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# HOW **(NOT)** TO DO BUSINESS AND HUMAN RIGHTS IN CENTRAL AND EASTERN EUROPE AND CENTRAL ASIA. CASE STUDIES

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# LIST OF ABBREVIATIONS

<b>ADB AM</b>	Asian Development Bank's Accountability Mechanism
<b>ASCI</b>	Areas of Special Conservation Interest
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CESCR</b>	UN Committee on Economic, Social and Cultural Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organisation
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ECHR</b>	The European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECJ</b>	European Court of Justice
<b>EIA</b>	Environmental Impact Assessment
<b>ESC</b>	European Social Charter
<b>EU</b>	European Union
<b>FPIC</b>	Free, Prior, and Informed Consent
<b>GRS</b>	World Bank's Grievance Redress Service
<b>HRC</b>	Human Rights Committee
<b>HRDD</b>	Human Rights Due Diligence
<b>HREDD</b>	Human Rights & Environmental Due Diligence
<b>HRIA</b>	Human Rights Impact Assessment
<b>IATA</b>	International Air Transport Association
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>ITUC</b>	International Trade Union Confederation
<b>NCP OECD</b>	OECD National Contact Point
<b>NEA</b>	National Environment Agency
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	The Organisation for Economic Co-operation and Development
<b>OH&amp;S</b>	Occupational Health And Safety
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>EBRD's PCM</b>	EBRD's Project Complaint Mechanism
<b>SOE</b>	State-Owned Enterprise
<b>TFEU</b>	Treaty On The Functioning Of The European Union
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations

<b>UNECE</b>	Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNSC</b>	The United Nations Security Council

# FOREWORD

It is with great satisfaction that we are handing over to you the collection of Business & Human Rights (BHR) case studies from Central & Eastern Europe and Central Asia. They have been developed by the participants of the first edition of the Central and Eastern Europe and Central Asia Summer Academy on Business and Human Rights that took place in September 2022. The cases are based on publicly available information concerning real, adverse human rights impacts of companies operating in those regions.

Despite the numerous differences between them, all the countries are affected by their post-Soviet legacy and share challenges linked to a weak rule of law and ineffective state institutions that lead to poor human rights enforcement with, as we can see from the case studies, labour and environmental protection being particular subjects of concern. The situation is certainly not helped by the low awareness of human rights among the population which, in turn, is reflected in little understanding of the responsibility to respect human rights by enterprises in the region and enables the application of double standards by some companies from other regions when they operate in these parts of the world.

Both the Summer Academy and this publication are part of our attempt to respond to this challenge and contribute to the growth of competencies in BHR in the region. We do hope that organisation of the Summer Academy is just the first step in educating and building a network of BHR experts with the knowledge, competencies, and skills that will enable them to assist organisations from all sectors in implementing the UN Guiding Principles on Business and Human Rights in their own operations and in their broader regions.

This publication is intended to be used as self-learning or/and teaching material so that when teaching BHR in a region, references can be made to region-specific situations that are more tangible, relevant, and easier to relate to for the readers than cases from other parts of the world. Each case study starts with a short context description, followed by questions addressing core Human Rights Due Diligence (HRDD) elements that any company finding itself in such a situation should ask itself and be able to answer.

It should be stressed that the case studies were never intended to be academic papers. Rather, the intention was to drive thinking beyond academic discussions into what needs to be done on the ground by the company to address its adverse human rights impacts. While the answers provided are not comprehensive, not least due to limited space, we hope they will inspire discussion about what the application of HRDD could look like in such a context and provide some guidance in the right direction.

As we hand over the publication to the broader public, our gratitude goes to all those who made the Summer Academy and this publication possible: the PIHRB team, the Global Business Initiative for Human Rights team who were crucial in co-designing the practice-oriented section of the Summer Academy, and also the Active Citizens – Regional Program for funding the programme. This publication itself would not be possible without the engagement and time generously offered by the academics and professionals who acted as mentors to individual authors. Our gratitude goes to Gudmundur Alfredsson, Nadia Bernaz, Jernej Letnar Čerňič, Dirk Hoffmann, Bartosz Kwiatkowski, Chiara Macchi, Peter Muchlinski, Claire Methven O’Brien, Ron Popper, Agata Rudnicka, and Andrea Shemberg.

Finally, we would like to thank the authors for their hard work over several months and congratulate them on the result. Without you, this publication would not have come into existence. To use the late John Ruggie’s words, we sincerely hope that it is just ‘the end of the beginning’ of a broader and professional cooperation in the region aimed at advancing better UNGPs implementation by all actors.

Co-directors of the CEE&CA Summer Academy



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## CASE STUDY 1.

# URANIUM MINING OPERATIONS IN KYRGYZSTAN

**AUTHOR: GULNAZ BAITUROVA**

Following extensive mining projects during the Soviet era (until 1989), there are numerous high-risk tailing dumps from uranium legacy sites in Kyrgyzstan that pose serious risks to local livelihoods, public health, and the environment. Thus, uranium mining is a serious concern for the people of Kyrgyzstan.

The mining company UrAsia in Kyrgyzstan LLC, who wanted to mine uranium at the Tash Bulak deposit, was registered in Kyrgyzstan.<sup>1</sup> 70% of the company's shares are owned by Azarga Resources Ltd, a subsidiary company of Canada's Azarga Uranium Corp., with the remaining 30% of shares held by Kyrgyz shareholders.<sup>2</sup> In 2010, the company received a license to use the subsoil of the Kyzyl Ompol area for the purpose of geological exploration, valid until 31 December, 2020. In 2013 the company's license was reissued to entitle the geological exploration for uranium, thorium, zirconium, iron, titanium, phosphor, rare earth, and feldspar.<sup>3</sup>

In 2018, the company held public hearings in Kok-Moinok village and Balykchy city. The meetings were attended by representatives of the company and shareholders, heads of local authorities, deputies, youth activists, and the local public. Residents were dissatisfied with the fact that in a short time, a Kyrgyz company would begin the extraction of a radioactive element not far from their homes. UrAsia in Kyrgyzstan's General Director told the meetings that their method of uranium mining is essentially unique and does not harm the environment. The local population expressed their willingness to support the development of the field, provided that all environmental standards and norms were met. The company initiated the creation of a special commission, which was meant to include all stakeholders.<sup>4</sup> Yet, not all stakeholders were covered by these public hearings since some residents of nearby villages and towns were left unsatisfied with the lack or insufficiency of information.

In April 2019, local residents protested against uranium mining in the city of Balykchy and a few days after, Bishkek city residents joined the environmental objections. The topic of uranium field development in the Issyk Kul region attracted media and public attention. Almost 29 500 people signed the 'We are against the development of the uranium deposit in Issyk Kul!' petition.

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1 Kyrgyzstan Ministry of Justice, Registration, <https://register.minjust.gov.kg/register/Public.seam?publicId=22016>, (accessed 1 March 2023).

2 Central Asian Bureau for Analytical Reporting, 'Experts: Uranium Mining at Kyzyl Ompol is Hazardous to Environment, Economically Unviable', <https://cabar.asia/en/experts-uranium-mining-at-kyzyl-ompol-is-hazardous-to-environment-economically-unviable>, (accessed 1 March 2023).

3 Nuclear Engineering International, 'Kyrgyz Parliament bans uranium and thorium mining', <https://www.neimagazine.com/news/newskyrgyz-parliament-bans-uranium-and-thorium-mining-7487717>, (accessed 1 March 2023).

4 International Business Council, 'YurAsia company holds public hearings on the ecology of the Tash-Bulak field', 18 December 2018, [https://www.ibt.org/en/news/members/3951\\_yurasia\\_company\\_holds\\_public\\_hearings\\_on\\_the\\_ecology\\_of\\_the\\_tashbulak\\_field\\_](https://www.ibt.org/en/news/members/3951_yurasia_company_holds_public_hearings_on_the_ecology_of_the_tashbulak_field_), (accessed 1 March 2023).



Following the protests, the prime minister of Kyrgyzstan established the interagency commission in an expanded format with the participation of all concerned state bodies to study the uranium site development and to carry out close monitoring of its environmental impact. Lastly, the suspension of operations in the uranium field on the Kyzyl Ompol site was ordered until completion of the environmental impact audit. On 19 April, the committee published an explanation of the situation, stating that the method of Tash Bulak deposit mining was environmentally friendly as no reagents but only process water would be used.

On 31 October 2019, the Kyrgyzstan parliament approved a bill banning the extraction of uranium and thorium, following which, in December 2019, former president signed a law that banned uranium and thorium mining and radioactive tailings and waste dumps.

Although UrAsia in Kyrgyzstan has not violated the license agreement, it turns out that because the issue of radioactive waste impact is a sore subject for the local population, the state authorities decided to suspend the company activities following the wave of rallies against the project.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- The local population of the Issyk Kul region
- Employees/workers.

Stakeholders:

- Citizens of the Kyrgyz Republic active on social media
- Local environmental NGOs and scientists
- State authorities
- The State Agency on Geology and Mineral Resources of the Kyrgyz Republic
- Local government/political parties.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

Uranium is a radioactive material, so any mining activity – which lies at the core of the business model – is intrinsically linked to risks to health and life. Uranium mining may harm both workers and the local population’s right to health and to a clean, healthy and sustainable environment. The main risks are:

- risk of negative impact on the workers and local population’s members’ right to health and right to life due to health hazards caused by exposure to unknown or uncertain complex risks (radiation, etc.);
- environmental risks with impact on the right to health and right to life, and potentially the right to work, include i.a. biodiversity loss (wildlife, agricultural diversity), waste overflow, surface water pollution/decreasing water quality, mine tailing spills;
- socio-economic impact risks (e.g. loss of livelihood, loss of landscape/sense of place) that have impact on the right to an adequate standard of living and right to enjoy just and favourable conditions of work, right to property and potentially right to family life and other social and economic rights.

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED.**

The human rights of the affected members of the local population of the Issyk Kul region include:

- the right to health, including<sup>5</sup>:
  - the right food and nutrition
  - the right to housing
  - the right to access safe and potable water and to adequate sanitation
  - the right to safe and healthy working conditions and a healthy environment
- the right to life (in extreme cases);
- the right to a clean, healthy and sustainable environment,<sup>6</sup> including:
  - the right to non-toxic environments in which to live, work, study, and play
  - the right to access to safe water, healthy biodiversity, and ecosystems
  - the right to earn for living by agriculture and tourism business
- private property rights.

The human rights of the workers that could have been affected include:

- the right to safe and healthy working conditions;
- the right to the opportunity to gain their living by work which they freely choose or accept;
- the right to remuneration that provides fair and equal remuneration for work of equal value;
- the right to a decent living for themselves and their families.

### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Identified risks are:

- the risk that the company will have to cease its activities in the country – note: this has occurred;
- the risk of deterioration of the ecological situation that may eventually lead to sicknesses and death of people living close to the region, as well as of plants and animals the company could have to be liable for;
- the risk of ecological catastrophe because of accidents during mining or delivery of uranium;
- the risk of the hazardous impact of tailings dam break for many years afterwards.

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<sup>5</sup> See: the paragraph 4 of the General comment no. 14 (2000), The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), <https://www.refworld.org/pdfid/4538838d0.pdf>

<sup>6</sup> The UN General Assembly resolution (A/76/L.75) dated July 28, 2022

## **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

People in Kyrgyzstan are already sensitive to the issue related to environmental and health impacts from the exploration of uranium and radioactive waste due to the uranium legacy from the Soviet times.

People do not believe that the state and private companies can effectively prevent the hazardous effect on their safety and livelihood of uranium exploration close to their homes because the problem of existing hazardous waste and radioactive tailing dumps legacy is still not solved by the state or any organisation.

UrAsia in Kyrgyzstan could have avoided suspension of its activities if it demonstrated to the local population that it does (independently or with cooperation with the state or other stakeholders) take steps towards ensuring the safety of people and the environment.

The company could have been more transparent and open to dialogue with the local population, considering the crucial importance of environmental and health safety issues for the local population.

In accordance with UNGP 17: 'In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed...'<sup>7</sup>

Accordingly, companies carrying out due diligence should effectively track their responses and communicate with all stakeholders on an ongoing basis, especially on measures that mitigate human rights risks.

UrAsia in Kyrgyzstan could have avoided this turn of events if it placed much more attention on public anxiety about the company's impact on their livelihood and safety. Taking into account how sensitive and concerned the local population were about their environmental and health safety, UrAsia in Kyrgyzstan could have organised more clear and transparent communication on how it operates and on the means with which the company was planning to prevent or mitigate impacts on the livelihood of the residents so they would trust the company.

