

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 promotion and protection of the right to freedom of opinion and expression**

Ref.: AL BIH 1/2022  
(Please use this reference in your reply)

5 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 44/15, 46/7 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the activities of the Belgian-based company Green Invest and its subsidiary BUK d.o.o, based in Istočno Sarajevo, Bosnia and Herzegovina (BiH). In particular, the filing of three defamation lawsuits against two young Bosnian activists, Ms. **Sara Tuševljak** and Ms. **Sunčica Kovačević**.

Ms. **Sara Tuševljak** and Ms. **Sunčica Kovačević** are two law students, aged 25, who formed a group of activists and local community members organizing peaceful protests, press conferences and other initiatives against the construction of small hydropower plants in the Kasindolska river, in East Sarajevo. They run an informal civil society initiative "[Stop the construction of mini hydropower plants on the Kasindolska river](#)" to inform about and debate the impacts of such energy projects, and have established cooperation with other organizations to advance legal action tackling the issue.

Since 2017, they have been publicly speaking out about the environmental and human rights impacts of the small hydropower plants operated by BUK d.o.o in the Kasindolska river. BUK d.o.o is a company with headquarters in Istočno, Sarajevo, and is a subsidiary of Belgian-based company Green Invest.

The women human rights defenders have been questioning the concessions and environmental permits granted to BUK d.o.o to carry out the hydropower plants projects of "Podivič", "Slapi" and "Samar", mainly due to alleged lack of consultation with the local community about the projects and the negative consequences of the plants to the river, its surrounding ecosystem and human health.

Their advocacy also spotlights irregularities in the process of permits issuance and, in that front, have led to the filing of a lawsuit against BUK d.o.o, in which the District Court in Banja Luka revoked the permits to construct the referred plants. Despite the Court order, the company moved forward with the construction and operation of the "Podivič" hydropower, which has been publicly criticized by Ms. Sara Tuševljak and Ms. Sunčica Kovačević and other local community members.

Rulings on the status of the different permits are currently before the Constitutional and Supreme Courts.

According to the information received:

Following recent advocacy activities and media appearance by Ms. Sara Tuševljak and Ms. Sunčica Kovačević, the mayors of the three affected municipalities expressed support in objecting the construction of the referred small hydropower plants projected by Green Invest/BUK d.o.o. in the Kasindolska river.

In response, Green Invest/BUK d.o.o. has filed three defamation lawsuits and threatened further legal action against Ms. Tuševljak and Ms. Kovačević, seeking damages equivalent to 7,500 EUR. The lawsuits are based on statements made by the women human rights defenders on the actual and potential environmental damage caused by the clearing of forests for access roads and as well as construction of the hydropower dams themselves. The court action puts defendants at risk of incurring in high proceeding costs in case of a negative Court ruling. On 24 October 2022, preliminary hearing against Ms. Tuševljak took place. The next court date set for 27 December 2022 at 12 p.m. Ms. Kovačević's first hearing will take place on 27 December 2022 at 2 p.m.

Without wishing to prejudge the accuracy of the allegations, we wish to express concern at the filing of defamation lawsuits against the two young activists in face of their advocacy for the protection of the Kasindolska river and its surrounding environment. We are particularly concerned that such lawsuits present the hallmarks of Strategic Lawsuits Against Public Participation (SLAPPs), hence may contribute to discourage their legitimate advocacy work and to have a chilling effect on other activists, human rights defenders and civil society organizations engaging in environmental protection in the region.

We are furthermore concerned about the risk of disproportional financial burden on the two defendants which may put pressure on their engagement in the defence of human rights and the environment, including the human right to a clean, healthy and sustainable environment. Moreover, we are concerned by the reported threatening tone of the lawsuits and believe they express the company's opinions rather than factual statements, featuring the characteristics of SLAPPs.

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. Please provide information if your Excellency's Government have requested information from the company concerning their hydropower plants project as well as the reasons for filing the defamation lawsuits against the two young activists.
3. Please explain what measures have been taken to ensure that human rights defenders can carry out their peaceful and legitimate activities without fear of judicial harassment, SLAPPs or other restrictions, including from foreign businesses operating in the country under concessions. In particular, please indicate the steps that your Excellency's Government has taken, or is considering to take, with regard to the 2021 guidance on ensuring respect for human rights defenders by the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/47/39/Add.2, paragraph 84), where steps were outlined for States to address SLAPPs, including introducing law reforms to prevent cases of criminal libel being pursued against human rights defenders, introducing anti-SLAPP laws, and giving a court powers to dismiss or decline to accept a case if the court considers that the intention of the claim/prosecution is to distort facts concerning the work of a human rights defender, or harass or take advantage of the defendant.
4. Please explain if an investigation was carried out about BUK d.o.o's construction and operation of the "Podivič" hydropower without a valid permit.
5. Please inform if your Excellency's Government is following of plans to follow the aforementioned proceedings and explain how they are compatible with Bosnia and Herzegovina's obligations under international human rights law and standards, particularly with regard to the right to freedom of expression, right to freedom of association and assembly, and right to a healthy environment.
6. Please advise about the steps taken by your Excellency's Government to ensure that business enterprises respect human rights in line with the UN Guiding Principles on Business and Human Rights, including by conducting human rights due diligence to prevent, mitigate and remediate adverse impacts.
7. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 note that the allegations contained in this letter will also be sent to Belgium, Green Invest and BUK d.o.o.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Fernanda Hopenhaym  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would also like to refer to article 19 of the International Covenant on civil and political rights, succeeded by Bosnia and Herzegovina on 1 September 1993, which protects the right to freedom of expression, including the freedom to access and impart information. In her report on media freedom and the safety of journalists in the digital age from June 2022, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended that “States discourage frivolous or vexatious legal action (strategic lawsuits against public participation) against journalists and news outlets by adopting laws and policies that allow early dismissal of such cases, limit the damages claimed in civil defamation suits against journalists and media outlets, permit the defence of “public interest” and “no malice” for journalists, provide legal support to victims of strategic lawsuits against public participation, end “forum shopping” and sanction the use of strategic lawsuits against public participation” (para. 113).

Further, we would like to refer to 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders.

In particular, we would like to draw your attention to article 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation 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. Articles 5 and 6 guarantee the right to meet or assemble peacefully; as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we call particular attention to article 12 of the Declaration, which states:

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, we would like to refer to Human Rights Council Resolution 22/6, which provides that domestic law and administrative provisions and their application should facilitate the work of human rights defenders, including by avoiding any criminalization, stigmatization, impediments, obstructions or restrictions thereof contrary to international human rights law.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached”.

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Moreover, principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”.

In addition, the Guiding Principle 18 and 26 underline the essential role of civil society and human rights defenders in helping to identify potential adverse human rights impacts related to business. The Commentary to Principle 26 underlines how States, in order to ensure access to remedies, must ensure that the legitimate activities of human rights defenders are not obstructed. In its 2021 guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It explains, for States and business, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Finally, we would like to bring to the attention of your Excellency’s Government that the human right to a clean, healthy and sustainable environment was recognized by Human Rights Council resolution 48/13 and United General Assembly resolution 76/300. The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should 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.” Principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.