

In collaboration with

Armenian Environmental Front, civic initiative

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Summary of Main Issues

- Extractive industry investments have long-term negative impact on the livelihood of Armenia's populationⁱ, its economic and ecological balanceⁱⁱ, precious water resourcesⁱⁱⁱ
- EBRD¹ and Sweden's Export Credit fund (SEK) and Export Credit Guarantee Agency (EKN)² have financed (and/or have guaranteed) the Amulsar Gold Project, a flagship project by Lydian International incorporated in Jersey, Channel Islands in 2005-2006. The financing has been conditional upon compliance with IFC and EBRD performance standards, falling short of the mandate to identify and verify the full scale of the mining project's impact on natural environment and to uphold to human rights, including the right of local people not to consent with a damaging project in their communities. Other shareholders and investors include primarily investment funds.
- A government commissioned international expert review of the Amulsar Gold Project has identified serious gaps in and underestimation of the negative impact of the project on the environment and came up with the overall conclusion that the company's EIA is incomplete and uncertain, therefore it is impossible to answer the general question whether the operation of the mine is safe^{iv}, echoing similar international reports coming from the civil society that the project with its current design poses a serious threat to Armenia's water resources^v
- Bankwatch commissioned international expert review of the Amulsar Gold Project have also identified incompliance with EBRD performance standards and violation of Armenia's international commitments towards biodiversity protection^{vi}
- Government capacities (technical, financial and political) to assess impact and to oversee operation of large-scale projects is inadequate, aggravated by structural corruption embedded in regulations and government practices^{vii}
- Following popular democratic movement that has overthrown Armenia's authoritative regime, the local population has stood for its right to protect its environment and to live in a healthy environment, including access to clean water, by employing direct action (the method of its revolution) as other measures, including legal disputes in courts and appeals to the government have failed to yield outcomes. For a year and 4 months, local residents that have never formally consented to this project, have been keeping the mining site's access blocked still waiting for a resolution by the government
- The company (Lydian) is threatening the Armenian government with a controversial litigation mechanism (ISDS)^{viii} posing a serious threat to the country's democratic foundations.³

¹ EBRD Project Summary Document: <https://www.ebrd.com/work-with-us/projects/psd/dif-lydian-amulsar-gold-mine.html>

² EKN, Amulsar Gold Mine Project, Armenia, <https://www.ekn.se/en/what-we-do/sustainability/transactions-with-environmental-and-social-impact-assessment/archive/amulsar/>

³ James Angel, "Corporate courts: the latest threat to democracy in Armenia", Aug 13, 2019, available at: <https://www.opendemocracy.net/en/odr/corporate-courts-latest-threat-democracy-armenia/>

EBRD investments in Amulsar Project, Armenia

In 2009 the European Bank for Reconstruction and Development (EBRD) invested CAD 5.8 million equity financing for continued exploration and development programme of Lydian's Amulsar gold project in Armenia.⁴ In 2016 the EBRD provided further equity injection of up to CAD 10.5 million to purchase Lydian's shares as part of its capital increase. The EBRD funds were earmarked to be used to finance Environmental and Social Mitigation Measures (ESMM) undertaken as part of the project, as defined in the Environmental and Social Action Plan (ESAP), including financing a biodiversity off set programme and the construction of water treatment facility and related activities.⁵ The project is currently at the disbursement stage.

The International Finance Corporation of the World Bank (IFC) also invested Euro 1.0 million equity investment for exploration, feasibility studies and project assessments.⁶ Complaints from impacted local people and civil society to the CAO resulted in a compliance review that concluded in August 2017⁷, followed by IFC's divestment from Lydian in September 2017.

Bankwatch monitoring of the Amulsar gold mine project

CEE Bankwatch Network has supported Armenian civil society in monitoring the investments of IFIs in Amulsar gold mine project since 2011. Since 2015 it has been in regular contact with the investor, Lydian International, conducting site visits, meetings with the company's sustainability team and submitting comments on the Environmental and Social Impact Assessment (ESIA). Bankwatch have raised several concerns with the company and with the EBRD, for example with regards to the need to conduct a better gender impact assessment, the need to assess properly the impacts on local water resources, including on local villages' irrigation and drinking water supply. With regards to Lydian's social license, Bankwatch have reiterated the demand of Armenian civil society for better public consultations. For example, a formal presentation of the ESIA and a meaningful public consultation with the residents (not just the authorities) of the town of Jermuk (located only 6km from the open-pit site) was never conducted. Last but not least, we have stressed that in the repressive climate before the 2018 revolution, many local people were afraid to openly speak up, especially those in public sector jobs (teachers, policemen, doctors, municipal authorities' servants etc.). The complaints (one in 2014, another in 2017) lodged by Armenian civil society representatives to EBRD's complaint review mechanism have continuously been dismissed by EBRD, while the IFC CAO's reviews resulted in identification of a number of instances of in compliance with IFC standards (economic impact assessment on Jermuk town and its brand, cumulative livelihood assessment on Gndevaz village, next to which the cyanide heap-leach facility is planned)⁸.

