Reply by the Government of Romania to questionnaire

UNSR Thematic Report on Natural Resource Exploitation and the rights to freedom of peaceful assembly and of association

1. What are the particular challenges in your country to respecting individuals' rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, while also attracting investment and responsibly maximizing the State's ability to benefit from these resources? For example, are all stakeholders affected by projects consulted, with their rights and concerns taken into account? Are peaceful assemblies facilitated? Are companies cooperative and understanding of the need to preserve individuals peaceful assembly and association rights?

In Romania, the natural resource exploitation is performed in accordance with the EU rules concerning public information and public participation. In this respect all the stakeholders affected by a project are consulted accordingly to the regulatory process of the Environmental Impact Assessment (EIA). The aim of EIA process is to ensure that projects which are likely to have a significant effect on the environment are assessed in advance so that people are aware of what those effects are likely to be.

The right of association, in various forms, is guaranteed by the Constitution of Romania and Law no. 60/1991, republished, concerning the organization of public meetings which grants citizens the freedom to organize public meetings. Therefore, the context of exploitation of natural resources is not an impediment in organizing certain forms of manifestation by the population, subject to the observance of the legal framework. People's discontent and organized protest manifestations are caused on one hand by the ineffective communication of the authorities regarding the negotiation and approval of exploitation of natural resources and on the other hand by the non-observance of the commitments assumed by the trade companies which are carrying out geological explorations. For a project of exploitation of natural resources, the developer shall obtain from the environmental authority a regulatory act - the environmental permit, following the procedure of environmental impact assessment (developed by the transposition of EU legislation). In the framework of EIA procedure, after the public notice given by the developer, interested citizens have the right to participate in the debate on the likely environmental impact assessment which may be generated by the realization of such project.

In this respect all the stakeholders affected by a project are consulted and individuals' rights to freedom of peaceful assembly and of association in the context of natural resource exploitation are guaranteed if such associations are made in compliance with the environmental legislation in force.

1. Can you identify any particular challenges faced by the States of origin of the corporations operating in your country?

We don’t have any information about the challenges faced by the States of origin as related to environmental issues.

1. For Question 1-3 - to what extent do these challenges stem from:

a) Gaps/inadequacies in the domestic or international legal framework (e.g., laws on FOAA rights themselves, environmental laws, labour laws, trade agreements)

1. Government institutions (e.g., ineffective enforcement, lack of independence, lack of capacity, corruption)
2. The broader business environment (e.g., lack of voluntary guidelines or industry standards, competitive pressures)
3. Individual businesses themselves (e.g., focus on profits over rights, lack of interest in consulting local communities, willingness to leverage Government corruption)
4. Any other factors

The main problems encountered by the authorities in the workflow of contracts with the trade companies carrying out geological explorations are:

- lack of updated and detailed situations and maps regarding landowners and their actual location ;

- lack of a report on land leases, included in the cynegetic funds or for which the notary succession procedure hasn’t been performed;

- special legal status of protected natural areas;

From the trade companies which are exploring natural resources, there are some disfunctionalities such as:

- the omission of obtaining necessary approvals to conduct specific activities;

- the lack of notifications regarding the period over which the activities will be carried out, the way of achieving them, preparing and informing the public, media releases, etc.;

- trespassing on the lands (without informing the owner and without his / her consent);

- using deceiving methods in order to exercise the servitude right.

1. What is your Government doing to mitigate these challenges?

The right to free speech and to protest is guaranteed by the law under the provision of legal limits specified in the legislation regarding the public assemblies. The Romanian Gendarmerie has the main role to ensure respect for the rule of law during the protest and not to forbid or hinder these activities.

1. Please provide any specific case studies illustrating natural resource exploitation projects which your Government believes had a positive or negative impact upon FOAA rights, for example: (1) suppression or facilitation of peaceful protests regarding a project; (2) harassment or facilitation of civil society or grassroots groups involved in a project; (3) outcomes when consulting - or failing to consult -with affected communities; (4) involvement of private security companies. We would especially appreciate examples that demonstrate how Government action helped or hurt the protection and promotion of FOAA rights.

During the protests which took place in 2014, protests concerning the natural gas exploitations, the main instrument used by the Romanian Gendarmerie was the proactive dialogue. The dialogue was based on the formal and informal information flow on the ground and exchanges of opinions with the citizens. The dialogue was permanent with a preventive role in order to promote the trust, respect and confidence building between the two sides. The goal of the dialogue was to create a viable, direct and flexible connection in order to ensure the respect of the laws during the public gatherings.

1. What measures/actions would you recommend that States, businesses and private actors take to enhance the promotion and protection of freedom of peaceful assembly and of association in their policies, projects, goals and other engagements with civil society?

The implementation of the UN conventions.