As stated in the UNGP 15, UrAsia in Kyrgyzstan enterprise could have started to demonstrate its commitment by adopting and communicating that it has adopted policy commitments to meet its responsibility to respect the local population's human rights as well as processes that enable the remediation of any adverse human rights impacts to which they contribute. Although UrAsia in Kyrgyzstan attempted to organise the public hearings in 2018, the process of involving stakeholders in the risk assessment and risk mitigation process was insufficient. The company could have built better communication with its stakeholders. UrAsia in Kyrgyzstan could have also proposed the creation of an effective grievance

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7 Principle 17 of the Guiding Principles on Business and Human Rights, p. 17, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

mechanism to handle complaints and ensure that a remediation system was in place. For instance, these could be mixed composition bodies that would also involve representatives of the local population – selected by the population themselves. Existence of such a grievance mechanism would have helped to develop trust and helped to ensure feeling that there exists a trustful agency that could consider their complaints and that they have access to information and that they are being treated fairly.

If civil society could witness that the UrAsia in Kyrgyzstan mining enterprise demonstrates human rights due diligence in their activities towards preventing, mitigating, and accounting for how they address their impacts on human rights, there probably would not be such a strong reaction from the population.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

As the project was stopped, there is no need for additional measures. However, if it went ahead and caused adverse impacts, the rights-holders would have the options presented below.

If the citizens of the Kyrgyz Republic had exhausted all legal avenues because the project had not undergone a proper environmental impact assessment and the court had failed to protect their rights, only then would they be able to appeal to the Human Rights Committee. However, the UN Human Rights Committee considers complaints only against a state that fails to meet its obligations to protect human rights within its jurisdiction. The UN Human Rights Committee does not consider cases against the actions of business actors.

It is also possible to consider the perspective of a communication procedure in the framework of the UN Working Group on Business and Human Rights – the WG has the mandate to ‘receive information on alleged human rights abuses and, where deemed appropriate, intervene directly with States, business enterprises and others on such allegations. Such intervention can relate to a human rights abuse which has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned States and business enterprises to draw their attention to the facts of the allegations made and the applicable international human rights norms and standards, in particular the core concepts, obligations, responsibilities and expectations set out in the Guiding Principles.’<sup>8</sup>

The local population could also seek international arbitration as a tool for remedy. However, such an option could be unaffordable and difficult for a particular citizen or group of citizens.

While it is not relevant in this particular case, it is worth mentioning that against companies that have received investments from international development banks complaints, grievances can be submitted via those banks’ grievance mechanisms. The World Bank’s Grievance Redress Service (GRS), the EBRD’s Project Complaint Mechanism (PCM), Asian Development Bank’s Accountability Mechanism (AM), all have in place grievance procedures that allow people to raise their concerns about any

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<sup>8</sup> United Nations Mandate, ‘Working Group on Business and Human Rights’, <https://www.ohchr.org/en/special-procedures/wg-business/about-mandate>

direct, material, and adverse harm they have or could experience as a result of projects funded by these development banks.

However, since UrAsia in Kyrgyzstan has not used these investment funds, residents of Kyrgyzstan would not be able to avail themselves of these complaint procedures either.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- 1966 International Covenant on Civil and Political Rights<sup>9</sup>
- 1966 International Covenant on Economic, Social and Cultural Rights<sup>10</sup>
- 1992 The United Nations Framework Convention on Climate Change<sup>11</sup>
- 1998 Convention on Access to Information, Public Participation In Decision-Making And Access to Justice in Environmental Matters (Aarhus Convention)<sup>12</sup>
- 2001 Stockholm Convention on Persistent Organic Pollutants<sup>13</sup> (Ratified by Law of the KR No. 114 of the KR on July 19, 2006)
- 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Ratified by Law No. 59 of the KR on April 28, 2007)<sup>14</sup>
- 2011 International Guiding Principles on Business and Human Rights<sup>15</sup>
- 1999 Law of the Kyrgyz Republic ‘On Environmental Protection’<sup>16</sup>
- 1999 Law of the Kyrgyz Republic ‘On Radiation Safety of the Population Kyrgyz Republic’<sup>17</sup>
- 1999 Law of the Kyrgyz Republic ‘On Ecological Expertise’<sup>18</sup>
- 2001 Law of the Kyrgyz Republic ‘On Tailings and Mining Dumps’<sup>19</sup>
- 2016 Law of the Kyrgyz Republic ‘On Industrial Safety of Hazardous Production Facilities’<sup>20</sup>
- 2004 Law of the Kyrgyz Republic ‘On Sustainable Development of the Issyk-Kul Ecological and Economic System’<sup>21</sup>
- Law of the Kyrgyz Republic No. 139 dated December 14, 2019 ‘On Prohibition of Activities Related to Geological Exploration of the Subsoil for the Purpose of Prospecting, Exploration and Development of Uranium, Thorium Deposits in the Kyrgyz Republic’<sup>22</sup>

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9 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

10 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

11 <https://www.unwomen.org/en/how-we-work/intergovernmental-support/climate-change-and-the-environment/unit-ed-nations-framework-convention-on-climate-change>

12 <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

13 [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-15&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-15&chapter=27&clang=_en)

14 [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-15&chapter=18&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-15&chapter=18&Temp=mtdsg3&clang=_en)

15 [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

16 <http://cbd.minjust.gov.kg/act/view/ruru/218/145?mode=tekst> (text in Russian)

17 <http://cbd.minjust.gov.kg/act/view/ru-ru/223/40?mode=tekst> (text in Russian)

18 <http://cbd.minjust.gov.kg/act/view/ruru/219/40?mode=tekst> (text in Russian)

19 <http://cbd.minjust.gov.kg/act/view/ru-ru/464/20?mode=tekst> (text in Russian)

20 <http://cbd.minjust.gov.kg/act/view/ru-ru/111439/10?mode=tekst> (text in Russian)

21 <http://cbd.minjust.gov.kg/act/view/ru-ru/1514/65?mode=tekst> (text in Russian)

22 <http://cbd.minjust.gov.kg/act/view/ru-ru/111985/10?mode=tekst> (text in Russian)

## **CASE STUDY 2.**

# **A SPILLOVER OF CARCINOGENIC SIX-VALENT CHROMIUM FROM JUGOHROM PLANT IN THE AREA OF RASCE, THE PRIMARY SOURCE OF WATER FOR SKOPJE, NORTH MACEDONIA. WHO IS RESPONSIBLE?**

**AUTHOR: ANA DANGOVA HUG**

### **BACKGROUND**

Jugohrom, an industrial plant for chromium products and ferroalloys, was founded by the government of North Macedonia in the 1950s. The plant is located on the left bank the Vardar River, 15 km from Tetovo and 30 km upstream from Skopje, within the village Jegunovce.

Ferroalloys contain certain chemical elements, such as silicon, chromium and magnesium, for the needs of the steel industry. In the 1980s, Jugohrom was the leading industrial plant in the country, with around 7 000 employees. However, the production in Jugohrom was stopped in December 2001, followed by the company's privatisation in cooperation with a French investment group. The company SILMAK was created to restart the activities in Jugohrom and operate the facility. Later, several companies took over the facility's management, with Jugohrom Ferolajs-DOO Jegunovce being the last one.

Jugohrom Ferolajs-DOO Jegunovce possessed an A adjustment permit with an adjustment plan as a condition for continuation until compliance with the requirements for issuance of an integrated environmental permit. In 2015, the Ministry of Environment and Physical Planning (hereinafter the Ministry) issued a draft amendment of the A adjustment permit prescribing the conditions and terms for the facility's waste management. The document contains a picture of the occurrence of dangerous waste, its location, its treatment and places for depositing.

Because the operator did not fulfil obligations from the A permit in 2016, the State Inspectorate refused to renew the license for the upcoming period and the plant ceased to work. As the operator lost its license, the operator was obliged to cooperate with the Ministry to transfer the location and, eventually, dislocate the premises, the equipment, and any waste that can endanger the environment. The operator was also obliged to present an annual report to the Ministry for the measures undertaken to prevent environmental damage and envisage financial resources for remediation of any incidents.

According to the publicly available documents, there was no plan after the facility was closed, and no plan is mentioned in the Ministry's annual reports.

## ACTORS AND HUMAN RIGHTS CONCERNS

The site's location (adjacent to the Vardar River and the Rasce spring, the primary water source for individuals of Skopje) is a significant concern because of the presence of six-valent chromium due to the former production of sodium dichromate. More precisely, studies demonstrate<sup>1</sup> that insufficient precautionary measures for preserving the environment were undertaken from the beginning of its operation, especially concerning the surface and underground water contamination. Jugohrom is a contaminated site – a 'hotspot' with medium environmental risk.<sup>2</sup>

Currently, around 7 500 tonnes of six-valent chromium are stored in a landfill of an average of 23 metres height, and is mixed with slag to decrease the solubility.<sup>3</sup> There is no new dangerous waste. The stored dangerous waste of the chromium is purified via a drainage system and purifying station and then spilt as a non-active chromium in the Vardar River. The six-valent chromium is believed to be a dangerous substance that produces cancer. There is a real threat that the landfills pollute the waters of the Rasce spring, which is the principal potable water supply source for the city of Skopje and the region.<sup>4</sup>

The government is the landfill's founder, and Jugohrom Alzar (former Jugohrom Ferolajs) manages the purifying station. The Ministry operates the dump and the drainage system, financially assisting in maintaining the purifying station. The Ministry of Environment and Physical Planning is a waste holder and is obliged by the principle 'the polluter pays'. Two municipalities may have obligations regarding the plant, i.e., municipality Jegunovce, where the landfill is located, and municipality Skopje, concerning the drinking water. According to official documents, the Sector for Sanitary Control of the public company Vodovod and Kanalizacija indicated to the municipality Skopje the existence of unwanted components in the drinking water with recommendations on action to be taken.<sup>5</sup>

In October 2021, the communities of Jegunovce noticed that the Vardar River was polluted with wastewater of a green and yellow colour, later found to be from the industrial waste of the closed Jugohrom plant. In addition, activists have warned that six-valent chromium has also polluted the groundwaters of the mountain Zeden, where the village Jegunovce is situated, and the springs of Rasce. According to official documents in October 2020, the purifying station was not functioning. In the previous

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1 Hydrometeorological Service, 'The impact of the Jugohrom-Jegunovce landfill on the quality of surface and underground water', 2020, [https://inis.iaea.org/collection/NCLCollectionStore/\\_Public/34/069/34069265.pdf](https://inis.iaea.org/collection/NCLCollectionStore/_Public/34/069/34069265.pdf) (accessed 19 December 2022).

2 Ministry of Environment and Physical Planning, 'Annex 9: Special Study E Industrial Contaminated Sites ('hotspots')', September 2005, [www.moep.gov.mk/wp-content/uploads/2014/11/Annex\\_9\\_Special\\_Study\\_E\\_Industrial\\_Contaminated\\_Sites\\_.pdf](http://www.moep.gov.mk/wp-content/uploads/2014/11/Annex_9_Special_Study_E_Industrial_Contaminated_Sites_.pdf), p. 5 (accessed 19 December 2022).

3 Meta.mk, 'The carcinogen six-valent chromium from the Jegunovce landfill lurks the health of the citizens', 17 February 2022, <https://meta.mk/> (accessed 19 December 2022).

4 Free Press, 'Nuredini: The six-valent chromium is a risk for the entire country', 19 December 2021, [www.slobodenpecat.mk/nuredini-shestvalentniot-hrom-od-jegunovcze-e-rizik-za-czelata-drzhava/](http://www.slobodenpecat.mk/nuredini-shestvalentniot-hrom-od-jegunovcze-e-rizik-za-czelata-drzhava/), Free Press, 'JP Vodovod: The drinking water is safe, but the danger from Jugohrom is lurking', 06 July 2021, [www.slobodenpecat.mk/jp-vodovod-vodata-za-piene-e-bezbedna-no-opasnosta-od-jugohrom-ne-demne/](http://www.slobodenpecat.mk/jp-vodovod-vodata-za-piene-e-bezbedna-no-opasnosta-od-jugohrom-ne-demne/) (both accessed 19 December 2022).

5 JP Vodovod i Kanalizacija – Skopje, Sektor for Sanitary Control, Annual reports for 2019 and 2020, p. 21.

period, it worked with a lower capacity of 60 m<sup>3</sup> /day because of a defect in the purifying station.<sup>6</sup> The Ministry announced that it opened three public tenders to remediate the purifying station to reduce the six-valent chromium, which should have been finalised by November 2020.

This incident was followed by intense media reporting, which showed pictures of yellow water in the village Jegunovce, dead plants surrounded by the contaminated water, and reportage of villagers who testified that their land and drinking water had been polluted for years. The eco activists insist that the whole waste from the landfill and the entire premises should be relocated while the Government is preparing a plan to construct a new purifying station.<sup>7</sup>

## 1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?

Rights-holders:

- People living in the town Tetovo and capital Skopje
- People living in the village Jegunovce
- Fishers fishing in the Vardar River
- Farmers in the region
- Future generations.

Stakeholders:

- Eco activists
- Local municipalities
- Government of North Macedonia.

