



**ALTERNATIVE TO UN COMMITTEE
REPORT ON ECONOMIC,
SOCIAL AND
CULTURAL RIGHTS**

REALIZATION OF THE RIGHT
TO SAFE AND HEALTHY
WORKING CONDITIONS
IN ARMENIA
WITH A FOCUS ON
SYUNIK REGION
OF ARMENIA

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This report has been produced as part of the project “Promoting Human and Labour Rights through GSP+ in Armenia” and is presented now for the purposes of the EU’s ongoing GSP+ monitoring process. It is also to be submitted to the UN Committee on Economic, Social and Cultural Rights. However, that submission will be at an undetermined future date and hence the content of the report may be modified in the interim.



**DEMOCRACY
REPORTING
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The report was prepared by
Eurasia Partnership Foundation,
“Human Rights Research Center”
Non-governmental organization,
“Goris Press Club”
Non-governmental organization



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EUROPEAN UNION FOR ARMENIA

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BRIEF INFORMATION ABOUT THE REPORT

- (1) This Alternative Report aims to provide information to the UN Committee on Economic, Social and Cultural Rights (CESCR) on the implementation of the Armenian Government's obligations under Article 7 of the International Covenant on Economic, Social and Cultural Rights (hereinafter – “the Covenant”), which sets forth the obligation of a state to ensure the right of everyone to the enjoyment of just and favourable conditions of work.
- (2) The Report in particular addresses the problem of realization in Armenia of the right to safe and healthy working conditions as prescribed under Article 7(b) of the Covenant. CESCR General Comment 23 outlines the parameters of this right, and points out that “Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work...” It calls on states to adopt nationwide policies to prevent workplace accidents, injuries, and health hazards and provides considerable guidance on what those policies should include. (Paras. 25-29.) It also explicitly states that “Workers should be able to monitor working conditions without fear of reprisal” (Para. 26).
- (3) Following a general discussion of the legal, regulatory, and policy framework impacting safe and healthy working conditions, the Report assesses the labor rights of persons working in the mining sector in Syunik region through the lens of the right to safe and healthy working conditions. It also includes the results of field work conducted in April, 2019, which formed the basis of assessment.
- (4) Armenia ratified the Covenant on Economic, Social and Cultural Rights in 1993. In 2009, it signed the Optional Protocol to the Covenant allowing for individual communications on alleged violations of the Covenant. Unfortunately, the Optional Protocol has not been ratified.

PROBLEMS OF REALIZATION OF THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS IN ARMENIA

Legislative safeguards of realization of the right to safe and healthy working conditions and the national policies

- (1) The right to safe and healthy working conditions is enshrined in the Constitution and regulated by a number of domestic laws¹. Article 82 of the Constitution provides that *every worker shall, in accordance with the law, have the right to healthy, safe and decent working conditions, to limitation of maximum working hours, to daily and weekly rest, as well as to annual paid leave.*
- (2) The Labor Code is the core legal document in the field of safe and healthy working conditions. Article 3 ensures the right of every worker to just working conditions (including the right to conditions which ensure safety and meet hygiene requirements, the right to rest) as one of the principles of labor legislation, and Chapter 23 (Articles 242-262) establishes a number of provisions related to the safety and health of workers, stating that employers shall provide employees with appropriate safety equipment and medical first aid, and also establishes norms for reporting accidents or deaths if they may occur².
- (3) In addition to the International Covenant on Economic, Social, and Cultural Rights, Armenia has ratified several International Labour Organization conventions that elucidate the right to a safe and healthy working environment, including a number of conventions of the International Labor Organization (ILO). Armenia has ratified the ILO Prevention of Major Industrial Accidents Convention (No. 174)³, which states that competent authorities must ensure provisions for off-site emergency preparedness, the Labor

1. The RA Labor Code, the RA Law “On Employment”, the RA Law “On State Regulation to Ensure Technical Safety”, the RA Law “On Ensuring Sanitary-Epidemiological Safety of the Population of the Republic of Armenia”.

