

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL BIH 1/2017

16 May 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 28/11 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **excessive use of force by special police unit forces of the Ministry of Interior, and charges laid against twenty-three residents (22 women and one man) of Kruščica village who have been peacefully defending the river and the surrounding environment from the construction of two hydropower plants.**

According to the information received:

From 2 August 2017, local residents of Kruščica village in central Bosnia and Herzegovina (BiH), gathered near the bridge on the Kruščica River to protest against the construction of two hydropower plants operated by HIGRACON d.o.o. Sarajevo Ltd, which is licensed by the Federal Ministry of Physical Planning. They were protesting against what they saw as breaches of their procedural rights, in not being able to access information about the plant's construction, and because they felt they had not been meaningfully consulted. They were also protesting against the potential environmental damage from the hydropower plants that may also impact upon their human rights such as their right to clean, safe drinking water. The residents felt that they had exhausted the administrative process to stop the construction, so they began to peacefully defend the river and block access of the heavy machinery to prevent the development. The protestors allowed passage of private cars and other traffic not related to the constructions.

The protestors are environmental human rights defenders and are part of a wider coordinated movement by the 'Civic Coalition for the Protection of Rivers of Bosnia and Herzegovina', whereby in close cooperation with numerous local civic initiatives throughout the country, local residents are peacefully opposing controversial projects of dams and hydropower plants construction.

Public concerns about irregularities with the decision making process

Bosnia and Herzegovina ratified the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in September 2008, and procedures are in place to obtain an environmental permit licence before any construction of the hydropower plants can begin.

The river and land that is being constructed upon, were originally intended to become a protected conservation park. However, changes were made to the Vitez Municipality Spatial Plan 2005-2025 in 2015 and the construction of two small hydropower plants was added to the plan.

In order to obtain an environmental permit, the operator of the hydropower plants must first prepare an activity plan and an Environmental Impact Assessment (EIA) be conducted. Then the operator can apply for the issuance of an environmental permit.¹ In accordance with Art 6(6) of the Aarhus Convention on public participation, the public have an opportunity to participate in decision making, and must be able to offer their opinion and suggestions to the EIA (article 61 LoPE FBiH).² The competent ministry is supposed to hold a public hearing on the matter, while the studies are being assessed for the EIA which is supposed to contain all information relevant for decision-making.

According to the relevant cantonal ministry MHE Krušćica II, the operators passed the administrative procedures, but according to the local residents, the permits for the hydro power plants were accompanied by a series of irregularities and they question whether an Environmental Impact Assessment (EIA) was properly carried out.

In addition, local residents say there was inadequate public involvement in the decision making process and hold the strong view that their interests were not taken into account. It is claimed that written submissions made by local environmental NGOs, fishermen and a hiking association in 2008 were ignored. Furthermore, citizens claim that their right to access information about the environmental and construction permits and the minutes of the public hearing about the change to the spatial plan have been ignored by the authorities.

Environmental and human rights issues

The Krušćica River springs from a number of sources on a mountain of the same name. It flows through the municipality of Vitez and into the Lašva River.

¹ 2nd Aarhus Convention Implementation Report for BiH, p.76
http://aarhus.ba/sarajevo/images/docs/Drugi_nacionalni_izvjetaj_o_provedbi_Aarhuske_konvencije_u_BiH.pdf.

² 2nd Aarhus Convention Implementation Report for BiH, p.76

Environmentally, the river is significant because it provides favourable habitats and spawning grounds for river trout, which is an extremely sensitive species to any changes. Construction of the hydro power plants would most certainly damage the ecosystem upon which it depends and could even lead to its extinction.

The Krušćica River is also hugely important because it supplies over 150,000 inhabitants with potable drinking water including the Vitez municipality which had a population of over 27,000 in the 2013 census, and a large part of Zenica (population 75,000). The hydro power plants will divert the river flow, thereby jeopardizing both the quantity and quality of the drinking water.

Also, culturally, the area itself is significant as it has been a popular relaxation area for local residents with more than 20 picnic houses scattered around the riverbank.

Excessive use of police force

According to the information received, in the darkness around 5.00 a.m. on 24 August 2017, the Special Police unit forces of the Ministry of Interior of Central Bosnian Canton, violently removed a group of 40 peaceful protestors. The group who were mainly women from the village, including one who was pregnant formed a human block on a bridge in Krušćica to prevent the entry of heavy machinery to the riverbed. During the intervention, police officers insulted the women and made inappropriate comments with sexual connotations designed to humiliate them. The police also pulled the women's clothes and the traditional head scarves that some were wearing.

At least 27 women and two men sought medical services due to injuries (mostly bruising and contusions) they received. They first sought medical help at Vitez hospital but were refused treatment necessitating them travelling a further 15 kms to Travnik hospital. The medical services refused to issue proof of their injuries, even though they were prepared to pay the obligatory fees of 50BAM. Over 27 people were taken to Vitez police station for 'disturbing the peace' where they were detained and interrogated for seven hours. Afterwards, some of them needed to return to hospital to treat their injuries.

The Ministry of Interior of the Central Bosnian Canton, issued an immediate statement which claimed the police acted according to a plan prepared by the Travnik police headquarters that had been cleared by the Ministry to make the blocked road accessible to citizens. The Ministry also denied all allegations of excessive use of police force and insisted that there was no injured people from their intervention - this might also explain why the medical staff were not prepared to issue proof of their injuries at Travnik hospital.