## 2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?

The human rights risks inherent in the business model concern the following rights:

- the right to life, i.a. Article 6 (1) of the Covenant of Civil and Political Rights (ICCPR), Article 6 (1) of the Convention on the Rights of the Child (CRC), Article 2 of the European Convention on Human Rights (ECHR);
- the right to clean, healthy and sustainable environment (General Assembly Resolution A/RES/76/300);<sup>8</sup>
- the right to an adequate standard of living, i.a. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to food, i.a. Article 11 (1) and (2) of the ICESCR;

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<sup>6</sup> Institute of communication studies and MYLA, 'Case study: Endangering the environment with leakage of the six-valent chromium from the former industrial plant 'Jugohrom'', July 2021, p. 2, <https://myla.org.mk/wp-content/uploads/2021/07/zagrozuvanje-na-zivotnata-sredina-so-sestvalenten-hrom-od-poranesen-jugohrom-studija-na-slucaj.pdf> (accessed 19 December 2022).

<sup>7</sup> Institute of Communication Studies, '300.000 tons industrial waste remain untreated in the landfill of ex-Jugohrom, 15 April 2021, <https://www.facebook.com/IKSMK/videos/454171129132292/> (accessed 19 December 2022).

<sup>8</sup> UN General Assembly. 2022. *Resolution adopted by the General Assembly on 28 July 2022 – The human right to a clean, healthy and sustainable environment. A/RES/76/300. N2244277.pdf* (un.org) (accessed June 2019).



- the right to water, i.a. Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 5 of the International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, Articles 24 and 27 (3) of the CRC, Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD);
- the right to health, i.a. Article 12 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Articles 11 (1) (f), 12 and 14 (2) (b) of the CEDAW, Article 24 of the CRC, Articles 28, 43 (e) and 45 (c) of the CMW, Article 25 of the CRPD;
- the right to property, i.a. Article 1 of Protocol 1 to the ECHR.

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED.**

People living in the town Tetovo and the capital Skopje, have had the following rights adversely affected:

- the right to life;
- the right to clean, healthy and sustainable environment;
- the right to water;
- the right to health.

People living in the village Jegunovce:

- the right to life;
- the right to clean, healthy and sustainable environment;
- the right to an adequate standard of living;
- the right to food;
- the right to health;
- the right to property.

Fisherpeople fishing in the Vardar River:

- the right to life;
- the right to food;
- the right to health.

### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

As many actors bear some form of responsibility in this case under national law for the operation of Jugohrom (which, as explained, has changed its ownership structure a number of times) a legitimate question arises whether this case is one of contribution or causation.

On the one hand, as the company is responsible for the management and supervision of the plant, but the landfill ownership and financial assistance are on the state side, both Jugohrom and the state are contributing to risks and have a shared responsibility for the human rights violations.

- Jugohrom failed to properly manage the purifying station contributing to the pollution of the Vardar River and the groundwaters of the mountain Zeden with six-valent chromium. This

pollution has been negatively impacting the enjoyment of the human rights of the rights-holders and contributing to severe environmental damage to the land, the Vardar River, and underground waters.

- The state failed to act promptly and fulfil its obligation under national and international law to take steps to prevent, investigate, punish, and redress human rights violations by Jugohrom.

On the other hand, driven by the principle ‘the polluter pays’ and that the company is a source of the contaminated liquids, one is inclined to conclude that Jugohrom caused negative human rights impacts. All other actors have their role to play and incur responsibility, but if there was no original problem to start with, their negative impact would not occur. By not acting in due time to address the problems with the purifying station, the state organs are aggravating the scale of the company’s impacts on the rights-holders and the environment. However, the original cause rests with Jugohrom, which demonstrated poor waste handling and insufficient safe storage care.

## **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

Several measures could have been taken to avoid the adverse human rights impacts.

- The state inspectorate for the environment could have made constant inspections of the plant by adding this task to its annual work programme. This item is still missing in the state inspectorate’s annual work programme.
- In line with the Law on Waste Management, the Ministry of Environment could have taken necessary measures to prevent big hazardous acts as it possessed information that Jugohrom Alzar, the operator, would not undertake such measures.
- The government should have envisaged adequate funding, resources, and capacity to ensure that relevant ministries and agencies do not circumvent international human rights and environmental commitments.
- Jugohrom Alzar could have partnered with reliable stakeholders, especially NGOs working on business and human rights issues, the academia, or independent experts, to bring an UNGP lens to the company’s business activities.

To avoid and prevent future adverse human rights impacts, these measures should be taken.

- The government should elaborate on the dangerous waste in the country in its annual report, inform the population of the risks, and explain what measures have been taken and will be taken, with clear deadlines, to prevent human rights violations.
- The government can adopt a special fund to compensate the citizens of Jegunovce for the harm caused.
- The company Jugohrom Alzar should change its practices by doing human rights due diligence to integrate measures that would prevent future violations in light of mutually reinforcing principles of environmental law and human rights law. In conducting due diligence, the company should engage with the government, local authorities from Jegunovce and Skopje, NGOs, the affected communities, academia, and independent experts, and learn from practices emerging

in their industry and other sectors. Later, the company should develop an action plan to integrate the findings from the human rights due diligence procedures in line with the Guiding Principles<sup>9</sup> into its practices and everyday operations.

- The company should establish a grievance mechanism where people can direct their concerns.
- The contamination of the drinking water for the people living in Skopje is the most significant harm that can happen. To avoid this, the municipality Skopje should act upon the recommendations given each year to them by the Sanitary inspection.

In the end, collective action is needed to address these systemic challenges, as the environmental harm caused by the landfills with carcinogenic substances is beyond what the government and company Jugohrom Alzar can resolve. A multi-stakeholder alliance between North Macedonia, neighbouring countries, businesses, unions, civil society, and international organisations is crucial to develop collective action based on business respect for human rights, accountability, and engagement to increase leverage to deal more effectively with the systematic challenges.<sup>10</sup>

States should consider a ‘smart mix’ of measures – national and international, mandatory, and voluntary – to foster business respect for human rights.

Depending on the lenses one uses to analyse the case, it can exemplify the ‘Contribution in parallel’ model,<sup>11</sup> where Jugohrom Alzar, the government, the Ministry of Environment and Physical Planning, and the municipalities Tetovo and Skopje contribute to adverse human rights impact on the people, society and environment; or a ‘Causation’<sup>12</sup> model where Jugohrom is solely responsible for the adverse human rights impacts to the rights-holders and the environment. As a matter of priority, all involved actors should take necessary steps, such as allocating financial resources to change the purifying station to cease or prevent its contribution. Jointly all actors should also take steps to ensure the remediation of any actual impact on the human rights of the stakeholders.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

Before initiating an international procedure, a civil procedure needs to be commenced against the defendant/s, asking the court to order the defendants to undertake specific measures to prevent

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<sup>9</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on multi-stakeholder engagement across ‘Protect, Respect and Remedy’ – Reflections from discussions at the 2015 annual United Nations Forum on Business and Human Rights, A/HRC/32/45/Add.3, 27 May 2016, 1608580, <https://digitallibrary.un.org/record/843246?ln=es> (accessed 6 February 2023).

<sup>10</sup> Shift, ‘Fulfilling the State Duty to Protect : A Statement on the Role of Mandatory Measures in a ‘Smart Mix’, February 2019, <https://shiftproject.org/fulfilling-the-state-duty-to-protect-a-statement-on-the-role-of-mandatory-measures-in-a-smart-mix/> (accessed 6 February 2023).

<sup>11</sup> Global Compact Network Netherlands, Oxfam and Shift, ‘Doing Business With Respect for Human Rights – Chapter 3.4 Integrating and Acting’, <https://www.businessrespecthumanrights.org/en/page/345/integrating-and-acting> (accessed 6 February 2023).

<sup>12</sup> Ibid.

harm and remove the source of danger from the landfills that risks harming the human rights of an identified number of individuals. NGOs and citizens from Jegunovce could be plaintiffs, also claiming compensation. The lawsuit could be brought against several defendants claiming they failed to undertake their respective obligations, such as the Government, Jugohrom Alzar, Ministry of Environment and Physical Planning, Municipality Jegunovce, and Municipality Skopje. Plaintiffs can claim compensation. Also, the plaintiffs can require an interim measure before initiating a civil procedure.

If the plaintiffs lose the lawsuit at the national level, they could initiate a procedure in front of the European Court of Human Rights (at least under Articles 2, 6, 8 of the ECHR), submit a complaint to the UN Human Rights Committee (under Article 6 of the ICCPR,) or a communication to the Compliance Committee (under Article 9 (3) of the Aarhus Convention). Also, NGOs or individuals can initiate a communication procedure with allegations of a violation of the human rights of individuals and a community at least before one of the Special Procedures on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, health, toxics and human rights, or to the Working Group on Business and Human Rights. NGOs can also raise the allegations of misconduct of Jugohrom to the Business and Human Rights Resource Centre through the Company Response Mechanism.<sup>13</sup>

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- Resolution 17/4 adopted by the Human Rights Council – Human rights and transnational corporations and other business enterprises<sup>14</sup>
- Committee of the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights<sup>15</sup>
- General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities<sup>16</sup>
- Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business<sup>17</sup>

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<sup>13</sup> Business and Human Rights Resource Centre, Company Response Mechanism, <https://www.business-humanrights.org/it/from-us/company-response-mechanism/> (accessed 6 February 2023).

<sup>14</sup> Human Rights Council, Resolution adopted by the Human Rights Council – Human rights and transnational corporations and other business enterprises, A/HRC/RES/17/4, 2011, <https://digitallibrary.un.org/record/706796?ln=en> (accessed 6 February 2022).

<sup>15</sup> Committee of the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s right. CRC/C/GC/16, April 2013, <https://digitallibrary.un.org/record/778525?ln=en> (accessed 6 February 2022).

<sup>16</sup> Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, <https://daccess-ods.un.org/tmp/757467.150688171.html> (accessed 6 February 2022).

<sup>17</sup> Council of Europe, Recommendation Cm/Rec(2016)3 of the Committee of Ministers to Member States adopted on 2 March 2016, <https://rm.coe.int/human-rights-and-business-recommendation-cm-rec-2016-3-of-the-committee/16806f2032> (accessed 6 February 2022).

- OECD Guidelines for Multinational Enterprises<sup>18</sup>
- OECD Due Diligence Guidance for Responsible Business Conduct<sup>19</sup>
- Resolution 76/300 adopted by the General Assembly on 28 July 2022 – The human right to a clean, healthy and sustainable environment
- UNECE Convention on Access to Information, Public Participation in Decision-Making and access to Justice in Environmental Matters<sup>20</sup>
- Constitution of North Macedonia (Decision 08–4642/1 of 17 November 1991)
- Law on the Environment (Official Gazette no.53 of 05 July 2005)
- Law on Waste Management (Official Gazette no.216 of 17 September 2021)
- Law on Obligations (Official Gazette no. 18 of 05 March 2011)

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<sup>18</sup> OECD, OECD Guidelines for Multinational Enterprises, 2011, <https://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm> (accessed 6 February 2022).

<sup>19</sup> OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 06 March 2018, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> (accessed 6 February 2022).

<sup>20</sup> UNECE, Convention on Access to Information, Public Participation in Decision-Making and access to Justice in Environmental Matters, 25 June 1998, <https://unece.org/DAM/env/pp/documents/cep43e.pdf>, (accessed 6 February 2022).

## CASE STUDY 3.

# VIOLETION OF THE HUMAN RIGHT TO WATER BY A MINING AND ENERGY COMPANY IN POLAND

**AUTHOR: KRYSZYNA DANIKOWSKA**

Polska Grupa Energetyczna (PGE) Mining and Energy branch in Turów is a Polish state-owned enterprise situated in the southwest part of the Lower Silesian Voivodeship managing the Turów mine. Turów is an open-pit mine with its peak availability of extraction of brown coal of 20 tonnes per annum. The operation of the mine dates back to the 18<sup>th</sup> century; however, it has been under Polish jurisdiction since 1947.<sup>1</sup>

In addition to the main activity of the PGE in the region, the coal extraction, the company also owns the power station supplying the electricity for the region and more remote parts of the country. The location of the company is exceptional as it is located right at the junction of the borders of three countries: Germany, Czechia, and Poland.<sup>2</sup> Despite the location of the company and the possibility of providing product to the other countries, the company focuses only on the national market.

The activities of the mine have direct or intermediate impacts on the local population, climate, and natural environment. Open-pit mining causes severe damage to the soil by violating its surface and to the landscape by damaging the nature. Additionally, the activities necessary for open-pit mining lead to the production of tonnes of waste and pollution of the air by contamination of the atmosphere by the dust coming from extraction.