2. See at: <https://www.arlis.am/DocumentView.aspx?docID=66489>

3. See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312319:NO

Inspection Convention (No. 81)⁴ which states that members must maintain a system of labor inspection in industrial workplaces, and the Safety and Health in Mines Convention (No. 176)⁵. However, Armenia has not yet ratified the Occupational Safety and Health Convention (No. 155)⁶, which is of key importance as it ensures that Members will formulate and implement a “national policy on occupational safety, occupational health and the working environment”.

- (4) Under CESCR General Comment 23⁷, States parties should adopt a national policy for the prevention of accidents and work-related injury by minimizing hazards in the working environment. Formulation and adoption of a national policy is also prescribed as a requirement in the 1981 ILO Occupational Safety and Health Convention (No. 155). *Armenia does not have a national policy concerning regulation of labor rights, which the governmental Strategy on ensuring safe and healthy working conditions and its Action Plan would have been part of, if it existed.*

The problems of realization of the constitutional right to safe and healthy working conditions

- (5) Regulation and oversight of safe and healthy working conditions is vested in the Health and Labor Inspection Body (HLIB)⁸, the Statute of which was approved based on the decision N 775-L from 11 July 2018 of the Prime Minister⁹.
- (6) HLIB was formed as a result of restructuring the Health Inspection Body of the Ministry of Health of the Republic of

4. See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312226:NO

5. See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312321:NO

6. See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312300:NO

7. See at: <https://www.refworld.org/docid/5550a0b14.html>

8. See at: <https://www.gov.am/am/bodies-under-government/254/>

9. See at: <http://www.irtek.am/views/act.aspx?aid=95884>

Armenia which in its turn had been created in 2013 as a result of legislative changes that led to merging of the State Hygienic and Anti-Epidemiological Inspection of the RA Ministry of Health and the RA State Labor Inspection of the RA Ministry of Labor and Social Affairs. Since the legislative changes, HLIB has lost its effectiveness due to reduction of its powers.

- 6.1) Within the framework of its Statute the control functions of the RA HLIB apply to a very narrow circle of labor rights. The RA HLIB imposes disciplinary liability measures in the fields of providing healthcare and ensuring safety and health of the workers, and it is within the scope of its powers to exercise control over the work of juveniles and pregnant women (Article 11(10, d)).¹⁰
 - 6.2) Although control over ensuring safe and healthy working conditions is a key function for the HLIB as authorized by its Statute, *there are many legislative gaps that impede the realization of this right.*
- (7) According to Heriqnaz Tigranyan, a lawyer specialized in the field of labor rights and the Deputy Head of the Standing Committee on Health care and Social Affairs of the National Assembly, the legislative changes that had begun in 2013 have mainly led to derogation of the powers of the Inspection Body. Article 84 of the RA Labor Code, that authorized the RA State Labor Inspection of the RA Ministry of Labor and Social Affairs to exercise control over labor legislation, has been nullified since 2014. As a result of legislative changes the powers and functions of the Inspection Body were significantly restricted, and the extrajudicial functions which the Inspection Body used to have and which used to play a significant role in remedying workers' violated rights, were eliminated¹¹.

- 7.1) Since the Committee's latest observation of Armenia

10. See at: <http://www.irtek.am/views/act.aspx?aid=95884>

11. Interview with Heriqnaz Tigranyan, 25 July 2019

in 2013, there have been published numerous local reports, including the Annual Reports of the Human Rights Defender's Office, highlighting the problem of the absence of an extrajudicial body that would oversee the observation of labor rights and prevent violations thereof¹².

