

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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(Please use this reference in your reply)

5 March 2024

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; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 46/7, 51/8, 43/16 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of arbitrary arrest of 4 environmental defenders, Mr. Dragan Dmitrović, Mr. Nikola Dragosanovic and Mr. Vladimir Božić on 27 September 2022 and Mr. Mladen Vladić on 6 October in the municipality of Majdanpek, Bor region of Serbia. The arrests appear to respond to efforts of the alleged victims to defend their human right to a healthy environment (enshrined in the Serbian Constitution) in the face of mining project with impacts on local people's health and the environment in terms of air and water pollution.

According to the information received:

Majdanpek is situated in the Bor-region of Eastern Serbia. The Bor-region is known for a large copper mining and smelting complex, Zijin Bor Copper (formerly known as Mining Smelter Basin -RTB Bor). In August 2018, Zijin Mining Group Co (Zijin)¹, a Chinese multinational mining company with State agencies as its institutional shareholders, became the largest shareholder in Zijin Bor Copper (previously a Serbian state-owned company). Since the takeover by Zijin the inhabitants of Majdanpek have been facing negative health and environmental effects of the increased volume of mining: dust from open pits, water shortages and encroachment upon residential and natural areas.

Particularly concerning have been operations on the Hill Komo and Mountain Starica, which are natural physical barriers separating the town from the North open pit. According to the information received, many people suffer from respiratory diseases, especially children and there is a high incidence of serious forms of cancer even among younger and generally healthy people.

The Ministry of the Environment initiated proceedings against the company Zijin for the release of hazardous substances into the air in November 2019 and January 2020. According to the information received, the Ministry has

¹ [Zijin Mining-Zijin Mining Group Co., Ltd.](#)

conducted reviews of the company's standards on repeated occasions, and has at least five times, since the privatization of the mining basin in late 2018, identified failures.

In accordance with the information received, the situation in the area of Majdanpek deteriorated dramatically in the summer of 2022 with the operations of Zijin Bor Copper on Mountain Starica. At the beginning of June 2022, without adequate consultation or communication nor warning to the residents of Majdanpek, the company Zijin performed blasting of the top part of the eighth ridge of Mountain Starica. The ridge sits on Parcel 624/1, public property of the Republic of Serbia.

This caused great upset and protests from the locals and the public. Many individuals and organisations, including the organisation Ne dam/Nu dau, reported the incident and demanded to halt any further damage to the mountain. According to the information received, the organization also asked the Government to disclose the hitherto unknown details about the strategic partnership between the State and the Company. This was due to a suspicion that the contract allowed the company to expand mining operations beyond the mining licence, without the required planning or compliance with the legal framework. The company was also allowed to start works without communication and consultation with local communities.

The protests:

At the beginning of June 2023, after several days of protest with no response from the local authorities and institutions, the mining company continued with the blasts. The activists of Ne dam/Nu dau decided to protect the mountain with their bodies. The activists set up a temporary camp on the cliffs of the seventh ridge, directly adjacent to the blasting area, to stop (in a non-violent manner) further operations of the company Zijin on the parcel that was public property.

According to the information received, from that moment on, a media campaign in the pro-government media channels began, directed against the group of activists and their supporters, with accusations that they were endangering the security of the locals and their property, as well as that of the workers. Representatives of the State and also from Zijin depicted the activists as troublemakers standing in the way of the economic prosperity of the city and accused them of being politically motivated. The activists claim that the protest was based on concern for the protection of nature and for the health of their fellow citizens.

According to the company and the Ministry of Mining and Energy, the blasting intervention is supposed to "rehabilitate" the mountain top and was demanded by the Ministry of Mining. The company (Zijin) in their view did possess the valid paperwork. Despite continuous demands, neither the company nor the authorities, published the relevant documents nor did they share information of vital public significance.

One of the key concerns of the local activists, was that behind the alleged "rehabilitation" there would be an intention to expand the open pit and the

zone of mining exploitation onto the Mountain Starica. Mountain Starica is the only “green” barrier protecting the city from the particulate matter pollution from the North Pit. Mountain Starica extends from the Hill Komo, which was also the place of the works last winter, again for alleged “rehabilitation” and reclamation purposes. There too, the company actions were met with inhabitants’ protests. Beyond their natural value, Hill Komo and Mountain Starica as a natural whole represent a natural and cultural symbol of the city and have great emotional value for the people of Majdanpek.