Finally, it is argued by the local population in Poland and in Czechia that the mine affects the flow of groundwater, causing it to flow towards the mine and thus leaving certain areas without adequate water supply. The company claims that the problem with the water supply is not caused by the mine activities but it is instead a meteorological issue. The company denies wrongdoing by pointing to research conducted by the National Research Institute stating that the shortage of the water supply is due to hydrological droughts. However, despite denying wrongdoing, the company decided to build an anti-filtration screen, which should prevent the flow of water from the Czech Republic to the Turów mine.<sup>3</sup>

Due to all of the above-mentioned issues, local communities have been seeking remedy. At the beginning, the local community representatives raised their concerns and filed a claim with the local authorities. They demanded the mining operations stop as, in their opinion, only such an action would solve the problem. The company operating the mine, however, refused to stop the operation, as it would generate losses and could undermine the functioning of the power plant that the open-pit

1 PGE GIEK official website, 'Historia', <https://kwbturow.pgegiek.pl/O-oddziale/Historia> (accessed 2 February 2023).

2 PGE GIEK official website, 'O oddziale', <https://kwbturow.pgegiek.pl/O-oddziale> (accessed 2 February 2023).

3 PGE Group official website, 'PGE udostępnia protokół z konsultacji transgranicznych ze stroną czeską', 22 May 2021, <https://www.gkpge.pl/grupa-pge/dla-mediow/komunikaty-prasowe/korporacyjne/pge-udostepnia-protokol-z-konsultacji-transgranicznych-ze-strona-czeska> (accessed 2 February 2023).

mine is supplying, which at times of geopolitical pressure could additionally threaten the country's energy security. The company also stated that they could not put at risk the jobs of almost 5 000 employees working directly or indirectly for the enterprise.<sup>4</sup> Finally, if the mine stopped working, the power plant could not operate and that would deprive thousands of people of electricity.

As there was no agreement between the company representatives and the stakeholders, further steps were taken, including at the official state level. In April 2021, the official claim had been filed by the Czech Republic against Poland's state-owned enterprise PGE to the European Court of Justice (ECJ) regarding the functioning of mine. After several weeks, the ECJ imposed interim measures requiring the company to stop the operation of the mine until a final decision is taken. This was to prevent severe harm from continuing, and they also imposed fines for not doing so. The mine, however, continues operating despite the Polish state paying huge sums in fines for it.

This case has a clear state-to-state dimension, yet this case study will not focus on the state-related issues but on the company's action and behaviour as expected under Pillars II and III of the United Nations Guiding Principles on Business and Human Rights (UNGPs).

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Due to the character of the company's activities and the involvement in many sectors, there are many parties involved and interested in its activities.

Rights-holders:

- The local community and population directly affected by the company's operations
- Workers at the mine.

Other stakeholders include:

- The Governments
- Local authorities, in particular in Poland and Czechia
- Environmental NGOs
- The board of the company.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

As the nature of the company's operations is such that it causes continued degradation and deterioration of the natural environment, the human rights risks inherent in the company business model include:

- the right to health;
- the right to a healthy, clean, and sustainable environment;
- the right to water.

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<sup>4</sup> PGE Górnictwo i Energetyka, 'Największy pracodawca w regionie', <https://turow2044.pl/najwiekszy-pracodawca-w-regionie> (accessed 3 February 2023).

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

The biggest affected group are the residents of the local area, with those on the Czech Republic side being most seriously affected. The rights at stake are:

- the right to water, as the local area access to water is affected;
- the right to life, health, and a healthy environment are also potentially at risk of being adversely affected.

In the case of mine workers, the adversely affected human rights highest on the agenda included:

- the right to health;
- the right to life.

### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The company's main activity is mining operations, which by their very nature affect the environment and always carry additional risks of the environmental impacts having (potentially) adverse impacts also on the local inhabitants. At the same time, as it is impossible to move the natural deposits/materials to another location, preventive and mitigating measures have to be adjusted to the local context.

### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The UNGPs state that the company needs to undertake actions to 'avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur'<sup>5</sup> and that company 'should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships'.<sup>6</sup> In this case, the company not only did not cease its operations but continues to defend its actions. From media reports, one gets the impression that it has not put enough effort into solving the situation, and did not engage effectively with stakeholders or provide real solutions to the problem. What is more, no revision of the activities nor the verification of the action seems to have been taken.

The only thing that the company did – despite denying wrongdoing – was conducting preventive measures and building an anti-filtration screen, which should prevent the flow of water from the Czech Republic to the Turów mine.<sup>7</sup> The enterprise should conduct an identification and impact assessment of the potential adverse impacts on human rights and the influence of its activities on the natural environment and the people's lives, taking into consideration that the potential threats could evolve and

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<sup>5</sup> United Nations, Guiding Principles on Business and Human Rights, New York and Geneva, 2011, p. 14.

<sup>6</sup> Ibid, p. 17.

<sup>7</sup> PGE Group official website, op. cit.



change due to the different factors. It should thus implement procedures that would ensure that the HRDD process is ongoing and tailored to the company's complexity and size.<sup>8</sup> Unfortunately, there is no information provided by the company regarding any activities conducted in this area.

The UNGPs would expect companies to 'seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts'. Before expanding the extraction, the enterprise should start consultations with the rights-holders and stakeholders. Next, they should assess the potential human rights impacts on people in order to see whether they can prevent them. There is no significant evidence or information that the company tried to prevent the harm caused and that actions initiated only after the problem became public to mitigate the impacts were sufficient and effective. The harm done to the people was obviously evident, but there is no information published regarding the preventive measures except the ones mentioned earlier and planting trees in an inactive part of the mine.

The UNGPs expect the company to 'draw on internal and/or independent external human rights expertise'. In the case described, there are no reports that would confirm or even suggest that the company sought such expertise or asked an external body to do it for them. Maybe, if such expertise had been provided, it would have helped the company to deal better with the whole process and avoided the controversy that arose around the situation.

Due to all of the above-mentioned issues, local communities have been seeking remedy. Unfortunately, the human right to effective remedy has been difficult and time-consuming. At the beginning, the local community representatives raised their concerns and filed their claim with the local authorities, demanding that mining operations be halted. The company was defending its position by claiming that the problems with water were not caused directly by the mining activities but due to the drought that the whole region was experiencing at that time. All in all, they refused to stop the operations, for the reasons mentioned above, with the fate of almost 5 000 employees, thousands of households not having electricity, and the country's energy security being among those most crucial.

The UNGPs would expect this situation to 'involve meaningful consultation with potentially affected groups and other stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation'. It is quite likely that the whole crisis could have been prevented if the company had started the whole process of expanding its operations by inviting all the interested parties and the stakeholders to engage in meaningful consultation, taking into consideration the suggestions of involved entities and aiming to find solutions to identified problems. This did not happen however. Later in the process, the company learned to engage more. According to the company's information published on the official website, the obligation has been fulfilled and dozens of consultations took place. What is more, the company initiated additional meetings with the stakeholders even though they were not obligatory. This proved that the enterprise wanted to make the whole process more transparent and published the protocol from the trans-border negotiations.

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<sup>8</sup> United Nations, Guiding Principles on Business and Human Rights, New York and Geneva, 2011, p. 17.

The UNGPS also require that findings and outcomes of such consultations and stakeholder engagement are effective when integrated ‘across relevant internal functions and processes, and take appropriate action’. In the case described in this paper, neither the integration of findings nor comprehensive further actions on their basis seemed to have happened.

Further, the company ‘should verify whether adverse human rights impacts are being addressed’. The enterprise indicates that they will fulfil within a proper time frame the points of the agreement signed between two sides: the governments of the countries and the business entity. It covers, for example, support financing of local and regional environmental projects, ensuring the protection of the environment around the mine as well as the construction of an underground anti-filtration screen for preventive water protection and earth embankment construction.

The company should also communicate to the affected individuals how the advancement of the work and the changes reflecting the concerns raised by the affected stakeholders is progressing – but there is a feeling that this was done at an insufficient level as well.

It is worth mentioning that in this specific situation, as the company is a state-owned enterprise and taking into account the specific role of the government, it is rather unlikely that the enterprise could take any actions or decisions without any or even detailed consultations with the national authorities.

To conclude, this case concerns a situation where an SOE does not meet its responsibility to respect human rights, as it neither conducted an HRIA prior to operations start nor did it implement the necessary HRDD process. And when the negative impacts started to occur, it denied wrongdoing and continued to operate. The situation could have been avoided if the company owning the mine had engaged in stakeholder dialogue and taken actions to improve water management by building the barrier blocking the groundwater from migration early on as part of preventive measures and not only as a reaction to the complaints. In the end, the fine paid by the company for its activities would help the local communities to mitigate the consequence of the extraction. However, the further work of the mine can cause growing damage to the environment and deepen the problem with access to water.

In the future, it will be crucial for the company’s better functioning and the stakeholders’ wellbeing to follow the UNGPs and make a strategy for addressing potential risks and harms caused by the activities.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

As was mentioned in the case description, one of the possibilities (and, in fact, one that was used) was to submit an official claim against Poland’s state-owned enterprise (SOE) in question to the European Court of Justice regarding the functioning of the mine.

Additional options of seeking the remedy include bringing the case to the attention of the United Nations Special Rapporteur on Water, and submitting a complaint to the European Court of Human Rights against the Polish state (as the owner of the SOE) once all domestic judicial measures are exhausted.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- Ustawa z dnia 7 września 2007 r. o funkcjonowaniu górnictwa węgla kamiennego (Dz.U. No. 199, item 1227, 'the Environmental Information Act')
- Article 259 Treaty on the Functioning of the European Union (TFEU)
- Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy
- Charter of Fundamental Rights of the European Union
- United Nations Resolution 64/292

## CASE STUDY 4.

# FORCED LABOUR OF NORTH KOREANS IN POLAND

**AUTHOR: SANDRA DZIEL-LATANOWICZ**

For decades, the Democratic People's Republic of North Korea (hereinafter referred to as North Korea or DPRK) has sent workers to various locations around the world, employing tens of thousands in logging, mining, and construction, while taking a sizable portion of their earnings in foreign currency. Although the country does not release official data, some observers estimate that more than 100 000 North Koreans worked overseas in 2015.<sup>1</sup> The North Korean authorities maintained tight control on the workers' communications and movement, and deprived them of information about workers' rights in the host countries.<sup>2</sup>

North Korea is infamous for violating the human rights of people living there; according to the ILO and Walk Free data, there are more than 2.6 million people living in slavery in the country, the vast majority of whom are forced to work by the state. The North Korean government had the weakest response to slavery of all countries surveyed for the Global Slavery Index.<sup>3</sup>

One of the many countries to which North Korean workers were sent was Poland. While in Poland, North Korean workers typically lived under the supervision of supervisors who were sent by the North Korean authorities – mainly the Ministry of State Security. They were allowed to move in groups of two or more, and if they deviated from the norm, the workers were threatened with punishment or repatriation. It was also reported that workers were assigned to work for North Korean recruitment agencies at wages lower than local workers, their documents were taken from them by their North Korean supervisors, they were not allowed to leave the employer under threat of punishment, and were only rarely allowed to leave their workplaces or interact with locals for entire periods.

In 2014, a North Korean welder died in a shipyard in northern Poland following a tragic accident in which 95% of his body surface was burned.<sup>4</sup> The accident was caused by improper equipment. It should be noted that the man was working in Poland legally, having received a Polish state-issued work visa and having permission to work in Poland.

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<sup>1</sup> Human Rights Watch, 'North Korea: Events of 2016,' in World Report 2017, 2023, <https://www.hrw.org/world-report/2017/country-chapters/north-korea> (accessed 2 February 2023).

<sup>2</sup> Amnesty International, Amnesty International Report 2017/18 – Korea (Democratic People's Republic of), 22 February 2018, <https://www.refworld.org/docid/5a9938d74.html> (accessed 2 February 2023).

<sup>3</sup> Global Slavery Index, 'GLOBAL SLAVERY INDEX / 2018 / FINDINGS', <https://www.globalslaveryindex.org/2018/findings/global-findings/> (accessed 2 February 2023).

<sup>4</sup> Information about the case was reported broadly in the media in Poland and beyond. See for example: <https://www.rp.pl/rynek-pracy/art1455341-die-welt-niewolnicza-praca-koreanczyka-z-palnocy-w-polsce>, <https://businessinsider.com.pl/twoje-pieniadze/praca/przymusowi-pracownicy-z-korei-polnocnej-w-polsce/7qxeexd>, <https://tvn24.pl/biznes/ze-swiata/korea-polnocna-zarabia-na-niewolniczej-pracy-miliardy-dolarow-ra590110-4462711>, <https://www.nytimes.com/2017/12/31/world/europe/north-korea-poland-workers.html>, <https://tvpworld.com/36845273/polish-firms-employ-north-korean-slave-laborers-reports-the-bbc>, <https://www.vice.com/en/article/xw33bj/cash-for-kim-how-north-koreans-are-working-themselves-to-death-in-europe>, <https://www.nytimes.com/2017/12/31/world/europe/north-korea-poland-workers.html>, <https://unwatch.org/un-condemn-north-korea-exploiting-labor-overseas/>.