Following the 2018 revolution and government change, Bankwatch commissioned two expert studies by independent sociologists and biodiversity specialists. As a result of these independent expert findings and in line with their recommendations, Bankwatch and Armenian civil society requested new Supplementary

⁴ EBRD Project Summary Document: <https://www.ebrd.com/work-with-us/projects/psd/dif-lydian-amulsar-gold-mine.html>

⁵ EBRD PSD: <https://www.ebrd.com/work-with-us/projects/psd/lydian-amulsar-gold-mine-extension.html>

⁶ IFC disclosure on the Amulsar project: <https://disclosures.ifc.org/#/projectDetail/SPI/27657>

⁷ See CAO communique and CRR: http://www.cao-ombudsman.org/cases/document-links/documents/EN_CAOCommuniqueLydianInternationalAugust42017.pdf and http://www.cao-ombudsman.org/cases/document-links/documents/LydianComplianceInvestigationReport-06192017_forwebsite.pdf

⁸ Ibid.

ESIA studies and wide public consultations.⁹ Meanwhile, since June 2018 local people have blocked access to the mine, effectively stopping the Amulsar mine project development.

Independent expert ESIA and EIA review

The idea for an independent review of the Amulsar project's ESIA and EIA was first suggested by the new Prime Minister Nikol Pashinyan in September 2018. In the meantime, two criminal investigations were initiated by Armenia's Investigative Committee, one over alleged concealing of data impacting the life and health of the population by a public official, and another one over illegal extraction (of clay) at Amulsar by Lydian. As part of the first criminal case, in November 2019, the Investigative Committee of Armenia announced pre-qualification for an independent Review of the project's impact assessment (EIA) conducted by Lydian. After the December 2018 elections and Nikol Pashinyan's reelection as Prime Minister of Armenia, at a session on February 21, 2019 the Armenian government decided to allocate USD 400.000 to the country's Investigative Committee to commission a comprehensive Review by experts from Earth Link & Advanced Resources Development (ELARD), Lebanon. The Review's terms of reference included assessment of the environmental risks of the mine through a comprehensive ecological, geological, hydrological, geophysical, materials science, chemical, technological, structural and technical, and economic examination. At some point the Lebanon-based ELARD involved USA-based TRC consulting company in the Review.

The independent expert Review by ELARD-TRC was released in August 2019. In a nutshell, it warned that despite the design concepts in the Amulsar ESIA/EIA were in general reasonable and appropriate, *“a number of the measures and plans are partial, not-sufficiently protective, and/or unreliable with a high degree of uncertainty”*. According to the Review this was *“particularly due to deficient and questionable data, models, model simulations, design bases, and/or assessment.”*

For example, first, major criticism concerned Lydian's approach to water resources in the mine's area of impact. Impact on water resources - like Lake Sevan, Ketchut and Spandaryan reservoirs, Jermuk spa resort and mineral water brand, Arpa and Vorotan rivers, local springs, irrigation and drinking water supply - was a major area of concern for local people, Armenia's citizens and NGOs, and for the government.

The Review stated that key data for measuring the impact of the mine had not been gathered and *“several potentially significant springs were not visited”*, adding that *“given the importance of springs to the local communities and the potential for impacts to the springs from the mine pits the springs flow characterisation is inadequate.”* Furthermore, the Review pointed out that *“[o]verall, the water quality modelling and solute transport model simulations are poor.”*

Second, the Review criticised Lydian's approach to acid rock drainage (ARD) and said Lydian's approach towards ARD *‘is misleading’*, it underestimates ARD generation and contaminant leaching potential of the Amulsar project. This assessment echoes previous independent reports commissioned by Armenian civil society and released in July 2017. ^v

Third, the Review concluded that geological, hydrogeological (including the movement of contaminants along faults that the ESIA ignored), waste characterization, and water treatment studies need to be conducted before mining begins. These studies must form the basis for water quality predictions and the

⁹ Bankwatch commissioned studies on local communities perceptions of the project and the biodiversity offset: <https://bankwatch.org/blog/new-reports-press-for-revised-terms-to-armenia-gold-mine>

design of effective mitigation measures. This makes the EBRD earmarking of its funding irrelevant to the requirements outlined by experts and the project design.

