QUESTIONNAIRE: UN SPECIAL RAPPORTEUR ON SITUATION OF HUMAN RIGHTS DEFENDERS

Theme: “Large scale development projects and human rights defenders”

1. Please indicate the main objectives of your development policy, including the main areas of implementation, and how you see this policy promoting a safe and enabling environment for human rights defenders to carry out their activities.

The main development objectives of the development policy of the Republic of Serbia in the field of natural resources, mining and spatial planning are safe supply of industrial facilities (power plants, heating plants, refineries, smelters, cement and lime plants etc.) and the market of the Republic of Serbia with all kinds of mineral resources; the use of best modern technologies in the construction of mining infrastructure and mining facilities in the interest of safety within facilities and safety and health at work; coordination and implementation of European directives in the field of mining and geological exploration, particularly in the area of labour and environmental protection; promotion of investments and sustainable development of the mining industry in the Republic of Serbia; creation of transparent and stable conditions for investment in mining and geological exploration; decentralization in planning and implementing development projects relating to geological exploration and mining. The above mineral policy through the application of regulations on labour and environmental protection, safety of facilities and safety and health at work, promotes a safe and favorable environment for human rights defenders to carry out their activities.

The main objectives of the development policy in the field of civil engineering and planning are the improvement and effective implementation of the legal and policy framework for the field of urban planning and development, land administration, housing and construction of buildings. The laws under the jurisdiction of the Ministry of Construction and Urban Planning, as well as other laws (Law on Access to Public
Information of Public Importance\textsuperscript{1}) govern the procedures that allow the Ombudsman to carry out activities in protecting the rights of citizens in this area. The Law on Planning and Construction\textsuperscript{2} and relevant by-laws legally regulate procedures of public access to the preparation and adoption of plans (Art. 49, 50, 51, 63 and 64), and to reports of audit committees regarding the licensing procedure for the implementation of investment projects.

The main development objectives in the field of foreign and domestic trade and telecommunications are support to the free movement of goods without undue restrictions, a high level of consumer protection and fair competition. Operational activities to achieve these goals are: systemic approach to market surveillance in accordance with the principles of the EU, increasing the level of coordination of market surveillance, implementation of the Market Surveillance Strategy, as well as legality of acts and activities in trade and services in terms of business entities’ operations, consumer protection and enforcement of intellectual property rights.

The main development objectives in the field of regional development and local self-government are the division of responsibilities between the central and local levels of authority through the application of the principle of subsidiarity with the aim to transfer responsibilities and authorities as close as possible to the local authorities, and therefore citizens\textsuperscript{3}, as well as extending infrastructure support for more balanced regional development, increasing regional competitiveness and supporting the development of local self-governments.

The main objectives of the development of transport policy are the promotion and effective implementation of the legal and policy framework in the areas of road, rail, water, air and intermodal transport. In this regard, significant activities of the Ministry of Transport are focused on the integration of transport networks in the Republic of Serbia into the Trans-European Transport Network, which is carried out in three main directions: construction of a missing transport network, preservation and improvement of the existing transport network, as well as traffic management and improvement of transport quality and safety.

The Law on Access to Public Information of Public Importance, and the Law on the Ombudsman\textsuperscript{4} govern procedures that allow activities of persons acting as human

\textsuperscript{1} “Official Gazette RS”, no. 120/04, 104/09 and 36/10.


\textsuperscript{3} The local authority recognizes the needs of citizens easier, thus increasing the efficiency and quality of public service delivery. The decentralization of the Republic of Serbia continues the process of greater modernization and democratization of the society, thus promoting the respect of human rights through active participation of citizens in policy-making, decision-making processes, representing the interests of smaller ethnic groups, the integration of the principle of gender equality in all areas of activity of system institutions, improving human rights and equal opportunities policies.

rights defenders - the Ombudsman in protecting the rights of citizens in already mentioned areas, including all regulations under the auspices of the Ministry of Transport. As this ministry adopts many administrative acts, the rights of stakeholders in the process and persons performing as defenders of human rights are protected by relevant provisions of the Law on General Administrative Procedure, which are consistently implemented in the Ministry of Transport (notification of the parties, the stakeholders' right of access to case files, etc.).