Once the accident happened, a number of state controls took place including by the Polish State Labour Inspectorate and other prosecution services. While investigation and controls uncovered a number of unsafe practices that violated occupational hygiene rules at the shipyard (whose core business is shipbuilding, offshore construction, steel structures, marine, civil, and offshore engineering), they have not shown that the work performed by DPRK nationals in Poland, including the victim of the accident, bear the hallmarks of forced labour.

The fact that no forced labour was identified may be because the inspections are mainly based on verification of documentation and additionally are limited in other ways. The lack of cooperation between the entities investigating the case, both at the state level and local government level also makes it more difficult to gain a comprehensive picture of the situation. At the same time, the fight against forced labour depends on effective mechanisms for its prevention, detection, and mitigation.

It should be noted that following this accident, the shipyard terminated cooperation with an employment agency and extended their control procedures for all subcontractors. The company has rejected allegations of harsh working conditions at the shipyard and implemented an Integrated Policy of Quality, Environmental and Health Safety based on PN-EN ISO 9001:2015, PN-N 18001:2004, PN-EN ISO 14001:2015, PN-EN ISO 3834-2:2005, EN 1090-1:2009/A1:2011.<sup>5</sup> It also contributed to the development of the toolkit on how to identify and prevent forced labour under the auspices of the relevant ministry. The shipyard stressed that it was convinced that if workers had visas and permits, they could be employed without additional risks, as it should be the role of the state to ensure that visa policies take into account also the trafficking and forced labour risks.

In Poland, foreign workers need to have a visa that allows them to work issued by the Ministry of Foreign Affairs, then work permits for foreign workers are issued by Voivodeship Authorities on the basis of the Act of 20 April 2004 on employment promotion and labour market institutions. One year after the adoption of Resolution 2397,<sup>6</sup> which provides for the expulsion of all North Korean workers within 24 months, Poland was left with only about 45 people. This meant a reduction in the number of DPRK workers in Poland by about 90% compared to the number on the day the UNSC resolution came into force – 445 workers. The resolution resulted in changes to Polish legislation, the Act of 24 November 2017 on Amendments to the Act on Foreigners and Certain Other Acts amended, among others that ‘the Voivod shall issue a decision on the refusal to issue a work permit also in the case where it is required by the obligations arising from the provisions of ratified international agreements binding the Republic of Poland’.

To conclude, this case study identifies a list of materialised risks that have occurred in relation to North Korean workers. It addresses both the irregularities related to the shipyard’s cooperation with the employment agency, and the lack of cooperation between the local authorities and the government, but also shows what mechanisms the North Korean government used to finance the regime. Secondly, it identifies a series of actions that the shipyard should take to ensure that this does not happen again.

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<sup>5</sup> CRIST S.A., ‘Statement about alleged North Korean workers,’ CRIST, <https://crist.com.pl/crist-sa-statement-about-alleged-north-korean-workers,148,en.html> (accessed 2 February 2023).

<sup>6</sup> In response to North Korea’s launch of a Hwasong intercontinental ballistic missile in November 2017, the UN Security Council adopted Resolution 2397 in December of that year, which provides for the expulsion of all North Korean workers within 24 months.

## 1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?

Rights-holders:

- Employees of the company and other workers performing work for the shipyard and on its premises, including the migrant workers from North Korea.

Stakeholders:

- State and local authorities
- Families of employees
- NGOs
- Media
- Civic society.

## 2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?

The human rights risks inherent in the company's business model partly reflect the industry's risk profile:

- Workers health & safety as mortality and injury rates in the industry are higher compared to other industries, temporary workers may be at greater risk due to their lack of training or experience in the industry, the risks regarding the lack of protection of workers' health and safety, the lack of provision of adequate safety equipment. Additionally, health and safety incidents may cause delays/disruptions to the projects.
- Sourcing low-paid labour from labour providers, where there is little visibility into or control over the protection of worker rights. Migrant workers were assigned to work for North Korean recruitment agencies at wages lower than local workers. Cooperation with recruitment agencies are established without adequate clauses obliging the contractor to prevent forced labour and because of this the shipyard lacks the ability to audit the contractor to monitor compliance with external standards that address the issue.

## 3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED

The individual human rights of the North Korean migrant workers, which are at risk of being adversely affected:

- The right to liberty and security and violation of the prohibition on forced labour,<sup>7</sup> (example: there has been bonded recruitment, forced labour, inability to leave the employer, punishment or threat of punishment,<sup>8</sup> workers were rarely allowed to leave their workplaces or interact with locals for entire periods of forced labour. Migrant workers' lives were under the supervision of

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<sup>7</sup> European Court of Human Rights, 'Convention for the Protection of Human Rights and Fundamental Freedoms,' Council of Europe, [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf) (accessed 2 February 2023).

<sup>8</sup> International Labour Organization, 'Hard to see, harder to count : survey guidelines to estimate forced labour of adults and children', [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182096.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf) (accessed 2 February 2023).

supervisors who were sent by the North Korean authorities – mainly the Ministry of State Security, they were allowed to move in groups of two or more, and if they deviated from the norm the workers were threatened with punishment or repatriation).

- The right to health (example: working in conditions that might result in the loss of life and health of the workers).
- The right to life, (example: the death of a North Korean employee working for the shipyard due to inadequate equipment is one example that this type of work carries a high risk.
- The right to adequate and satisfactory remuneration ensuring the individual and his family an existence compatible with human dignity. North Koreans were deprived of most of their wages, which were paid in foreign currency straight to the Korean Labour Party, which serves as a method of circumventing UN sanctions. As the placement services were provided by another company operating in the local market in Poland, which specialised in steel work, the North Korean workers were not paid by the recruitment agency, but by their employer to whom the recruitment agency sent funds for the work.
- The right to privacy, as the living and housing conditions in groups had them under constant supervision.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Risks of forced labour not only in the company's own operations but throughout the supply chain and the associated risk of unreliability of a subcontractor, e.g. an employment agency, labour violations, exploitation, trafficking for forced labour, migrant rights. For a company that had not consciously dealt with the issue of forced labour before, the fact that the state was issuing visas and work permits basically meant a green light. One of the biggest challenges is ensuring adequate and efficient oversight to ensure that agencies providing workers do respect human rights.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The situation could have been avoided, if the company did not rely completely on the state to protect human rights and did itself question whether given all that is known about North Korea, it is likely that employing workers from that country would contribute to the forced labour.

What the shipyard could have done (and did not do) to prevent the situation from occurring: the shipyard should have checked the information on the risk of forced labour/other violations in North Korea. Given the existing ILO data and UN reports, if the company had carried out a proper HRDD, it would have asked itself the right questions about whether it was OK to hire workers from North Korea through North Korean agencies. The situation could have occurred in many companies in Poland, as very few of them check such information, limiting themselves to checking only whether they are not in violation of official UN/EU/state sanctions.

In order to adequately manage forced labour risk policies, it is important to put in place top-level internal regulations in shipyards setting out a general commitment to respect human rights, including more specific obligations to prevent and counter incidents of forced labour, as well as appropriate preventive and mitigating measures and to have its own HR policy that prevents themselves from using such form of labour.

According to the UNGPs, The companies are responsible for their entire value chain. This means that the company should have introduced clauses that oblige the contractor to prevent forced labour and then monitor their compliance with contractual requirements through audits, because in the end it will be on them that the reputational risk will be greatest.

The contract of cooperation with the employment agency should specify the type of work to be entrusted to the temporary employee, the qualifications necessary to perform the work, the expected duration of the work, the working hours, the place, the principles for granting holiday leave, the principles for processing the personal data of candidates and temporary employees, as well as the principles concerning the transfer of information between the parties to the contract concerning, inter alia, the remuneration that the temporary employee will receive for the work entrusted to them, the conditions for performing temporary work in terms of health and safety at work, the recording of working time, and the deadlines for its provision.

The supply chain involves many suppliers and stages, and most often these companies do not know what each of them does, other than to provide their link in the chain. Effectively minimising the risk of forced labour requires the involvement of the whole organisation and the promotion of awareness among employees. This awareness-building among workers is very important so that they can first of all recognise that forced labour may occur in their workplace and notify the company management and where necessary the law enforcement authorities, so that the person concerned receives assistance and information about their rights. The first health and safety training for new employees could be used to make them aware that the company does not accept human rights violations and that situations of worker exploitation are unacceptable.

A problem that prevents victims from being assisted is the reluctance of the victims themselves to share their experiences with other people; most victims never approach any humanitarian organisation or state body. Arguably, this is largely due to experiences in their own country, a lack of trust in state institutions. An important aspect is also the poor knowledge of their own rights among migrants, the result being that migrants often do not know that the company for which they perform work is not complying with the law.

The shipyard did not carry out an assessment at all, or carried it out incorrectly in relation to the employment agency with which it cooperated, and there may also have been inadequate clauses in the cooperation agreement that would at least entitle the shipyard to carry out an audit.

However, information available publicly suggests that the shipyard learned from this crisis situation and implemented a number of steps and policies to prevent such situations in future.



Following the termination of the cooperation with the employment agency, the shipyard extended its control procedures to all subcontractors. The company's website informs that the shipyard has implemented an integrated policy of quality, environment, and health and safety. The policy is based on ISO 9001, ISO 14001, the ISO 45001 standards, setting out the requirements for an occupational health and safety (OH&S) management system, with guidelines for its application, to enable the organisation to proactively improve its OH&S performance in preventing injuries and illnesses. They published an environmental quality and health and safety policy, where respect for human rights is included within the values, and there is a code of ethics and business conduct. It also reviewed its cooperation with employment and recruitment agencies, carried out basic training on human rights for key managers and personnel and reviewed its complaints channels.

There is no information on whether the family of the deceased employee has been compensated, and this should be the case.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

Bringing the case to the European Court of Human Rights (first, the national judicial process must be in place for the case to be accepted). The application form must be downloaded from the website, completed, printed, and sent by post to the Court's address, attaching the necessary documents.<sup>9</sup>

The situation could have also been reported to the ILO – ILO Convention No. 29 of 1930 concerning Forced or Compulsory Labour, ILO Convention No. 105 of 1957 on the Abolition of Forced Labour.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- ILO Convention No. 29 of 1930 concerning Forced or Compulsory Labour
- ILO Convention No. 105 of 1957 on the Abolition of Forced Labour
- ILO Convention No. 143 of 1975 Migrant Workers (Supplementary Provisions)
- European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950
- UN Security Council Resolution 2397
- Act of 24 November 2017 on Amendments to the Act on Foreigners and Certain Other Acts amended
- Act of 20 April 2004 on employment promotion and labour market institution

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<sup>9</sup> European Court of Human Rights, 'Apply to the court'. <https://www.echr.coe.int/Pages/home.aspx?p=applicants&c=> (accessed 2 February 2023).

## CASE STUDY 5.

# OFFSHORE PLATFORM NO. 10, AZERBAIJAN

**AUTHOR: RUHIYYA ISAYEVA**

On 4 December, 2015 (17:40 local time), a devastating fire broke out on offshore Platform No. 10 in the Guneshli field located 60 miles east of Baku, Azerbaijan, in the Caspian Sea. The Guneshli field, which primarily produces oil and some gas, has operated since the 1970s and was refurbished in the 1990s. Platform No. 10, owned and run by Azerbaijan's state-owned oil company – State Oil Company of Azerbaijan Republic (SOCAR) – has been in production since 1984. The fire was caused by a storm that generated waves as high as 30 feet, resulting in a natural gas riser rupture. The incident resulted in the deaths of 12 oil and gas workers, with 19 still missing.<sup>1</sup> The strong winds and waves made rescue efforts difficult. Workers were evacuated to two lifeboats, which were lowered to 10 metres above the water, but a crane rigging or hook failure caused one lifeboat to fall into the sea. Three workers were rescued and one body was recovered by a nearby ship. One of the platform's lifeboats became trapped on the platform during the evacuation due to the storm.

SOCAR is a fully state-owned national oil and gas company based in Baku, Azerbaijan. The company extracts oil and natural gas from both onshore and offshore sites in the Azerbaijani sector of the Caspian Sea. It operates the nation's only oil refinery and one gas processing plant and manages multiple oil and gas export pipelines across the country. SOCAR also owns fuel stations under the SOCAR name in Azerbaijan, Turkey, Georgia, Ukraine, Romania, and Switzerland.

According to the Beaufort scale, the strength of the wind on that day changed between 10–11 points, which is considered a very powerful storm.<sup>2</sup> As per Annex 2 of the Labour Code of the Republic of Azerbaijan, the majority of workers on offshore platforms are supposed to be evacuated, and maintenance and construction works should halt during stormy weather. However, the employees were instructed to continue working despite the stormy weather.