Fourth, the Review found it impossible to comment on economic impact assessment on the tourist industry of adjacent Jermuk town due to its absence in Lydian's EIA.

In conclusion, the Review stated that there were remaining environmental risks, but pollution from the Amulsar project could be minimized if mitigating measures were to be taken based on corrected geological, geochemical data, impact modelling formulae and if other appropriate assessments were conducted. The Review's recommended additional studies and mitigation measures would represent substantial changes to Amulsar's mine project and its technological approaches and should require a new Supplementary ESIA.

The Review, however, did not cover the issue that many of the assessed documents were produced in years following the EIA approval by the Armenian government (2016).

Pending decisions on Amulsar by the Armenian government

Following the ELARD-TRC Review publication and several discussions with stakeholders, on August 19 2019, PM Pashinyan announced that the Amulsar project would be safe and should restart. After an outcry from both civil society and his own party's members of parliament, on August 21st, the PM put the decision on hold and requested an opinion by the Nature Protection Ministry till 4th September, which in the end recommended environmental inspections at Amulsar.

In the meanwhile, controversies followed the criminal investigations. On the basis of the ELARD-TRC Review, on 15 August the Investigative Committee of Armenia informed the Government of its decision to terminate the criminal case investigation. It justified its decision pointing out that, in case the conditions laid down in the ELARD-TRC Review were met, the Amulsar project would not have adverse environmental impact. On August 22, Transparency International Anticorruption Center, (TI Armenia), criticized as groundless the intention of the Investigation Committee to terminate the criminal case, since some of the assessments set out in the ELARD-TRC expert Review directly indicated the legal and factual need to continue the criminal proceedings.

In addition, on August 23 Transparency International Armenia appealed to the Nature Protection Ministry of the Republic of Armenia to invalidate the expert assessment opinion previously given to the Amulsar project, presenting a number of reasons why the Amulsar mine should not be exploited. *"It is obvious that under systemic corruption mining permits could not be granted by clean processes and it is very important that in post-revolutionary Armenia the Ministry of Environment revises its former vicious practices and revokes the previously issued expert opinion,"* TI-Armenia says in its press release.¹⁰

In the last week of August, Armenian civil society groups also issued appeals to foreign diplomatic services in Armenia and to Amulsar's investors calling for further assessments, support to democratic process and divestment from the project.¹¹

¹⁰ Transparency International Armenia press releases [in Armenian]:

21 August: <https://transparency.am/hy/news/view/2817>

23 August: <https://transparency.am/hy/news/view/2818>

¹¹ Armenian civil society, Call to US, Great Britain and Sweden Ambassadors: Support Society Fighting against Amulsar Project in Armenia: <http://www.ecolur.org/en/news/amulsar/---/11486/>

Armenian Environmental Front Civic Initiative, Divest from Amulsar! Urgent Appeal to Lydian's Investors: <http://www.armecofront.net/en/news/divest-from-amulsar/>

Blockade of the mine and civil society protests and marches, locally and in Yerevan, are on-going. International civil society has supported the campaign since the mine blockade started, with a special letter issued by Cee Bankwatch Network and more than a dozen NGOs in January 2019 to Armenia's Prime Minister and EU special rapporteur¹², and most recently with Global Justice Now and War on Want expressed solidarity with protesters.¹³

Following the outcry and testimonies from the ELARD-TRC Review that operation of the mine, as is planned by its EIA and project design, cannot be deemed safe, the Government organized a video-conference with ELARD-TRC experts who reassured that their review was based on science and industry guidelines and that their conclusions were straightforward and could not be interpreted as condoning the flaws of the EIA conducted by Lydian. After a conflict of interest was revealed by Armenian media between the Lead Investigator and the Minister of Nature Protection in 2016 who signed the positive conclusion for Lydian's EIA, resignations followed at the Investigative Committee and a new Lead Investigator has taken up the case. In a most recent press briefing, Deputy head of the Investigative Committee, Arsen Ayvazyan, stated that the investigation will resume and review both previous testimonies that have not been considered, and new circumstances.¹⁴

Yet, the government still sides by company and is indecisive about revocation of permits. A widely circulated argument against revocation of permits are the company's threats to sue the government through Investor protection agreements (BITs). There are concerns over the oppressive methods that the new Armenian government would need to resort to, in order to forcefully open access to the mine site and restart project development. Civil society representatives have voiced of disproportional criminal prosecution in the case of a number of protestors in Jermuk,¹⁵ while key environmental advocates are facing various litigations¹⁶ initiated by the company for their criticism of the project, allegations of corruption and posts in social media etc, along with online harassment waged through fake social media profiles.¹⁷