The intervention of members of private security company

According to the information received, in August, heavily armed members of a private security company FTO arrived at the place of the protests. FTO is a Serbian private security company, but it is unclear who called for their intervention and who paid for their service, whether it was the company or the Ministry of Mining and Energy. The members of the security company were equipped with shields, batons, helmets and balaclavas.

According to the information received, some of the members of the private security company were recognised on social media as possessing a criminal record, which would make doing what they were doing illegal. The company representatives have on multiple occasions, without foundation and proof, reported the activists to the police for throwing stones on the workers, allegedly causing material damage to the company and to its subcontractors.

According to the Nu dem/nu dau activists, members of the company have violently entered and destroyed the camp. One of the members of the private security company, who refused to throw away the protestors’ belongings, later stated on social media that he was “deeply ashamed to have been part of the spectacle on Mountain Starica” and offered “humble sorry to the inhabitants of Majdanpek and the activists.”

An encounter with the workers of the company

The next larger incident took place on 9 September 2022 when, according to the Ne dam/Nu dau activists, a large group of company workers blocked the activists from accessing the camp and then attacked two activists.

Two activists, Dragan Dmitrović and a person that wished not to be identified - reported that they received treatment at the emergency department in the city hospital. The incident was reported to the police, but the attackers were not prosecuted for the attack and the physical harm caused to the activists.

The non-identified person, according to the other activists, does not want to be named because of mental and physical exhaustion, and for fear of further persecution and retaliation.

After that attack, city council members and activists of Ne dam/nu dau, Vladimir Božić and Irena Barbulović, arrived on site on the eighth ridge of Mountain Starica, accompanied by journalists with clearly marked “press” vests. They report being verbally mistreated by Zijin’s representatives. Members of the private security company intervened and prevented any

further escalation. The police were called, but they did not come.

On the night of 24 September 2022, according to a statement by Zijin, on the site of the blasting on Mt. Starica, a worker who was operating a drill was assaulted by three persons, and he then fell from 10-meter height, and the machine was set on fire. He reported this incident to the police and accused the activists of the incident. The activists answered to that accusation saying that they were not in the camp at the time because of very cold nights in the mountain and because there had not been operations on the night. Upon arrival the following day, the activists discovered that their camp had been torn apart, which they reported to the police.

On 25 September 2022, after the orders from the Minister of the police, the police increased their presence and their monitoring of the events on the mountain.

The “informative talks” and the house searches:

According to the information received, on 26 September 2022, the police began a crackdown against the activists of Ne dam/Nu dau, including their supporters and any person who the police believe to be connected with them. A larger number of police and investigators arrived in Majdanpek and started extensive searches, based on official search warrants, of the activists’ homes, including arrests and “informative talks”.

The activists of Ne dam/Nu dau; Dragan Dmitrović, Nikola Dragošanić, Mladen Vladić, Nenad Kovačević and Vladimir Božić, city councillor for the group, and a person that wished not to be identified were amongst others called to “informative talks” at the police station. Other inhabitants were also summoned to the police station for “informative talks” including local and national opposition party members. There is no definite number of persons that were called to report to the police for “informative talks”, but the number would be in tens of people.

The apartments of several Ne dam/Nu dau activists were searched. One of the city councillors’ apartment was searched in late evening hours in front of her three children. During the house searches, the activists reported that the policemen turned the people’s homes upside down, searching through the children’s toys, looking for proof of the alleged crimes, and even for narcotics.

The detentions of the activists

On 26 September 2022, **Nikola Dragošanić** made a statement at the Police Station of Majdanpek about the events on Mt. Starica that happened took place on 24 September 2022, when a Zijin company machine was allegedly set on fire and a Chinese worker was beaten.

He was again summoned for a hearing while he was at work on 27 September 2022. During this hearing he was brutally mistreated by two police inspectors from Kladovo police station at the Police Station of Majdanpek. According to the information received, they slapped him and hit him on the back, ribs, and head in order to make him sign a statement that had been previously drawn up

by a police-inspector from the Police Station in Majdanpek.