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1 Oil-Workers' Rights Protection Organization Public Union (OWRPO PU), 'Evaluation on fire at stationary deep sea platform No.10 in 'Guneshli' field of State Oil Company of Azerbaijan Republic on December 4, 2015', (2016), p.4, available at <https://www.business-humanrights.org/en/latest-news/report-on-accident-at-guneshli-oil-field-platform-that-resulted-in-12-dead-19-missing-32-injured/>. The accident was also covered in various media outlets: <https://www.business-humanrights.org/en/latest-news/report-on-accident-at-guneshli-oil-field-platform-that-resulted-in-12-dead-19-missing-32-injured/>, <https://www.business-humanrights.org/en/latest-news/azerbaijan-2-killed-29-missing-after-socar-oil-rig-fire/>, <https://maritime-executive.com/article/azerbaijan-three-missing-and-platform-on-fire>, <https://guide-supervision.ilo.org/freedom-of-association-complaints/>, <https://en.trend.az/azerbaijan/society/2465970.html>, <https://maritime-executive.com/article/azerbaijan-three-missing-and-platform-on-fire>, <https://emtv.com.pg/azerbaijan-says-29-missing-after-oil-platform-fire-feared-dead/>, <https://www.business-humanrights.org/en/latest-news/azerbaijan-abuses-by-oil-companies-include-workplace-discrimination-illegal-termination-of-contracts-health-safety-violations-sexual-harassment-environmental-pollution-say-ngo-reports-includes-company-comments/>.

2 Ibid., p. 14.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

The rights-holders are:

- The workers who died or those who are missing, and their heirs and families
- Workers who are still working at the Guneshli field
- Workers in other fields of SOCAR.

The stakeholders are:

- SOCAR
- '28 May' OGPD
- Relevant NGOs, local authorities and potentially also emergency services
- Complex Drilling Trust
- Transportation Department
- Caspian Catering Service
- Ministry of Labour and Social Protection of the Population (Labour Inspectorate)
- Oil and Gas Industry Workers Union.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

SOCAR is a national oil and gas company. Its activities cover: oil and gas exploration, production, refining, and marketing; energy transportation and storage; and renewable energy projects, including wind and solar power. As with any business operating in such a complex and challenging industry as oil and gas, there are several human rights risks inherent in its business model.

Relevant human rights risks inherent in the company's business model:

- Right to a healthy environment: oil and gas activities have the potential to cause environmental harm, such as air and water pollution, which can have negative impacts on the health of local communities and workers.
- Right to health/right to life/right to work: workers in the company's facilities, particularly those involved in oil and gas extraction, are exposed to health and safety risks such as the risk of accidents, explosions, and exposure to hazardous chemicals.
- Right to freedom of expression: SOCAR is a state-owned company and may be subject to government influence, which could lead to limitations on the right to freedom of expression of employees and other stakeholders.
- Right to land, housing, and property: the company's energy infrastructure projects may involve the displacement of local communities and the loss of their homes and land, which could violate their rights to land, housing, and property.
- Right to water: the company's activities could impact the availability and quality of water resources, particularly in areas where water is scarce or where the company's operations require large amounts of water. This could have negative impacts on the right to water of local communities and ecosystems.

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED.**

The rights of oil and gas workers at risk of being adversely affected:

- the right to life;
- the right to work in a safe and healthy environment;
- the right to freedom from discrimination;
- the right to an adequate standard of living;
- the right to life;
- the right to a fair trial/an effective remedy.

The rights of the families of workers at risk of being adversely affected:

- the right to respect for family life;
- the right to an adequate standard of living;
- the right to an effective remedy.

### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The fact that the oil extraction is happening on the sea – where the oil field is located – by its very nature increases the risks to:

- the right of workers to health, the right to life, and the right to work in a safe and healthy environment due to the possible impacts of the water and in particular storms, as well as more difficult situations when it comes to emergency responses and evacuation (particularly in bad weather);
- the right to clean, healthy and sustainable development, as any oil spillage that is caused by human error or natural forces will lead to pollution.

These risks are likely to challenge the company's ability to operate in a safe and responsible manner, and to maintain a positive relationship with its stakeholders, including workers, communities, and governments. Additionally, this impacts the company's reputation and liability: the disaster is likely to have a negative impact on SOCAR's reputation and may lead to liability claims from the families of the workers who died or are missing.

### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

1. Conduct a human rights impact assessment: the company should conduct a comprehensive human rights impact assessment of its operations, taking into account the specific context in which it operates, to identify the potential human rights risks and impacts of its business.

2. Develop and implement a human rights policy: the company should develop a comprehensive human rights policy that sets out its commitments and obligations to respect human rights and provides guidance on how to integrate human rights considerations into its business practices.
3. Address human rights issues identified at the stage of the human rights impact assessment. One of the obvious areas in this context is the improvement of health and safety measures: the company should review and improve its health and safety measures to ensure that workers are protected from harm and that effective emergency response and evacuation plans are in place.
4. Engage with affected communities and stakeholders: the company should engage with affected communities and stakeholders, including workers and their families, to understand their concerns and to find ways to address and prevent human rights abuses.
5. Monitor and report on human rights impacts: the company should monitor and report on the human rights impacts of its and its supply chains' operations and provide regular updates to stakeholders, including workers and their families, to demonstrate its commitment to respecting human rights.
6. Grievance mechanisms: the company should have in place adequate and efficient communication channels and grievance mechanisms. It should also ensure adequate compensation and remedy to those harmed and the families of the deceased workers.

It is not possible to say definitively whether the situation could have been avoided altogether, as the cause of the fire was a storm that generated waves as high as 30 feet. However, there are steps that the company could have taken to minimise the adverse impact of the situation:

1. Conducting regular risk assessments: the company could have conducted regular risk assessments to identify potential risks to workers and to ensure that appropriate measures were in place to mitigate those risks.
2. Improving emergency response and evacuation plans: the company could have reviewed and improved its emergency response and evacuation plans to ensure that workers were evacuated safely and that rescue efforts were effective.
3. Ensuring the maintenance of lifeboats: the company could have ensured that its lifeboats were regularly maintained and tested to minimise the risk of failure in the event of an emergency.
4. Providing regular training to workers: the company could have provided regular training to workers to ensure that they were equipped with the skills and knowledge needed to respond to emergencies effectively.
5. Engaging with affected communities and stakeholders: the company could have engaged with affected communities and stakeholders, including workers and their families, to understand their concerns and to find ways to address and prevent human rights abuses.

If harm has occurred as a result of the situation, the following steps could have been taken to mitigate the impact and avoid similar incidents in the future:

1. Providing adequate compensation and support to affected individuals: the company should provide adequate compensation and support to affected individuals, including workers and their families, to address the harm that has been caused.
2. Improving emergency response and evacuation plans: the company should review and improve its emergency response and evacuation plans to ensure that workers are evacuated safely and that rescue efforts are effective in the event of a similar incident.

3. Ensuring the maintenance of lifeboats: the company should ensure that its lifeboats are regularly maintained and tested to minimise the risk of failure in an emergency.
4. Providing regular training to workers: the company should provide regular training to ensure that they are equipped with the skills and knowledge needed to respond to emergencies effectively.
5. Engaging with affected communities and stakeholders: the company should engage with affected communities and stakeholders, including workers and their families, to understand their concerns and to find ways to address and prevent human rights abuses.

Additionally, an accident on an offshore platform like the Guneshli field could result in environmental harm in the event of a spill or other incident. This could be avoided by implementing and enforcing robust environmental protection measures, including regular monitoring and reporting on environmental impacts and responding quickly and effectively to any incidents that do occur by implementing actions and installing adequate equipment.

The case study of the fire on Platform No. 10 in the Guneshli field in Azerbaijan highlights the importance of human rights considerations in the operations of companies. The incident resulted in the deaths of 12 oil and gas workers and the evacuation of other workers, with some still missing. The strong winds and waves made rescue efforts difficult, highlighting the risks inherent in the business model of the state-owned oil company SOCAR. There are several international procedures and mechanisms that could be used to address and challenge the company's behaviour and enhance the chances of the victims for remedy. In conclusion, the case highlights the need for companies to be aware of their human rights obligations and to implement measures to respect human rights and avoid adverse impacts on human rights in their operations.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

International Labour Organization (ILO) complaint procedures: The ILO has established a number of complaint procedures that allow individuals and groups to bring complaints via workers' organisations of alleged violations of international labour standards, including those relating to working conditions, freedom of association, and the elimination of forced labour.

UN Human Rights Council: The UN Human Rights Council has the mandate to promote and protect human rights around the world, including by examining individual complaints and conducting investigations into human rights abuses. Thus, under certain conditions (e.g. when the country accepted the individual complaints option, or when it did not include a reservation when ratifying a treaty that would affect such possibility), treaty bodies (CAT, CCPR, CRC, etc.) may consider individual complaints or communications from individuals.

National courts: In some cases, it may be possible to bring legal claims (which can be civil case or even criminal case) against a company in national courts for human rights abuses. The criminal liability of legal entities was introduced in Azerbaijan on 7 March, 2012.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

### **INTERNATIONAL DOCUMENTS**

- United Nations Guiding Principles on Business and Human Rights (UNGPs); 16 June 2011
- International Labour Organization (ILO) Convention on Safety and Health in the Workplace (No. 155); 3 June 1981
- International Covenant on Civil and Political Rights (ICCPR); 16 December 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR); 16 December 1966
- Universal Declaration of Human Rights; 10 December 1948
- The Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC)
- The International Convention on Civil Liability for Oil Pollution Damage (CLC Convention) and 1976 Protocol thereto, 1992 Protocol renewing CLC Convention

### **NATIONAL DOCUMENTS**

- Constitution of the Republic of Azerbaijan<sup>3</sup>, 12 November 1995
- Labour Code of the Republic of Azerbaijan<sup>4</sup>, 1 February 1999
- Law on Technical Safety No.733-IQ, 02 November 1999
- Azeri-Chirag-Guneshli Production Sharing Agreement, 14 September 2017
- Criminal Code of the Republic of Azerbaijan<sup>5</sup>, 30 December 1999
- Act of the Azerbaijan Republic on Fire Safety, No. 313-IG of June 10, 1997
- Act No. 313 of 29 September 1992 on labour protection (occupational safety and health), etc.

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3 Constitution of the Republic of Azerbaijan, 12 November 1995, available at <https://www.e-qanun.az/framework/897>

4 Labour Code of the Republic of Azerbaijan, 1 February 1999, <https://www.e-qanun.az/framework/46943>

5 Criminal Code of the Republic of Azerbaijan, 30 December 1999; available at <https://www.e-qanun.az/framework/46947>

## CASE STUDY 6.

# CENTERRA GOLD MINING COMPANY'S IMPACT ON HUMAN RIGHTS ENJOYMENT IN KYRGYZSTAN

**AUTHOR: MURAT KARYPOV**

This case study focuses on the impact of the international gold mining company Centerra on human rights enjoyment in Kyrgyzstan. The international corporation Centerra Gold Inc., is a Canadian-based gold mining company focused on operating, developing, exploring and acquiring gold and copper properties in North America, Türkiye, and other markets worldwide. Up until 2022, Centerra owned 100% of the Kumtor gold mine in Kyrgyzstan through its wholly-owned subsidiary Kumtor Gold Company (KGC).<sup>1</sup> In 2022, the Kumtor gold mine was nationalised by the Government of Kyrgyzstan. It was one of the largest gold mines in Central Asia owned by a Western-based company, having produced more than 13.2 million ounces of gold between 1997 and the end of 2020. In 2020, Kumtor's gold production was well over 16 tonnes of gold.<sup>2</sup>

Throughout almost 30 years of active mining of gold and minerals in Kyrgyzstan, Centerra has been the main object of considerable confrontations many times. The main reason was how the huge, multi-millions of income coming from gold mining were distributed. Centerra made active attempts to control all the processes of obtaining monetary profits on their own. In the initial stages, they entered into a bilateral agreement with official Kyrgyz authorities to establish a joint company at the Kumtor mine. Through corrupt arrangements with the former political authorities, most of the profits went to the foreign company, Centerra. At the same time, the local communities located near Kumtor were affected by the negative impact of poison substances, in particular cyanide, which in 1998 entered water resources and rivers in the Issyk-Kul region through the fault of Centerra.

After the cyanide leak, the water was disinfected with chlorine, which caused the poisoning of local residents. 17 000 people required medical assistance, 2 000 were recognised as victims, and two local residents died. For several years local people have been giving birth to babies with physical and mental disabilities and various mutations, and many women from the region have been forced to have abortions on demands of doctors. After that, a group of over 120 local people filed lawsuits against Centerra, but the investigation has been going on for over 25 years and the issue is still open. Detailed reports confirm the facts of the human rights violations by Centerra, namely the negative impact of gold mining on the health of local citizens, especially farmers and on their agricultural land<sup>3</sup>.

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1 K. Kasymbekov, Strategic agreement between Kyrgyzstan and 'Centerra'. What the parties agreed on, Radio Azattyk (Kyrgyz service of Radio Free Europe), 2019, [https://rus.azattyk.org/a/kyrgyzstan\\_kumtor\\_strategic\\_agreement/30134766.html](https://rus.azattyk.org/a/kyrgyzstan_kumtor_strategic_agreement/30134766.html) (accessed 26 April 2023).

