

To
Mr. Nermin Nikšić
Prime Minister
Office of the Prime Minister of the Federation of Bosnia and Herzegovina
Ured premijera Federacije Bosne i Hercegovine
premijer@bihvlada.gov.ba

Heidelberg, 7 June 2023

Dear Mr. Nikšić,

FIAN International is an international human rights organization, with consultative status with the United Nations (UN) Economic and Social Council that works towards the worldwide implementation of the right to food and nutrition. The Aarhus Centre in Bosnia and Herzegovina supports the national implementation of the 1998 Aarhus Convention, namely its three pillars: Access to information, public participation in environmental decision-making and access to justice in environmental matters.

We would like to express our concern regarding the impact of coal mining and coal-fired power plants in Bosnia and Herzegovina (BiH) and the resulting adverse impacts on the realization of the human rights to food, to a clean, healthy and sustainable environment, and to other related human rights such as the rights to water and health. As per testimonies collected from local people and civil-society groups, coal related ecological destruction and degradation is seriously threatening local food systems and agriculture with implication on local communities' right to food and nutrition. People have to face crop diseases, reduced yields and contamination of water and cultivated food crops. They also face pollution and disruption of groundwater supplies leading to waterlogging and water scarcity, as well as damages of houses.

Tuzla with the region's largest coal mining area and the largest coal power plant is a case in point in this context: 4,400 ha of land and 4,417.24 ha of forest vegetation are already degraded due to mining and the flow of the Spreča and Šikuljačka rijeka rivers has been disturbed. 20 villages needed to be relocated. The four units of Tuzla Thermal Power Plant (TPP), Tuzla 3, Tuzla 4, Tuzla 5, and Tuzla 6 operated by Elektroprivreda Bosne i Hercegovine (EPBiH), a public power utility company, burn over 3.3 million tons of coal annually and are the main sources of air pollution in BiH. Pollution caused by the plants is a major cause of respiratory diseases, allergies, various types of cancer and other serious health consequences. More than 1300 premature deaths per year in Tuzla are attributed to air pollution. Many children are suffering from asthma and bronchitis. Despite the heavy toll on human health, a new unit, Tuzla 7, is under discussion to be established since in 2014 the Chinese state-owned company Gezhouba Group Co. (CGGC) signed an Engineering, procurement and construction (EPC) contract to build it, financed by China Exim Bank. After a successful complaint to the EU Energy Community Secretariat, challenging the state loan guarantee, the State Aid Council of Bosnia and Herzegovina decided that the previously issued state guarantee was illegal. This decision was challenged by the Federal Ministry of Finance and the future of Tuzla 7 is still unclear.

In addition, the waste (ash) created from burning coal further jeopardizes nature and people's health through water and soil contamination. In Tuzla, ash disposal sites were built in natural valleys and near urban areas without proper construction and fencing off the areas. Due to improper treatment of wastewater, underground and surface spring water in the vicinity of the disposal site contains high levels of nitrates, iron, and manganese. Unscientific covering and recultivation of closed-off coal sites (containing high levels of harmful chemicals e.g., nickel, chrome and cadmium), which are being used by locals for cattle grazing and agriculture, led to contamination of locally produced and marketed food.

Despite the above-mentioned serious impacts on the rights to food, health and the environment, the Government of BiH has not adequately addressed the root causes of pollution and degradation of natural resources and the resulting consequences on the realization of the right to food and nutrition and related rights of affected people. In this context, Bosnia and Herzegovina clearly infringes its human rights and environmental commitments and obligations enshrined in a number of international instruments:

BiH is obliged to respect, protect and fulfill the right to a clean, healthy and sustainable environment, as recognized by the resolution (A/76/L.75) of the UN General Assembly, that is integral to the full enjoyment of a wide range of human rights including, among other rights, like e.g. the rights to adequate food, water, and health enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which BiH is a State party. Accordingly, BiH is duty-bound to progressively realize, among other rights, the right of everyone to an adequate standard of living for himself and herself and his/her family, and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Under the ICESCR, BiH must refrain from interfering with or curtailing the enjoyment of existing human rights, e.g., the enjoyment of the rights to food, water and health. The severe pollution and degradation of land used for food production thus constitutes a violation of the rights enshrined under the Covenant. Furthermore, BiH did not provide adequate legal recourse or remedies to those who have been and are being affected. BiH is also a State party to the Convention on the Rights of the Child (CRC), under which it is obliged to address the dangers and risks that environmental pollution poses to children's health.

BiH is also member of the Convention for the Protection of Human Rights and Fundamental Freedoms (or European Convention on Human Rights, ECHR), which has, through its case law, addressed environmental issues as components of Articles 2 ("right to life") and 8 ("right to respect of private and family life") of the ECHR, as well as Article 10 ("right to receive and impart information") and Article 1 of Protocol no.1 of the ECHR and procedural rights such as the right to an effective remedy (Articles 6.1 and 13).