With regard to the sector of energy, development and environmental protection, the Republic of Serbia has ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and as a member of the Aarhus Convention, the Republic of Serbia through implementation shows that one of its main goals is to democratize society in the fields of access to environmental information, public participation in decision-making on environmental matters and legal protection relating to environmental issues when these rights are violated.

2. In the context of your development policy, please explain how large scale development projects and programmes are elaborated and implemented and how the participation of human rights defenders is ensured. Please describe participation and consultation mechanisms in place and provide the concrete examples.

The process of programming international development aid, thus large-scale development projects and programs is based on an annual action plan prepared by the Office for European Integration. Identification of proposals is carried out on a sectoral basis in cooperation with all authorized nominators including ministries, special organizations, services of the Government of the Republic of Serbia, the National Bank of Serbia and the National Assembly. The process is performed through sectoral working groups which, among other things, conduct consultations regarding the identification of priorities for the use of international aid, and the identification of project proposals. The field of human rights is part of the justice sector which also has an established sectoral working group composed of representatives of institutions in the field of human rights, the Ombudsman, the Commissioner for Equality and the Office for Human and Minority Rights.

Implementation of the Strategy for Mineral Resources of the Republic of Serbia by the Ministry of Natural Resources, Mining and Spatial Planning further improves the elaboration and implementation of the mineral policy, for which strategic environmental impact assessment is carried out in order to inform the public about specific plans and programs and their possible influence on the environment, as well as to ensure full transparency during the preparation and adoption of the Strategy. In addition, in the

5 "Official Gazette of RS" - "International Agreements", number 38/09.
process of obtaining approval for performing mining activities in the field of geological exploration and exploitation of all kinds of mineral raw materials and geothermal resources, an environmental impact assessment of the mining project is undertaken which allows the possible participation of the public in accordance with regulations from the sector of environmental protection. And in the process of preparing the impact assessment study of mining projects on the environment, the competent authority shall ensure public access, organize presentations and conduct a public hearing on the impact assessment study of mining projects.

The participation of human rights defenders in the areas of foreign and domestic trade and telecommunications is provided through the implementation of strategic documents, also in the phase of formulating projects, where human rights defenders are included as stakeholders through working groups, consultations, meetings, surveys and so-forth. An example for this is the implementation of the Market Surveillance Strategy with already stated main objectives of market surveillance that are at EU level designated as protection of consumers and other users, support to the economic sector and fair competition, as well as basing current activities on effective consultations with all stakeholders who present objectives of this strategy.

Large development projects and programs in the field of regional development and local self-government are entered into public tenders, which are launched every year in line with strategic objectives and applicable regulations. Applications may be submitted by ministries and local self-government units. Projects are assessed according to established criteria, ranked in both the appropriate field and sector of finance, after which the selection of priority projects is undertaken in consultation with project applicants. The competition results are made public. Contracts on the implementation of projects are signed after conducting public procurement procedures in accordance with the Law on Public Procurement. The entire process is transparent, from application through to the results of the competition and the project implementation phase, it is in accordance with applicable regulations, and in this sense there is no application of special mechanisms for the participation of human rights defenders.

With regard to development projects in the fields of civil engineering and urban planning, and in line with decision-making procedures within the urban development plans and projects, the time and place of a public hearing must be advertised through public media. The duration of a public insight in the process of adopting urban plans is 30 days, and 7 days for the public presentation of an urban design. Information from the report deriving from the presentation are public and available at the authority responsible for the development and adoption of an urban plan or project.

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6 “Official Gazette of RS”, number 124/12.
3. How do you ensure that human rights defenders can effectively monitor the impact of large scale development projects and programmes? Please provide examples of successful experiences/mechanisms in this regard and kindly address the issues below:

a) Kindly indicate how relevant information about large scale development projects is made available and accessible to the public. Provide concrete examples if applicable.

One of the ways in which relevant information on major development projects is submitted for inspection and made available to the public is placing relevant information on the internet addresses of ministries. Examples are the internet addresses of the Ministry of Energy, Development and Environment Protection, the Ministry of Foreign and Domestic Trade and Telecommunications, Ministry of Transport, the Ministry of Construction and Urban Planning, the Ministry of Regional Development and Local Self-government. Stakeholders may also contact the press office or certain officials in the ministries responsible for informing on the exercise of citizens' rights and access to case files and official records. Additionally, all stakeholders, including human rights defenders, may at any time gain access to information of public importance, in accordance with the provisions of the Law on Free Access to Information of Public Importance.

b) How can defenders complain if they feel that human rights are unduly restricted or violated in the context of implementation of large scale development projects? Kindly provide concrete examples of mechanisms in place to seek redress at every stage of the process, that is, assessment, design, implementation, monitoring and evaluation.

