source: 2008 annual report by the “Environmental Impact Monitoring Center” SNCO , Yerevan, 2009

Trans-boundary Debed River, which also flows in Alaverdi, is already heavily polluted because of direct discharge of the solid and industrial wastes as well as domestic waste into the river. Samples taken from the Debed River demonstrated that the average annual concentration for aluminum exceeded MACs 10,1-14,5 times, for vanadium 2,0-6,0 times, for chrome 4,0-9,0 times, for manganese 1,6-4,8 times and for copper 2,0-9,0 times, for nitrite ion 1,5-3,7 times, for zinc 2,3-2,5 times. The quality of Debed River during 2006-2009 dropped from “good” to “satisfactory” (by the scale of excellent, good, satisfactory, poor, very poor).

²⁵ According to 2010 and 2011 annual reports of ArmEcoMonitoring Center of Armenia’s Ministry of Nature Protection, the average annual concentration of CO₂ in Alaverdi town has increased the maximum allowed level for respectively 3.6 and 3.3 times.

The contents of heavy metals in the surrounding area of the copper processing plant exceeds the maximum permissible norms 20-40 times; the concentrations of copper and lead exceed the norms 32,3 and 16,0 times respectively. The soils are full of other chemical substances such as Hg, As, Mo, Ni, Cd and Cr.

The numbers of different diseases in Alaverdi in the period of 2004-2008 has significantly increased. The number of dermatological diseases has increased almost 4 times, the respiratory diseases almost 3 times, nervous diseases have doubled and tumours have increased 1.6 times.

The numbers of lung cancer cases in Alaverdi and Gavar cities (an agriculture city that never had industrial manufacturing) showed that in Alaverdi the numbers of lung and stomach cancer are significantly higher compared to Gavar. In 2008 the number of lung cancer cases in Alaverdi was 16 times higher than in Gavar (120,5 per 100 000 population in Alaverdi compared to 7,7 in Gavar). The number of stomach cancer for the same year in Alaverdi was 24 per 100000 while in Gavar no case of stomach cancer was registered.²⁶

12. Conclusion

- Mining activity in Teghut has been initiated by ACP and approved by the Armenian Government with massive infringements of national laws and international conventions, including violations of human rights requirements.
- The decision-making on Teghut mining was carried out without ensuring timely and effective public awareness and participation that ruled out the possibility for the exercise of people's right to participate in decision-making that might impact their lives and the protection of other rights such as right to live in a healthy and safe environment, right to property and right to cultural heritage.
- Mining activity and mining waste have a high risk of causing serious damage to the health and lives of human population, as well as the ecosystem. It will pollute and destroy sources of drinking and irrigation water, increase possibilities of landslides, destroy large areas of forest. The project will likely deprive the population of safe drinking water and food. All mentioned risks will grow because of high seismic activity of the region.
- The local population is being deprived of their permanent agricultural jobs, and forced taking mining jobs. The latter are short term, little paid and cause high health risks. In case of large scale mining in Teghut and large scale water, soil and air pollution, agricultural use of the area will become impossible for tens of thousands of years. This may cause dramatic increase in the rates of poverty and migration of the population in the future.

²⁶ "Geo Alaverdi: Environment and Urban Development", Dr. Gevorg Nazaryan, Yerevan, 2009

- Historical and cultural heritage is being destroyed, including valuable historical monuments and artifacts, which will be lost as a consequence of the mining project in Teghut.
- The Teghut case is not unique and most of the hazards described in this Appeal are valid in case of other mines in the country. Scales of mining in Armenia are increasing dramatically, and in many cases this is accompanied by illegalities, major human rights violations and threats to human life and environment.

Urgent Appeal

The concerned Armenian public has tried all possible measures in order to stop illegal mining in Teghut, which violates human rights, national legislation of Armenia and international conventions to which Armenia is a signatory.

The national justice system of Armenia does not allow legal standing for public organizations, which means that public rights, public health, right to water, right to safe environment cannot be protected.

Impunity in the case of Teghut gives way to the Armenian government to launch other mining projects, with a high risk of environmental disaster, large scale pollution and major damage to human health and life. Every year, dozens of new mining licenses are given out by the Government of Armenia. Teghut and similar projects are further implemented, very soon the basic right to life of the people will be threatened, due to pollution of the nature and exploitation of all natural resources. Pollution of water resources in Armenia will lead to similar pollution of other neighboring countries, primarily Georgia, considering trans-boundary water resources.

Taking all of these circumstances into consideration, we kindly ask an urgent visit of relevant special rapporteurs to Armenia for further investigation and reporting on this issue. There is a pressing need to take steps to stop the practice of unsustainable and irresponsible mining that put under the risk the existence and well-being of the tiny country with a territory of only 29,000 sq. kilometers and its population.

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