2 E. Nurmatov, Barskoon tragedy. In the 22-year-old case, the court handed down its fifth judgment, Radio Azattyk (Kyrgyz service of Radio Free Europe), 2020, <https://rus.azattyk.org/a/30782997.html> (accessed 26 April 2023).

3 Report 'Justice in waiting: Kumtor and a community's struggle for their rights', FORUM ASIA, 2022, <https://forum-asia.org/?p=37589>, p.25 (accessed 26 April 2023).



The Joint Working Group established by representatives of public authorities to investigate all offences, identified large amounts of dust from the various types of trucks that transport ore for gold extraction. The dust and unknown chemical elements subsequently settle on the ground and on glaciers, two of which have now been completely destroyed by Centerra and cannot be restored. The Kyrgyz government authorities were able to prove that Centerra, when developing the Kumtor mine, had deposited waste dumps from gold mining on the glaciers in violation of national environmental laws, resulting in the loss of the glaciers.

In September 2021, Centerra tried to lay off 4 000 employees at the Kumtor gold mine without payment of any financial compensation after reports of various violations of the national law, including the labour rights of employees, became known.

In addition, the pit wall and waste dumps stability monitoring system, on which the safety and lives of miners involved in gold mining depend, was disabled. Centerra's human rights violations under the Kyrgyz Constitution and national labour laws were uncovered as it actively sought to deny responsibility and pay compensation to its employees for suspending Kumtor's operations. Additionally, according to the statements by the Kumtor employees, there was also a large-scale data leak of employees' personal data, while their right to access their own personal data under the applicable Kyrgyz Law on Personal Data Protection was not respected. In addition, under Kyrgyzstan's Personal Information Law, Centerra's remote locking of computer servers with databases of all employees' information constitutes a breach of personal data and a violation of Centerra's employment obligations to Kumtor's more than 4 200 Kyrgyz national employees. It violated the right of citizens to access information and the company's employees could not prove that they were employees of Centerra and receive their salaries and social benefits.

Additionally, public, non-governmental organisations in Kyrgyzstan, which monitored Centerra's activities were subjected to pressure from the former authorities, because they wanted to hide corrupt schemes and tried in every way to limit access to information about the Kumtor gold mine. Former officials received substantial payoffs for covering up violations caused by Centerra's operations in Kyrgyzstan. These violations included violations of labour rights, damage to the country's environment, tenders for expensive equipment, obtaining required licenses from government authorities, and circumventing legal barriers and restrictions that required Centerra to provide detailed and transparent reports to the country's local population. Moreover, there were attacks by unknown persons on the offices of public organisations and activists dealing with Kumtor.

To avoid similar harm, it's necessary to develop a list of specific mitigating actions, then multi-stakeholder working groups should be established involving NGOs, journalists, and local communities for ongoing monitoring of Centerra's activities. This will allow all stakeholders, including leaders and community activists themselves in the Issyk-Kul region, to participate in exploring all controversial and problematic issues to effectively protect their rights and advance civil interests. Working groups could be mandated to develop specific action plans to hold Centerra accountable in which all the involved parties who have been negatively affected by Centerra will be able to actively interact with each other, share information, and develop local action plans with the interests of all citizens in mind. To prevent the continuation of the problem of access to clean drinking water by local population members, coordinated joint actions are needed by public authorities with the active involvement of

experts, NGO representatives, journalists, local community activists, and environmentalists who are best informed about the real situation in the region and can offer specific solutions to reduce the negative consequences and damage caused by the company.

The company should also pay compensation to the victims, rights-holders affected by its operations and neglect, as well as establish appropriate communication channels and grievance procedures.

#### **WHAT OTHER, RELATED HARMS COULD HAPPEN AND HOW THIS CAN BE AVOIDED**

Additional damage can occur in the case of inaction and passivity. Most people affected by Centerra's activities may not receive compensation and repayment from the company because Centerra is trying to avoid responsibility to the local people. The damage to the environment and ecology, if not acted upon, could spread even further across the regions of Kyrgyzstan, affecting local populations' access to clean drinking water.

### **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- Members of the local communities affected by company operations
- Members of the NGOs/activists who were harassed and attacked by the company.

Stakeholders:

- Local authorities
- Shareholders
- Population of Kyrgyzstan
- The state.

### **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

Inherent in the company's business model are risks to the representatives of the local community who live near the Kumtor gold mine and work there as employees. Risks are especially possible in relation to the violation of their labour rights, limitation of local people's rights of access to information, limitation of residents' rights of access to clean drinking water, and risks associated with the impact on people's rights to a clean, healthy and sustainable environment. Also workers' rights are at stake when it comes to mining.

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

Members of the local communities in the Issyk-Kul region had the following rights negatively affected by the company:

- the right to life;
- the right to health;

- the right to access clean drinking water;
- the right to work;
- the right to fair wages;
- the right to access information;
- the right to access natural resources;
- the right to the environment and ecology.

Employees/workers had the following rights negatively affected by the company:

- the right to life;
- the right to health;
- the right to work;
- the right to privacy.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Now that the mine has changed ownership, it is likely to be challenging to find sufficient resources to clean the environment. Centerra damaged the environment and had a negative impact on people but carried out no adequate remedial activities. Now it is the state, as the new owner of the mine, that needs to take care of the situation.

It is also challenging that the gold ore is in a specific place, so moving the location of the mine is not possible.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

It was possible to avoid the current situation with Centerra and the Kumtor gold mine. The first step would have been to establish the most transparent and accountable legal mechanisms at the stage of signing bilateral agreements between the former Kyrgyz Government and Centerra's management to extract and fairly distribute gold and precious metals. In this case, the population would initially be informed and involved in the process of investigation of how much gold was mined and how much gold was exported abroad.

A legislative basis is the most important in this matter. To avoid this situation, it was necessary to clearly comply with the agreements reached between the parties and not to make any changes in the national legislation of Kyrgyzstan. It was because of the thirst for additional profits that former officials colluded with Centerra to change the laws in their own interests, and the foreign company used the former authorities in order to make super-profits and export even more gold abroad without any reports.

Centerra failed to conduct proper human rights and environmental impact assessments and to ensure that all of its infrastructure was safe and did not pose a risk to local communities. The company also failed to establish appropriate policies, communication channels, and procedures in case of accidents and spills to immediately inform local residents and let them know what to do to limit the negative impacts on their health and lives.

Centerra has had a tremendous impact on the ecology, farming, and agriculture through the leaking of chemical elements. Because local farmers could not work under such conditions, their right to work and their right to a clean, healthy, and sustainable environment, and their right to clean water has been violated.

Appeals should be provided to the national authorities on behalf of civil society activists, NGOs, experts, and local communities to ensure that state authorities take appropriate steps to protect the rights of citizens from Centerra through investigating facts of all the human rights violations against local people, making appropriate policy decisions and legislative changes within their jurisdictions. This would strengthen Centerra's legal accountability to Kyrgyzstan, as well as articulate clear requirements for Centerra to pay compensation to affected people.

A review of Kyrgyzstani law should also be undertaken to identify laws and regulations previously lobbied by the former Centerra administration that are inconsistent with Kyrgyzstani human rights principles.

It needs to be noted that this situation could have been avoided if the initial bilateral agreement between Centerra and the former Kyrgyz government had been concluded with maximum transparency and accountability to the local population of the country. Stakeholders, experts, NGOs, and journalists should have been actively involved in the monitoring of Centerra's gold mining activities. The damage caused by Centerra could have been mitigated and future damages avoided in the cases of compensation and payments for the reclamation of ecosystems and environment in the Issyk-Kul region, reconstruction of water supply systems, and restoration of rights of former Kumtor gold mine workers.

Other collateral damage may continue to occur if the ecology in the region is not restored. Then irreversible changes may occur that will affect the climate not only in Kyrgyzstan but also in Central Asia.

This case study illustrates the human rights impacts of Centerra's gold and precious metals mining operations in Kyrgyzstan for more than 20 years. It demonstrates how powerful the adverse human rights impact of a private company can be. The case study draws the necessary conclusions for further joint actions by civil society, NGOs, government authorities, experts, journalists, and environmentalists to prevent similar violations in this sector and to create conditions for open, transparent, and accountable operations of other companies.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

It is important to implement a strategy for effective action to protect the rights of the victims of Centerra's actions. It is also possible to initiate litigation under domestic legislation to hold the company accountable for the damage caused.

Right-holders and NGOs could also reach out to key labour rights organisations, in particular the International Labour Organization<sup>4</sup> and the Special Rapporteur on the Protection of Labour Rights Against Discrimination, with collective and individual appeals because the labour rights of a whole group of Kyrgyz nationals working for Centerra have been violated.

It is possible to submit requests for information to the state authorities.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE.**

- Kyrgyz Law 'On Ratification of the Agreement on New Terms for the Kumtor Project between the Government of the Kyrgyz Republic and the Canadian company Centerra Gold Inc. signed on April 24, 2009
- Kyrgyz Law 'On Glaciers'
- Kyrgyz Labour Code
- Kyrgyz Law on Access to Information
- UN Convention on Discrimination in Employment and Occupation
- The Universal Declaration of Human Rights, 1948

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<sup>4</sup> ILO Supervisory System/Mechanism, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm> (accessed 26 April 2023).

## CASE STUDY 7.

# ASSESSING HUNGARY'S RED SLUDGE DISASTER FROM A BUSINESS AND HUMAN RIGHTS PERSPECTIVE

**AUTHOR: ZSUZSANNA KERBER<sup>1</sup>**

Hungary's largest industrial and environmental disaster occurred in 2010, when the dam of a red sludge<sup>2</sup> reservoir burst, spilling around 1 million cubic meters of red sludge into the surrounding towns. Ten people died, 121 were injured, and there was considerable material damage, with 367 properties damaged in the affected municipalities. The contaminated area covers 800–1 000 hectares. The spillage of concentrated alkaline sludge has also caused serious ecological damage destroying the fauna of the lakes in the area.<sup>3</sup>

The company concerned was an important actor in the Hungarian economy when the disaster happened: as one of the largest employers in the region, it provided jobs to thousands of people. The company represented the aluminium production sector, and it was 100% Hungarian owned.<sup>4</sup>

Although the United Nations Guiding Principles on Business and Human Rights (hereinafter: UNGPs or Guiding Principles) were adopted after the catastrophe, it is worth looking at this case through the lens of business and human rights for several reasons:

1. The case is about business-related human rights violations which have been so significant that they have fundamentally changed the lives of the members of the local communities.
2. Access to remedy, the third pillar of the UNGPs, is of particular importance in this case and it is worth examining this aspect within the framework of the Guiding Principles.
3. We can draw valuable and useful lessons for the future by analysing how the disaster could have been prevented or at least mitigated if the company had conducted adequate human rights due diligence.

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1 The views and opinions expressed in this case study are those of the author and do not reflect the views or positions of any entities.

2 Red sludge is a by-product from the early stage of aluminium production. After bauxite, the raw material, is taken out of the ground and washed with sodium hydroxide, it produces alumina, which is processed further, and waste, which is composed of solid impurities, heavy metals, and the chemicals used as processing agents. About 40%-45% of the waste is iron-oxide, which gives it the red colour. Another 10%-15% is aluminium oxide, a further 10%-15% silicon oxide and there are smaller quantities of calcium oxide, titanium dioxide and sodium oxide. See: <https://www.bbc.com/news/world-europe-11492387> (accessed 2 February 2023).

3 A Jövő Nemzedékek Országgyűlési Biztosának állásfoglalása az Ajkai Timföldgyár területén bekövetkezett vörösiszap katasztrófa építésügyi jogi és hatósági háttere vonatkozásában, 2010, para 8.

4 J. I. Tóth, 'Key actors of the red sludge disaster in Hungary', in L. Westra, P. Taylor and A. Michelot (eds.), *Confronting Ecological and Economic Collapse*, London, Routledge, 2013, p. 145.

As Telesetsky points out, '[d]isasters often happen because known hazards are ignored by those actors who are in the best position to manage the hazard or eliminate the hazard.'<sup>5</sup> In this case, the disaster probably could have been avoided if the company had carried out human rights due diligence and the authorities had properly monitored the activities of the factory.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

The primary rights-holders are:

- The local communities and residents who have been directly affected by the disaster (this case study focuses on them)
- The factory workers.

The list of stakeholders includes:

- Environmental organisations and NGOs
- Trade unions
- Local authorities
- Business partners
- Rescue workers.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

In the bauxite mining and aluminium production sector, human rights and environmental risks are interrelated. Serious health and safety issues arise (e.g. air and water pollution, dam breaks) that could affect workers' and residents' right to health, and their right to physical integrity and personal security. This type of business can also have a long-term environmental impact (e.g. inadequate waste storage, soil and groundwater pollution, and threat to biodiversity).<sup>6</sup>

## **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

The main victims of this industrial and environmental disaster are the local communities and residents: their right to life and physical integrity, right to human dignity, and right to health was at stake in this case. There are also land rights issues for landowners, given that surrounding agricultural land has been damaged.