Within the framework of development projects related to the field of natural resources, mining and spatial planning, the competent body responsible for elaborating the plan and programs prepares a report on the participation of interested authorities, organizations and public entities that contains all opinions, as well as opinions submitted during the public review and public hearings concerning the curriculum, and a strategic assessment report, which must be approved by the competent authority. In the event an impact assessment regarding the mining project is prepared, interested public parties may lodge an appeal against a court decision on the request for determining the scope and content of the impact assessment study. The appeal shall be filed with the competent appellate authority in accordance with the law governing the protection of the environment.
As for development projects dealing with energy, development and environment protection, Article 10 of the Law on Environmental Impact Assessment (LEIA) envisages the obligation of the competent authority to notify the interested authorities, organizations and members of the public on the submitted request for the requisite of an environmental impact assessment within 10 days of receipt of the complete application. The public concerned may deliver its opinion in a designated period of time, whereas the competent authority shall decide taking into account the submitted opinions of interested authorities, organizations and members of the public. Hereafter, the competent authority submits its decision to the project developer and notifies the interested authorities and organizations. Article 11 stipulates that the project developer and the general public can lodge an appeal against the decision of the competent authority concerning the request for deciding on the necessity for an environmental impact assessment. Also, the project developer and the general public can lodge an appeal against a competent authority's decision relating to the petition for determining the scope and content of an EIA study (Article 15). Articles 24 - 26 of the LEIA provide that the competent authority shall adopt a decision to approve the impact assessment study or deny the request for approval of the impact study, based on the conducted procedure and report of the technical committee and submits it to the project developer within ten days of receiving the report. The decision of the competent authority shall be final, wherein the applicant and interested members of the public may initiate administrative proceedings against it.

c) How do you ensure that the human rights defenders can peacefully voice their opposition to the development projects without fear of intimidation or violence of any sort?

Within development projects related to the field of natural resources, mining and spatial planning, the general public, including civil society organizations dealing with the protection of the environment, may participate in decision-making processes regarding the impact of development projects on the environment.

This indicated procedure is provided even through anonymous evaluations of projects in development projects related to the field of foreign and domestic trade and telecommunications.

4. Please indicate whether information and/or technical assistance about corporate social responsibility principles, such as UN Guiding Principles on Business and...
Human Rights, is provided to businesses and corporations, including guidance how to engage with human rights defenders and communities affected.

a) Are there any kind of incentives offered to those engaging in large scale development projects to adhere to international human rights minimum standards or guidelines?

The Ministry of Labour, Employment and Social Policy implements the Strategy for Development and Promotion of Corporate Social Responsibility 2010 - 2015, and the basic guidelines for the application of this document is the Action Plan for 2012 - 2015. The Serbian Chamber of Commerce ensures the work of the Secretariat of the Global Compact in Serbia, which is responsible for the implementation of some of the strategic guidelines in the field of human rights. Within the framework of the Global Compact there are relevant groups active in the area of human rights (Working Group on Social Inclusion and Working Group on Labour Rights) associated with the implementation of the Strategy.

b) Is there an agency or focal point where defenders can make complaints regarding alleged human rights violations by businesses, corporations or investors?

Article 25 Law on the Ombudsman provides that any individual or legal entity, local or foreign person who believes that an act, action or omission of an administrative authority violated his/her rights, may file a complaint with the Ombudsman. The Ombudsman will refer the complainant to institute appropriate legal proceedings if such proceedings are provided, and will not initiate proceedings until all legal remedies have been exhausted. The Ombudsman has the power to publicly recommend the dismissal of a public official who is responsible for the violation of civil rights, or to initiate disciplinary action against an employee of the government who is directly responsible for a violation, if an official or employee repeatedly shows intention to refuse cooperation with the Ombudsman or if it is established that the committed violation against a citizen caused material or other major damage. If it is established that the actions of a government official or employee have elements of criminal or other punishable acts, the Ombudsman is empowered to submit to the competent authority an injunction, or application for initializing criminal, misdemeanor or other appropriate proceedings.