According to the Treaty Establishing Energy Community and the Decision of the Ministerial Council of the Energy Community (D/2013/05/MC-EnC) from 24 October 2013, BiH is required to reduce emissions of pollutants (dust, sulfur dioxide, and nitrogen oxides) from large combustion plants. BiH has endorsed the Sofia Declaration on the Green Agenda for the Western Balkan, which spells out commitments to support progressive decarbonization of the energy sector, depollution of air, water and soil, and halting biodiversity loss, protection and restoration of ecosystems and abundant biological diversity.

According to the Secretariat of the Convention on Biological Diversity BiH is among the most biodiverse countries in Europe. Among the relevant pressures on and drivers of change to biodiversity are reportedly energy, mining and industrial sectors, and limited capacities for waste disposal. However, implementation of existing laws on Environmental Protection is weak and an adequate biodiversity monitoring system is yet to be established.

In spite of all BiH's the commitments and obligations outlined, there is a lack of targeted legal and policy actions to reduce emissions and coal related pollution and degradation of natural resources in BiH. Considering the issues outlined above, FIAN International and Aarhus Centre in Bosnia and Herzegovina would like to ask you to:

- Draft and adopt a regulation clearly describing compulsory measures to prevent the negative impacts of coal mining and thermal power generation (including waste disposal) and to lay down clear guidelines for regular air, soil and underground water monitoring, and create and implement a favorable legal framework to respect and protect human rights related to environmental harm; and establish mechanisms and tools for affected people to assess and record their losses and damages to create evidence and establish proper remedy mechanisms as well as people's access to justice;
- Ensure implementation of all pollution prevention measures defined in environmental permits and international treaties signed by BiH;
- Acquire explicit consent from affected villagers, for any project that could potentially cause ecological degradation and seriously threaten the local food systems and agriculture; establish and implement clear rules for the effective and meaningful participation of local communities in consultations; and ensure that decision-making processes are transparent, participatory and in line with relevant international human rights standards;
- Cease planning new coal power facilities and subsidizing coal-fired power plants and coalmines. Instead, establish ambitious coal phase-out goals and develop a strategic framework and road map for exiting lignite-based energy production, in line with the Paris Agreement and obligations under the Sofia Declaration, as well as for the compensation and rehabilitation of those whose rights have been violated;
- Conduct independent and transparent human rights and environmental impact assessments regarding all planned mining and thermal power projects, as well as current mines and thermal power plants, and do

not implement respectively continue their operations if any adverse impact – or even the risk of any adverse impact – is being identified;

- Safeguard, respect, and restore biodiversity, with a focus on the right to adequate food and nutrition and to a clean, healthy, and sustainable environment considering its crucial role in food production and maintaining people's wellbeing and health;
- Raise awareness on the negative effects of pollution coming from Thermal Power Plants as well as create disaggregated data and provide for information on the true costs of coal production;
- Invite the UN Special Rapporteur on Human Rights and the Environment, and the Special Rapporteur on toxics and human rights to a country visit to gather first-hand information on the current human rights situation.

We would like to thank you for your attention and request you to kindly keep us informed about the action you intend to take on this matter.

Respectfully yours,

Sofia Monsalve
Secretary General

FIAN International

Denis Žiško
Energy and Climate Change Program
Coordinator
Aarhus center in BiH



cc.

National:

Cabinet of the Federal Minister of Energy, Mining and Industry (Kabinet federalnog ministra energije rudarstva i industrije)
kabinet@fmeri.gov.ba

Office of the Federal Minister of Agriculture, Water and Water Management (Kabinet federalnog ministra poljoprivrede vodoprivrede) kabinet@fmpvs.gov.ba

Cabinet of the Federal Minister of Environment and Tourism (Kabinet federalnog ministra okolisa i turizma)
kabinet@fmoit.gov.ba

EU:

Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) of the European Commission, Director General Gert Jan Koopman Gert-Jan.Koopman@ec.europa.eu

Directorate-General for Energy (DG ENER) of the EU Commission, Director General Ditte Juul Jørgensen Ditte.JUUL-JOERGENSEN@ec.europa.eu

Directorate-General for Environment (DG ENV) of the EU Commission, Director General Florika.Fink-Hooijer@ec.europa.eu

UN:

UN High Commissioner for Human Rights: Mr. Volker Türk ohchr-InfoDesk@un.org; ohchr-civilsociety@un.org

UN Special Rapporteur on the Right to Food: Mr. Michael Fakhri hrc-sr-food@un.org

UN Special Rapporteur on Human Rights and the Environment: Mr. David R. Boyd hrc-sr-environment@un.org

UN Special Rapporteur on the Human Right to Water and Sanitation: Mr. Pedro Arrojo-Agudo hrc-sr-watsan@un.org

UN Special Rapporteur on Human Rights and Extreme Poverty: Mr. Olivier De Schutter hrc-sr-extremepoverty@un.org

UN Special Rapporteur on Human Rights Defenders: Ms. Mary Lawlor hrc-sr-defenders@un.org

UN Special Rapporteur on the Right to Housing: Mr. Balakrishnan Rajagopal hrc-sr-housing@un.org

UN Special Rapporteur on the Right to Health: Ms. Tlaleng Mofokeng hrc-sr-health@un.org

UN Special Rapporteur on Toxics and Human Rights: Mr. Marcos A. Orellana hrc-sr-toxicshr@un.org