Conclusion

CEE Bankwatch Network echoes the calls of Armenian civil society for revoking the EIA permit for the mine and starting supplementary ESIA for the Amulsar project in parallel to wide formal public consultations. Currently Lydian lacks a social license to operate, so the mine development needs to be put on hold. Pressure from investors needs to stop until the democratic processes run their course and the on-going investigations are concluded. The EBRD should "*stand by high environmental standards for people in Armenia and human rights values*,"¹⁸ adhere to the "do no harm" principle and support the democratic transition in the country.

¹² International letter to Nikol Pashinyan on the "Social and environmental impact of the Amulsar mine", January 2019, available at: https://bankwatch.org/wp-content/uploads/2019/01/Solidarity-letter-to-Armenian-PM_Amulsar-gold-mine_Jan-22-2019.pdf

¹³ Global Justice press release of August 20, 2019: <https://www.globaljustice.org.uk/news/2019/aug/20/approval-armenian-gold-mine-shows-corporate-courts-crush-democracy> and other resources: <https://www.globaljustice.org.uk/news/2019/jul/30/government-challenged-rule-out-corporate-courts-after-brexite-following-criticism>

¹⁴ "Armenia Investigative Committee: New questionings to be conducted under Amulsar mine criminal investigation", Sept 27, 2019, <https://news.am/eng/news/535749.html>

¹⁵ "Disproportional Punitive Actions and Selected Justice Exercised Towards Jermuk Residents Involved in Combating Amulsar", Sept 23, 2019, <https://ecolur.org/en/news/amulsar/---/11583/>

¹⁶ International Federation for Human Rights (FIDH), Press Release June 20, 2019, <https://www.fidh.org/en/region/europe-central-asia/armenia/amulsar-mine-in-armenia-government-must-avoid-potential-environmental>

¹⁷ More to be released by Human Rights House Yerevan human rights organization in its Semi-Annual Report 2019 to be announced in early October on its Facebook page

¹⁸ Armenian civil society, Call to US, Great Britain and Sweden Ambassadors: Support Society Fighting against Amulsar Project in Armenia: <http://www.ecolur.org/en/news/amulsar/---/11486/>

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ⁱⁱ European Union Action to Fight Environmental Crime, “Environmental crime in Armenia A case study on mining”, 2015, available at: <https://efface.eu/environmental-crime-armenia-case-study-mining>

ⁱⁱⁱ G. Gevorgyan et al, “Environmental Risk Assessment of Heavy Metal Pollution in Armenian River Ecosystems: Case Study of Lake Sevan and Debed River Catchment Basins”, 2016, available at: <http://www.ysu.am/files/2-1509624749-.pdf>

^{iv} ELARD-TRC Review, 2019, available at <http://investigative.am/en/news/view/amulsar-porcaqnnutyun-ezrakacutyun.html>

^v Buka Environmental et al, “Amulsar Gold Project: Overview of Concerns with the Amulsar Gold Project, Potential Consequences, and Recommendations”, available at: http://www.armecofront.net/wp-content/uploads/2015/03/BronozianConsultants_Concerns.Consequences.Recommendations-Appendices_8Jan2018.pdf

ARD experts press conference, July 2017: <http://www.armecofront.net/en/press-releases/announcement-of-bronozian-consultants-after-visiting-amulsar/>

Additional relevant correspondence on Amulsar’s ARD: <https://www.business-humanrights.org/en/armenia-amulsar-gold-mine-poses-high-risk-of-long-term-adverse-impacts-to-drinking-water-resources-say-experts-includes-shareholders-comments>

^{vi} Bankwatch commissioned studies on local communities perceptions of the project and the biodiversity offset, 2019, available at: <https://bankwatch.org/blog/new-reports-press-for-revised-terms-to-armenia-gold-mine>

^{vii} Transparency International Anticorruption Center, TIAC’s 2017 Assessment of Corruption Risk in Mining Awards in Armenia: <https://transparency.am/en/publications/view/208>

^{viii} Armen Agabyan, Weapons of Legal Destruction: ISDS lawsuits and Lydian International’s Assault on Armenian Sovereignty, Sept 23, 2019, available at: <http://www.cadtm.org/Weapons-of-Legal-Destruction-ISDS-lawsuits-and-Lydian-International-s-Assault>