After two hours, they took him to the emergency room because he complained that he was sick. He was then examined and returned to the police station where they continued to beat him for a few more hours. At the end, he signed the statement they drew up, an alleged confession of having committed the act on 24 September. From there, he was taken to the prosecutor's office in Negotin, where he gave a statement in the presence of an official defence attorney who advised him that he should not talk about being beaten.

Witnesses saw how policemen took Nikola Dragošanić to the emergency department at the hospital in Majdanpek. Nikola Dragošanić was not able to walk on his own. After medical assistance, he was taken to the prison in Negotin. The chief of the emergency department reportedly refused to provide any information to the mother of the detained Nikola Dragošanić about his health condition and injuries suffered during police “information talk”.

Nikola Dragošanić publicly testified on the psychological and physical abuse by the police officers in Majdanpek police station on the day of his arrest. His lawyer filed criminal charges against the identified members of the police and against one anonymous person. Mr Dragošanić remained in custody for 30 days, after which he was transferred to house arrest with an ankle bracelet.

On 27 September 2022, **Dragan Dmitrović** (a serious heart condition- patient) was also invited to an 'informative interview' at the Police station in Majdanpek. While there, he was beaten for almost four hours with a goal to make him sign a statement which in the end he did not sign. He begged the policemen to stop hitting him because he was sick as affected by heart condition. He was subsequently released.

According to the information received, directly after the release, the activist Dragan Dmitrović gave a testimony to his lawyer stating that that immediately upon arrival at the police station on 27 September he was mishandled by two unidentified police investigators in plain clothes. He further said that during the interrogation he was threatened that, if he did not confess, he will be beaten to death, notwithstanding his medical condition.

Mr. Dragan Dmitrović had to undergo emergency hospital treatment after the incident. On 11 November 2023 he was operated on, the operation lasted 5 hours during which he had a bypass installed.

On 26 September 2022, **Vladimir Božić** received an invitation to come to the Police Station in Majdanpek as a citizen to provide information. He was held at the “informative talk” for 9 hours, which is above the legal limit, and on that occasion, he was not provided with the attorney's presence nor allowed contact with his family. From there, after a hearing, he was taken to the public prosecutor in Negotin, where he was detained for 30 days.

On 6 October following a search warrant, **Malden Vladić** personally with the presence of his lawyer went to the Police Station of Majdanpek and from there on taken to the High Public Prosecutor in Negotin, where he was remanded in

custody for 30 days. Mladen Vladić was given 30 days of detention.

The prosecutor ordered detention for all the above in Negotin, a town 70 km away, because of the risk that the accused would repeat criminal acts and that they could influence the witnesses.

The accusations

The four alleged victims were detained for 30 days for suspected “incitement of national, racial and religious hatred and intolerance”. However, the orders for the search of their apartments were based on another accusation: “causing public danger and mild physical injury.”

The legal basis for the detention is the suspicion that they have committed a criminal offense under article 317 of the Criminal Code of the Republic of Serbia. Allegedly, the State does not have any physical evidence that the suspects committed the crime they are charged with. The alleged victims claim that they were engaged in defending their basic constitutional human right to healthy environment.

Right to an adequate defence

During the entire day of 27 September, no family member, nor the lawyers of the detained activists were able to find out where the alleged victims were held nor were they able to reach them. According to the information received there has been a violation of the law on criminal procedure, as reflected in the denial of the right to an adequate defence.

The defence lawyer who lodged an application to the Ministry of Internal Affairs regarding the case was not allowed to see the report of the internal control of the Ministry of Internal Affairs. The internal control informed her that on 1 November 2022, they sent a report to the Public Prosecutor in Negotin, who forwarded it to the public prosecutor's office in Majdanpek.

The public prosecutor Mr. Božić in Majdanpek, prevented their lawyer from inspecting that report for 15 days. First, he was on vacation for a week. After that, when the lawyer finally got hold of prosecutor Božić, he informed her that he had already forwarded the case to the Court of Appeals.

As of today, the four detained activists have been released after having found themselves under house arrest for 90 days (with ankle bracelets). They are still waiting for the criminal charges to be filed.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern over the allegations of arbitrary detention, and harassment of Mr. Dragan Dmitrović, Mr. Nikola Dragosanovic, Mr. Vladimir Božić and Mr. Mladen Vladić by the National Police, and the failure to ensure their right to due process, including the right to a fair trial.