However, it is claimed that the real purpose of the police intervention was to clear the road for heavy machinery as the protestors never blocked ordinary traffic - only those that were intended for the construction site.

Workers and machinery for the company were right behind the police lines when the police force struck and they crossed as soon as the protestors were removed. This leads the public to believe that the state armed police forces may have been misused to enforce private business interests instead of protecting public order.

The state authorities had known for three weeks that the residents in the village had been protesting so there was ample time to try to negotiate with them in a non-violent way. The violence and the excessive use of police force against the peaceful, mainly women protestors, not only was unlawful but was completely unnecessary and could have been easily avoided.

Mr. Viktor Bijelic, Vice President of the Center for Environment raised this case during the Meeting of the Parties to the Aarhus Convention in Budva, Montenegro (11-15 Sept 2017). He informed states that citizens just want to exercise their rights provided by the Aarhus Convention, to have access to information and be able to participate in decision-making. They announced their intentions to the police that they would peacefully defend the river. However, the riot police were sent in to remove them and environmental defenders in the country are facing persecution and harassment.

Court proceedings

On 6 November 2017, a hearing was held in Travnik Municipal Court. Twenty-three residents (22 women and one man) of Kruščica village, were charged with disruption of public peace and order for blocking the local road by means of passive resistance on 24 August 2017, and not allowing passage of the machinery to the construction site.

The Chief of the Travnik Police Directorate, Mr. Mirsad Fazlic stated in court that, “the locals were repeatedly warned to withdraw from the road; before the intervention took place, the last warning to abandon the bridge and move away from the passage road was given through the megaphone.”

The protestors’ defence lawyer, noted at the hearing that the prosecution did not present any evidence that the 23 persons charged are in fact the actual people who blocked the road and were the ones refusing to act upon the orders of the police officers.

Based on these allegations, the Institution of the Human Rights Ombudsman has opened an *ex-officio* investigation in order to examine all the circumstances of the case, while the residents continue to peacefully protest.

The villagers are still blocking the road, 24 hours each day and with the State authorities appearing unwilling to negotiate with them, there is concern that conflict might erupt again.

While we do not wish to prejudge the accuracy of these allegations, we wish to express concern over the physical and verbal excessive use of police force against peaceful protestors especially on women including one who was pregnant.

We are also concerned that questions have been raised about a lack of due process in obtaining the environmental permits for the construction of the hydropower plants especially for a project that involves such a dramatic change to the original spatial municipality plan and one that is strongly perceived by the local community to be against their interests and the environment.

We are gravely concerned that the physical and verbal abuse meted upon the mainly female protestors, their denial of proper medical care, and the misdemeanour charges laid against them, may be directly attributed to their environmental and human rights activism.

We are also concerned that such acts of harassment and intimidation will have a negative impact across the wider human rights community and may deter local initiatives throughout the country where environmental human rights defenders are peacefully assembling to oppose controversial projects of dams and hydropower plants construction.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. According to article 18 of the Law on Freedom of Access to Information of BiH (LoFAI BiH), public authorities should take all necessary measures to assist any natural or legal persons seeking to exercise their rights on access to information, and article 14(4) LoCS FBiH, states that one of the responsibilities of civil servants in FBiH is to assist interested parties and public authorities with requested information. What steps will the Government take to ensure that citizens right to access information about the environmental and construction permits and the minutes of the public hearing about the change to the spatial plan be respected?

3. Bosnia and Herzegovina ratified the Aarhus Convention in September 2008. In accordance with art 6(6) of the Aarhus Convention on public participation, the public must have an opportunity to participate in decision making, and must be able to offer their opinion and suggestions to the EIA (article 61 LoPE FBiH). What steps did the Government take to consider the formal comments submitted by local environmental NGOs, fishermen and a hiking association in 2008? What steps will the Government take in the future to consult with local residents to ensure that their views are fully heard?

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully.
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Furthermore, we would like to bring to the attention of your Excellency's Government, the recent resolution adopted by the Human Rights Council A/HRC/40/L.22/Rev.1 that recognises the important role and legitimate work of environmental human rights defenders and expresses grave concern for their situation around the world. The resolution strongly condemns the killing of and all other human rights violations and abuses against environmental human rights defenders, including women and indigenous human rights defenders. It urges all States to take all necessary measures to ensure the rights, protection and safety of environmental human rights defenders.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

With regards to security of person, we recall that, as established by the Human Rights Committee, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury”. Furthermore, we would like to recall that “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).

Furthermore, Bosnia and Herzegovina ratified the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in September 2008, and procedures are in place to obtain an environmental permit licence before any construction of the hydropower plants can begin.

In accordance with art 6(6) of the Aarhus Convention on public participation, the public have a possibility to participate in decision making, and can offer their opinion and suggestions to the EIA (article 61 LoPE FBiH).¹ The competent ministry is supposed to hold a public hearing on the matter, while the studies are being assessed for the EIA which is supposed to contain all information relevant for decision-making.

According to article 18 of the Law on Freedom of Access to Information of BiH (LoFAI BiH), public authorities should take all necessary measures to assist any natural or legal persons seeking to exercise their rights on access to information, and article 14(4) LoCS FBiH, states that one of the responsibilities of civil servants in FBiH is to assist interested parties and public authorities with requested information.

We would further like to bring your attention to principles 4, 5, 7, 8 and 9 of the Framework Principles on Human Rights and the Environment (Framework Principles), which call on States to provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.