- 7.2) According to the 2017-2019 Action Plan of the National Strategy for Human Rights Protection¹³ it is envisaged to examine the possibility to introduce a national extrajudicial mechanism for protection of workers' rights in labor relations, but no practical results have been delivered yet. *Thus, starting from 2014, the state in fact has shirked almost all the functions ensuring realization of labor rights.*
- 7.3) The effectiveness of the RAHLIB, given its current functions, is defined by H.Tigranyan as being at a “zero” level. As Tigranyan states, there is a need for implementation of immense legislative changes to guarantee honoring the government's obligations in the field of labor rights. *To this end a legislative draft is being developed now within the framework of current activities – aiming at restoring the functional integrity of the inspection body*¹⁴.
- 7.4) In June 2019 the RA Ministry of Economic Development and Investments, in order to revamp the Labor Code, put into circulation a draft legislation which however contradicts international standards of labor rights and many of the requirements set under CESCR GC 23. In addition to other restrictions, this Draft Labor Code eliminates a number of regulations established by the current Code, some of which concern the issue of safe and healthy working conditions, such as removing the mandatory requirement for additional remuneration for the work performed overtime and in conditions harmful to health.

12. See at: <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/0e3f463c0e6c42f12cb497d483739dec.pdf>

13. See at: <https://www.arlis.am/DocumentView.aspx?DocID=113223>

14. Interview with Heriqnaz Tigranyan, 25 July 2019

- 7.5) In order to ensure realization of the right to safe and healthy working conditions, it is necessary, besides restoration of the integrity of functions of the HLIB, to ensure also existence of the normative basis for realization of this right.
- 7.6) Article 248 of the RALabor Code provides that *the employer shall be obliged to adopt internal legal acts on ensuring the safety and protecting health of the workers*. Although there are many decrees of the Minister of Health concerning working conditions, nevertheless, there is no integrated document containing all normative regulations which would include comprehensively defined and elaborated criteria of safe and healthy working conditions and serve as guidance for the employers as well.
- 7.7) The HLIB does not have a checklist that would be necessary in order to evaluate risks in the workplace. There are no standards of risk level assessment. The checklist and the risk standards were developed for the Inspection Body of the RA Ministry of Health that operated till 2018, and not for the currently operational HLIB, which is a completely new body and not a successor to the previous one. That means that the HLIB is not authorized to conduct inspections and analyses, or to initiate proceedings. It follows that this body, in terms of its functions, cannot promote remedies for the violated rights of the employee.
- 7.8) *Thus, in Armenia there is a constitutional guarantee for the right to healthy, safe and decent working conditions, but the legislative grounds for ensuring this right are deficient, and there are no mechanisms for state control over the realization of this right and for the restoration of the violated rights of a worker.*

THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS OF PERSONS WORKING IN MINING IN THE SYUNIK REGION

- (8) In order to identify the problems with the realization of labor rights in the Syunik region, in particular the right to safe and healthy working conditions of persons working in mining, a field analysis was conducted with the participation of those who currently work or have previously worked in the industry. The research was conducted in three cities in Syunik region: in Kapan, Kajaran and Meghri, with those who work or worked in various positions at the “Kapan Mine Enrichment Plant” CJSC in Kapan, the “Zangezur Copper-Molybdenum Plant” CJSC in Kajaran, and the “Agarak Copper-Molybdenum Combine” CJSC in Meghri. A description of the sampling and methodology is presented in Attachment 1 of this Report.
- (9) Selection of the mining industry as a field of target for this Alternative Report is based on the fact that the mining industry is one of the most vulnerable spheres in terms of protection of labor rights in Armenia.
 - 9.1) There are anecdotal reports of serious problems with mine safety, including death and serious injury, due to insufficient safety measures and as a result of the lack of attention and the application of insufficient safety measures. Nevertheless, till now there is no comprehensive study, either governmental or non-governmental, that would focus on the persons working in the mining industry and the problems of protecting their rights.
 - 9.2) The first conclusion formulated based on the field analysis conducted in Syunik region was that the mining industry is of an extremely closed nature and beyond any state control, as stated by the participants of group discussions and individual interviews.
 - 9.3) Provision of occupational conditions and regulation thereof

is at the unfettered discretion of the businesses. The latter also strictly control “leakage” of any information regarding the working conditions of persons working in the mines – creating a climate of fear and prohibiting the employees from talking about their working conditions.