The steps taken to intimidate Mr. **Dragan Dmitrović**, Mr. **Vladimir Božić**, Mr. **Nikola Dragosanovic** and Mr. **Mladen Vladić**, environmental human rights defenders, appear to constitute deliberate measures intended to restrict their peaceful

and legitimate work in defence of their human rights and the environment.

We are concerned that such allegations will not only impair the efforts of the above mentioned environmental human rights defenders to denounce human rights violations, but also the efforts of other human rights defenders and human rights organisations, contributing to a chilling effect on civil society and the ability to freely exercise the rights to freedom of expression and freedom of assembly and association without fear of retaliation.

We raise our concerns that the legal basis for such a legal prosecution does not seem compatible with the conditions for permissible restrictions to the right to due process and as such may be unlawful under international human rights law.

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 detailed information on the situation of the community of Majdanpek in relation to the presence of Zijin Bor Copper including with respect to the following issues:
 - a). Measures adopted by the Government to monitor the negative impact of related industrial activities on the right to a healthy environment (air pollution, water pollution and health impacts) of the inhabitants in Majdanpek.
 - b). Measures adopted by the Government to ensure the provision of public access to environmental information to the inhabitants of Majdanpek in relation to the expansion of the Zijin Bor Copper mine (by collecting and disseminating information and by providing affordable, effective, timely access to information to any person upon request).
 - c). Measures adopted by the Government to guarantee to respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters in reference to the group of citizens Ne dam/Nu dau.
3. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

4. Please provide any information you may have on the intervention of the private security company FTO in the context of the above-mentioned allegations.
5. Please provide the full details of the factual and legal basis for the detention of Mr. Dragan Dmitrović, Mr. Vladimir Božić, Mr. Nikola Dragosanovic and Mr. Mladen Vladić, including their arrests, and the stage of judicial proceedings against them.
6. Please provide information on the health and security conditions of Mr. Dragan Dmitrović, Mr. Vladimir Božić, Mr. Nikola Dragosanovic and Mr. Mladen Vladić while they were questioned by the national police at that police station in Majdanpek and what measures were taken to guarantee their personal, physical and mental integrity.
7. Please explain what measures have been taken to ensure that Mr. Dragan Dmitrović, Mr. Vladimir Božić, Mr. Nikola Dragosanovic and Mr. Mladen Vladić, are able to exercise their due process rights, such as the right to a fair and public hearing by a competent, independent and impartial tribunal, and to have adequate time and facilities for the preparation of their defense.
8. Please provide information, and where available, the results of any investigations into the attack against Mr. Dragan Dmitrović on 9 September in an encounter with workers of Zijin.

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.

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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards, including articles 9, 14, and 19 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by Serbia on 12 Mar 2001, which guarantee the right to liberty and security of person, the right to a fair trial, and the right to freedom of opinion and expression.

We wish to draw your Excellency's attention to article 9 of the UDHR, prohibiting arbitrary detentions, and article 9 of the ICCPR, enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention and general comment no. 352, any detention due to the peaceful exercise of rights, including the right to freedom of expression, is arbitrary.

Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. The right to freedom of expression includes the right to seek, receive, and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in general comment no. 34 (CCPR/C/GC/34), such information and ideas include commentary on one's own and on public affairs, discussion of human rights, and journalism (paragraph 11). All forms of expression and the means of their dissemination are protected (paragraph 12).

We would like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, restrictions must be provided for by law and conform to the strict tests of necessity and proportionality. Article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23). Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, be compatible with article 19(Id.). Article 14(1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing 2 CCPR/C/GC/35, para. 17.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that

fully respect the confidentiality of their communications. They should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

Likewise, 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 6(a), (b) and (c), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms; to freely 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 9(1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- Article 12(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 their legitimate exercise of the rights referred to in the Declaration. 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, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this connection, we would like to draw the attention of your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59).

The principles provide that States must ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (principle 1); States must respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). In addition, principle 4 provides 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”. In addition, principle 5 states that “States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental

matters” and principle 7 “States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective, timely access to information to any person upon request”.