Administrative authorities have an obligation to cooperate with the Ombudsman, allow him access to their premises and make available all data that is important for conducting his inquiry aimed at achieving preventive action, regardless of the degree of confidentiality, except when it is contrary to the law. The administrative authority is

8 “Official Gazette of RS”, no. 79/05, 54/07.
obliged to respond to all demands of the Ombudsman, and to provide all requested information and documents within the period he sets, which may not be less than 15 nor more than 60 days.

In addition, citizens can also protect their rights in second instance administrative proceedings, which in accordance with the authorities prescribed by the law may be conducted under the scope of ministries, while in cases where a first instance appeal is ruled out, protection is provided in proceedings before the Administrative Court.

In the field of supporting activities of human rights defenders, a Social Inclusion and Poverty Reduction Team in 2011 supported a project developed by the civil society organization "Lawyers' Committee for Human Rights - YUCOM" entitled "Strengthening the capacity of local human rights defenders and the introduction of standards in public life in Serbia." The project goal was to develop mechanisms for monitoring, control and compliance with standards in public life by the holders of public authority, that is, officials, and was carried out with funds provided by the Government of Switzerland and the Government of the Kingdom of Norway.

The Social Inclusion and Poverty Reduction Team is a member of the working group for drafting the Law on Free Legal Aid, which is proposed under the authorization of the Ministry of Justice and Public Administration of the Republic of Serbia. This matter is being regulated for the first time in a systematic way in the Republic of Serbia, and represents an opportunity to improve the system for providing legal assistance to the most vulnerable population in the Republic of Serbia. From the standpoint of development projects, this legislation opens the door for better access to justice for the poorest and most vulnerable groups of the population in the event of violations of their human rights during the implementation of large development projects. The first draft is expected in October 2013, after which it is expected to enter into public debate.

5. Kindly describe what you consider to be the main challenges and opportunities of the human rights based approach to the development, in particular, to the effective participation of human rights defenders. What do you think are the best measures to mitigate these challenges?

As far as the major challenges and opportunities for access to development based on human rights, particularly in terms of effective participation of human rights defenders, we consider as crucial the involvement of civil society in action, planning and implementation of policies by the public authorities. This includes capacity building of

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9 The Social Inclusion and Poverty Reduction Team of the Cabinet of the Deputy Prime Minister for European Integration in its work calls for the design, implementation and monitoring of policies and measures in the field of social inclusion based on respect for human rights, in accordance with domestic and international legal and other documents.
both the public administration bodies and stakeholders from civil society dealing with issues of human rights. In this sense, it is necessary to extend as much support possible to the work and capacity of the Office of the Government of the Republic of Serbia for cooperation with civil society, which has since its establishment in 2012 been providing support for the establishment of systematic cooperation between the two sectors and improving favorable conditions for civil society work.

Despite the mechanism of establishing independent bodies, one of the challenges is the establishment of an adequate system of support and assistance to victims of human rights violations, including compensation. In this regard, it is necessary to further support the improvement of work of independent bodies and ensure the execution of their decisions and recommendations.

Also, one of the main challenges in the realization of human rights lies in the reemergence of poverty in the Republic of Serbia due to the impact of the global economic crisis. In this regard, full support is extended to the Guiding Principles on Extreme Poverty and Human Rights adopted by the UN Human Rights Council in September 2012 which states that poverty, in itself, is an urgent human rights issue. For this reason, it is necessary to support as much as possible the work of the Office for Human and Minority Rights of the Republic of Serbia as a central institution that aims to promote respect for human rights in Serbia.

In general, regulations in the Republic of Serbia still guarantee a higher level of human and minority rights and freedoms than that achieved in practice, despite efforts being made in this direction. Special problems, lack of coordination, prioritization, awareness, resources for the realization of human rights are observed in some population groups, such as people with disabilities, refugees and internally displaced persons, the poor, elderly, Roma, members of sexual minorities, persons deprived of their liberty. A satisfactory level of gender equality has not yet been reached, although legislative and other measures have significantly improved the situation. In addition, an efficient measure would also be consistent enforcement of regulations and control of the application of regulations which provide public participation in decision-making on issues that have an impact on human rights.

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10 http://www.ohchr.org/EN/Issues/Poverty/Pages/DGPIntroduction.aspx