- 9.4) This problem served as the main challenge that necessitated conduct of the field activities: after establishing initial contact, the people would usually refrain from talking about their working conditions, which significantly limited opportunities for conducting interviews and facilitated discussions.
- (10) All 7 drillers who participated in the group interviews mentioned that they suffer respiratory, cardiovascular and other diseases, which developed as a result of working at the mines. One of the interviewees had a severe facial injury caused by an accident in the workplace.
- (11) None of the participants had health insurance. The interviewees considered their work to be highly dangerous. The employers would provide financial assistance only for the treatment of those health injuries that were suffered as a result of an accident that took place immediately at the workplace. If as a result of an explosion or any other accident the employee is transferred to hospital, the employer would incur the expenses, but the employee does not receive any compensation for the health problems developed within the course of time as a result of work performed in specific conditions of highly harmful and rough labor.
- 11.1) The employer only covers rehabilitation expenses arising from the accident, and does not provide any compensation for plastic surgery, if necessary.
- 11.2) All the participants of group interviews had indefinite-term employment contracts. However, the contracts lack any provisions on the rules and conditions concerning restitution of health-related damages by the employer.

- 11.3) Participants of the group interviews mentioned that, when hiring, the employer conducts safety training and repeats this on a quarterly basis, as well as providing the tools and equipment necessary for ensuring safety at the mine. However, the participants mentioned that there is no formal procedure to assess the level of the employees' knowledge of the rules and their proficiency in utilization of the safety measures.
- 11.4) The mechanism for computing salaries also seemed problematic in the opinion of the participants of the group interviews. Salaries are computed in the following manner: the principal amount is mentioned in the contract representing payments for the activities performed prior to drilling, such as: washing of the area, neutralization of the stones, strengthening, etc. The contract also envisages an additional 50% payment rate based on the high level of harmfulness of the work. This amount then increases by adding a payment for the total size of the area drilled during the given month, and in this way the final monthly salary is generated. The contract, however, lacks any provision as to how much should be paid for drilling a certain unit of the area, and what formula is to be used for the final calculation of the payment. Therefore, at the end of every month the employer calculates the amount to be paid for the work based on their own discretion that is completely unpredictable.
- (12) All the respondents of both the group interviews and in-depth interviews mentioned that they lack awareness of their labor rights, of the obligations of the employer and the norms concerning the adequate working conditions.
- (13) None of the interviewees has ever participated in a discussion hosted by the government on the problems of the mining industry, or in the meetings with the workers or any event to identify their needs.

- (14) All interviewees mentioned the problem of absence of trade unions – for protection of their collective rights.
- (15) The interviewees think that they would be able to protect their rights if they had any kind of governmental support, including health insurance. As per the interviewees, currently the state does not take any steps aimed at ensuring their rights, and the mining industry organizations “are autonomous states within the state”.

CONCLUSIONS AND RECOMMENDATIONS

The non-governmental organizations that prepared this report, based on the results of the analysis, urge the Committee on Economic, Social and Cultural Rights to pay attention to the following issues set out in the recommendations presented below.

Recommendation 1. Develop and adopt a national policy document for comprehensive regulation of labor rights, which the governmental Strategy on ensuring safe and healthy working conditions and its Action Plan would also be a part of. The government’s sector policy should be rights-based, founded on international standards for protection of labor rights (in particular: on the criteria set under CESCRC GC 23 and deriving from ILO conventions), be formulated and implemented in compliance with the principle of participatory involvement, with meaningful and wide participation of workers, employees and their representative bodies in particular.

Recommendation 2. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the ILO Occupational Safety and Health Convention (No 155). Ratification of these documents is of key importance for full realization of labor rights in Armenia.

Recommendation 3. Ensure full-fledged control of the state over the realization of labor rights. Establish an extrajudicial body in charge for the oversight of observance of labor rights and prevention of the violations thereof – based on the obligations undertaken by Armenia

within the framework of international legal instruments.

Recommendation 4. Carry out development of the planned legislative changes including the draft new Labor Code in accordance with the requirements of the Covenant and the CESCRC GC 23.

Recommendation 5. Ensure full legislative and normative basis for the realization of the constitutional right to safe and healthy working conditions.

Recommendation 6. Strengthen the role of trade unions in protecting labor rights, by providing them with appropriate safeguards and mechanisms necessary for their effective and independent operation.

Recommendation 7. Ensure state control over businesses operating in the field of mining industry, guarantee they ensure safe and healthy working conditions, full protection of the rights of persons working in the mines, including provision of state health insurance.

Recommendation 8. Eradicate the “climate of fear” created by employers in the mining industry, arbitrariness of the employers toward employees, and ensure public accessibility of information on the problems existing in the field.

Recommendation 9. Perform a comprehensive official analysis concerning labor rights in the mining industry. Reveal, through discussions with participatory involvement of the employees, the instances of exploitation of workers and infringements of their rights, and formulate a national Action plan aimed at protection of labor rights in the mining industry.

ATTACHMENT 1. DESCRIPTION OF THE SAMPLING AND THE METHODOLOGY OF INTERVIEWS AND DISCUSSIONS CONDUCTED IN SYUNIK REGION CONCERNING REALIZATION OF THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

Field research was conducted in the RA Syunik region in order to reveal the problems of realization of the right to just and favorable working conditions, and in particular the right of persons working in the mining sector to safe and healthy working conditions. This region was selected because two of the non-governmental organizations and individuals preparing this Report conduct their activities in the region, hence they are more knowledgeable of the problems in the region, constantly speak out concerning the problems of realization of the right to just and favorable working conditions in Syunik region, and implement activities and programs to solve those problems. Besides that, Syunik region is one of the epicenters of the mining industry in Armenia.

The target audience of the analysis were the current and former employees of the mining companies operating in 3 cities of Syunik region: “Kapan Mine Enrichment Plant” CJSC, “Zangezour Copper-Molybdenum Plant” CJSC, and “Agarak Copper-Molybdenum Combine” CJSC.

Qualitative analysis formed part of the methodology for this research. Group interviews and in-depth interviews were conducted as information-gathering methods. Within the course of the research we did not aim to generate statistically representative results or extrapolate those results onto the whole target group. Purposive sampling was applied both for the group interviews and for selection of participants for in-depth interviews.

The main impediment during the research was the fact that businesses exercise extremely strict control over “leakages” of information concerning the occupational conditions of those working in the mines – creating a climate of fear and prohibiting the employees from talking

about their working conditions - which significantly limited opportunities for conducting interviews and facilitated discussions.

Within the course of the research 1 group interview was conducted with drillers (7 men) and 5 in-depth interviews were conducted with persons engaged in the following occupations/positions: driver (man), warehouse manager (man), person in charge of the call center (man), head of the technical control unit (woman), and a specialist of the technical control unit (woman).

A guideline-questionnaire was used for conducting the interviews, which contained questions on the conditions and various situations occurring at the mining industry, specifically aimed at exploring the degree to which safe and healthy working conditions are ensured. The age group of the interviewees was in the range of 20 to 65.

During the interviews and discussions confidentiality and anonymity of the participants was ensured and the analysis does not contain any data that could make their identification possible.

The logic behind development of the questionnaire-guidelines was to receive, as far as possible, comprehensive information on compliance with the criteria for realization of the right to safe and healthy working conditions as elaborated in General Comment 23 of the Committee on Economic, Social and Cultural Rights.