For factory workers, the right to a safe working environment and the right to health is the main concern. For example, in the aluminium production sector, air pollution and the inhalation of bauxite dust can occur in this context.

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<sup>5</sup> A. Telesetsky, 'Beyond Voluntary Corporate Social Responsibility: Corporate Human Rights Obligations to Prevent Disasters and to Provide Temporary Emergency Relief', *Vanderbilt Law Review*, vol. 48, 2015, p. 1020.

<sup>6</sup> M. Buderath et al., 'Raw materials in focus: An integrative view of human rights and environmental risks', Berlin, adelphi, 2021, p. 13–16.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Companies whose activities involve the management of hazardous waste face additional safety risks. Community engagement is also crucial as aluminium production can have serious environmental impacts.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The situation could potentially have been avoided and harm could have been at least mitigated if the two duty-bearers – the company and the authorities – had conducted proper due diligence. For the authorities, the classification of the reservoir and the related authorisation powers have been a matter of dispute between the relevant authorities since the 1980s.

Construction started in 1993, following the building permit, and the filling of the red sludge into the reservoir began in 1998. The operation was authorised by the water authority in 2002. The competence dispute essentially arose from the legal classification of the reservoir itself. The reservoir should have been classified as a mining waste treatment facility, both in terms of the terminology used in the relevant EU Directive and in national legislation (reservoir, dam, waste treatment facility), and in terms of the nature of the facility. However, the mining authority refused to accept this interpretation and found that it had no competence in the case.

In practice, this meant that even though the red sludge reservoir had a permit issued by the water authority, no authority monitored the compliance with the permit, e.g. the stability of the reservoir, after 2002. When issuing the environmental operating permit, the authorities also made a mistake by classifying the red sludge as non-hazardous waste.

Given the above competence disputes, lack of cooperation of the concerned authorities, and failure to monitor, the operation of the reservoir played a crucial role in the process that led to the disaster. It was an enforcement issue rather than a legislative gap.

However, it is indisputable that the main duty-bearer is the company itself. In the following, I examine how the mistakes made by the company contributed to the disaster.

During the authorisation process, the company had to submit several plans, including a disaster prevention and preparedness plan. The plan calculated that a dam breach could only occur due to an external cause and that, even in this case, a maximum of 400 000 cubic meters of alkaline water and 100 000 cubic meters of red sludge would be spilled. However, the plan did not take into account the possibility that the company would store significantly more red sludge than permitted. As a result, about 1 000 000 cubic meters of red sludge flooded the surrounding villages. It must be noted that this plan is almost a verbatim copy of the water protection plan submitted by the company, thus it focuses on the environmental aspect.



One of the most significant deficiencies was that the company did not have a proper disaster management plan focusing on saving lives and property in the event of a disaster. In the UNGPs, businesses should identify and assess actual or potential adverse human rights impacts, address these impacts, and monitor the effectiveness of their response to them. It is of particular relevance to this case that businesses should communicate clearly how they address these human rights impacts, especially if the affected stakeholders raise concerns (UNGPs 18–21). A factory engaged in hazardous activities should have had a disaster management plan in place and should have communicated it externally, as the activity inherently has the potential to violate the right to life, the right to physical integrity, and the right to a healthy environment of the surrounding residents.

In one civil case, the court also found that the disaster could have been prevented by, among other things, more thorough soil testing, more careful use of technology, a proper monitoring system, and the construction of adequate protection structures.<sup>7</sup>

A human rights impact assessment carried out in accordance with the UNGPs would certainly have helped to prevent, or at least mitigate, the harm.

1. Potentially affected groups and other stakeholders (e.g. surrounding residents and environmental organisations) should have been engaged in a consultation to identify the actual or potential adverse human rights impacts of the factory's operations (UNGP 18). The available sources indicate that this had not been done.
2. A clear emergency protocol that considers these impacts identified would have been crucial to mitigate the damage promptly after the disaster, but the company obviously did not make any effort to undertake human rights due diligence.<sup>8</sup>
3. Once human rights violations had occurred, access to effective remedy should have been granted to those affected (UNGP 25).

The first judgment on damages was delivered in November 2013. In the case, the court made a judgment for a total of HUF 32 million to five members of a family because the defendant (the company) violated their right to physical integrity and health and also their right to human dignity and a healthy environment. The family members suffered serious physical and psychological injuries, the parents lost their 13-and-a-half-month-old child, and their home became uninhabitable.<sup>9</sup>

A large number of actions for damages have been brought against the company, a lot of them with success. The major problem concerning access to remedy was that the company went into liquidation and was unable to pay all the compensations ordered by the court. However, in 2015, the state took over the payment of these damages,<sup>10</sup> amounting to hundreds of millions of forints. The state also has to address the long-term (environmental) impacts of the disaster.

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<sup>7</sup> Fővárosi Törvényszék P. 24.249/2011/58. para. 140.

<sup>8</sup> Telesetsky, p. 1021.

<sup>9</sup> Fővárosi Törvényszék P. 20.799/2011/56.

<sup>10</sup> See 21/2015. (II. 18.) Korm. rendelet a vörösiszap katasztrófa magánszemély károsultjai javára nem vagyoni káruk megtérülése érdekében vállalt állami segítségnyújtásról

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

Not relevant in this case as there were no international investors or business partners linked to the company, and access to remedy has been granted within the national legal system so there was no need to refer to international mechanisms.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE.**

- Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives
- Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances
- A hulladékgazdálkodásról szóló 2000. évi XLIII. törvény (law on waste management)
- A vízgazdálkodásról szóló 1995. évi LVII. törvény (law on water management)
- A környezet védelmének általános szabályairól szóló 1995. évi LIII. törvény (law on the protection of environment)
- A bányászatról szóló 1993. évi XLVIII. törvény (law on mining)
- 1959. évi IV. törvény a Polgári Törvénykönyvről (previous civil code)

### **BIBLIOGRAPHY**

- A Jövő Nemzedékek Országgyűlési Biztosának állásfoglalása az Ajkai Timföldgyár területén bekövetkezett vörösiszap katasztrófa építésügyi jogi és hatósági háttere vonatkozásában (JNO-619/2010), (Position of the Parliamentary Commissioner for Future Generations on the legal and regulatory background of the red sludge disaster at the Ajka alumina factory)<sup>11</sup>
- Az alapvető jogok biztosának jelentése az AJB-843/2012. számú ügyben (Report of the Commissioner for Fundamental Rights)<sup>12</sup>
- Buderath, M. et al., 'Raw materials in focus: An integrative view of human rights and environmental risks', Berlin, adelphi, 2021
- 21/2015. (II. 18.) Korm. rendelet a vörösiszap katasztrófa magánszemély károsultjai javára nem vagyoni káruk megtérülése érdekében vállalt állami segítségnyújtásról (Government Decree on state assistance to private victims of the red sludge disaster to compensate for their non-pecuniary damage)

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11 <http://www.jno.hu/hu/?&menu=allasfog&doc=af-jno-619-2010> (accessed 25 February 2023).

12 <https://www.ajbh.hu/jelentesek-inditvanyok-allasfoglalasok> (accessed 25 February 2023).

- Telesetsky, A. 'Beyond Voluntary Corporate Social Responsibility: Corporate Human Rights Obligations to Prevent Disasters and to Provide Temporary Emergency Relief', *Vanderbilt Law Review*, vol. 48, 2015, pp. 1003–1027
- Tóth, J. I. 'Key actors of the red sludge disaster in Hungary', in L. Westra, P. Taylor and A. Michelot (eds.), *Confronting Ecological and Economic Collapse*, London, Routledge, 2013, pp. 143–155

#### **HUNGARIAN COURT CASES**

- Fővárosi Törvényszék P. 24.249/2011/58
- Fővárosi Törvényszék P. 20.799/2011/56

## CASE STUDY 8.

# CORPORATE BENEFITS OVER HUMAN RIGHTS: MANGANESE AND FERROALLOYS PRODUCTION IN GEORGIA

**AUTHOR: NANA KHECHIKASHVILI**

The case study involves Company X, a Georgian subsidiary of a British company that produces manganese and ferroalloys. The company has been accused of violating labour and human rights in its mining operations in Chiatura, Georgia.

In 2016, Company X introduced a new mining system that included 12-hour shifts, with over 15 consecutive days of work at night, without days off or formal breaks during shifts. This new system imposed quotas on miners and wage deductions for failure to meet these quotas, compromising worker safety.<sup>1</sup> Additionally, Human Rights Watch and the UN Working Group on Business and Human Rights have both listed serious concerns about labour rights at the Chiatura mines. Various reports also noted that the occupational hazards to miners were inadequately addressed, resulting in various injuries as well as damage to hearing due to noise in the mine.

In 2018, local trade unions documented 60 accidents resulting in one death and several serious injuries. Four workers of Company X died from workplace accidents between 2016 and the first quarter of 2019.<sup>2</sup> The incidents caused shock and outrage in Georgia and the world. The country had already needed labour reform after a decade of deregulation that dramatically reduced labour rights protection and government oversight. While the company suspended the practice of deducting wages for failure to meet targets in the old system mines in 2017 following an informal agreement with the Labour Union of Chiatura, fundamental changes have not been implemented yet.

There is also a risk of adverse environmental impacts, such as the contamination of local streams and wetlands, in the case of which there is the need for consulting experts to minimise the harm of mining to the environment.<sup>3</sup> There is still a danger that similar tragic instances or other related harms could occur again. The company's practices violate the Georgian Labour Law, which requires employers to provide a safe and healthy work environment for their employees and to provide them with objective and comprehensive information on all factors affecting their life and health.

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- 1 Human Rights Watch, '«No Year without Deaths» A Decade of Deregulation Puts Georgian Miners at Risk', 2019, [https://www.hrw.org/sites/default/files/report\\_pdf/georgia0819\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/georgia0819_web.pdf) (accessed 1 March 2023)
  - 2 Business and Human Rights Resource Centre (BHRRC), 'Georgian Manganese', 2021, [https://media.business-human-rights.org/media/documents/Georgian\\_Manganese.pdf](https://media.business-human-rights.org/media/documents/Georgian_Manganese.pdf) (accessed 1 March 2023)
  - 3 Gachechiladze, Maia & Antypas, Alexios, 'The Aarhus Convention in Georgia: The Long Road to Implementation', 2009 Environmental Liability, Vol. 15, pp. 190–199 (accessed 1 March 2023)

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- The miners
- Residents of the mining location where Company X operates.

Stakeholders:

- The government of Georgia
- Local administration
- NGOs (local and international)
- The UN Working Group on Business and Human Rights.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

The human rights risks inherent in Company X's business model include occupational health and safety risks further exacerbated by the long, 12-hour shifts, working over 15 consecutive days at night, with no days off or formal breaks during shifts, all of which pose significant risks to the health and safety of workers. This is evident from the numerous accidents and deaths that have occurred at the company's mines.

Also, labour rights risks – the company's mining practices, such as imposing quotas and wage deductions for failure to meet targets, compromise the labour rights of workers. There are environmental risks – mining activities can have adverse environmental impacts, including the contamination of local streams and wetlands. There are also communication risks – the company's communication with local communities has been identified as a risk, which can lead to misunderstandings and disputes.

## **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

Miners are the most affected rights holders, with violations of occupational health and safety rights, as well as labour rights being the most salient human rights issues at stake. Additionally, in the case of the residents of the mining location where Company X operates, the right to health and the right to a healthy environment are the rights most strongly adversely impacted. Mining can release harmful pollutants into the air, water, and soil, which can cause respiratory diseases, cancers, and other health problems for both miners and local residents. Mining can also damage the natural environment, including forests, rivers, and wildlife habitats, which can negatively impact the livelihoods and well-being of local communities.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The risks that are likely the most challenging for Company X are environmental risks. Mining and production of manganese and ferroalloys can have significant environmental impacts, including water pollution, soil erosion, and deforestation. This, in turn, can both impact the health of local and more distant populations but also result in legal and reputational risks for the company.

Also significant are the health and safety risks. Mining and production of manganese and ferroalloys can be dangerous and expose employees to hazards (such as respiratory diseases, accidents, and noise pollution), which cannot always be fully prevented. This can result in reputational damage, legal claims, and increased insurance costs for the company.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The company should adopt a human rights-based approach that prioritises respect for human rights, identifies and mitigates potential risks, and engages in meaningful dialogue with stakeholders. This can be achieved by implementing the United Nations Guiding Principles on Business and Human Rights, which provide a framework for responsible business conduct that respects and protects human rights.

There are several actions that the company can take to address the issues and ensure a UNGPs-aligned approach:

- **Conduct a human rights impact assessment:** The company can carry out a comprehensive human rights impact assessment (HRIA) across its value chain to identify and prioritise the human rights risks associated with its operations and supply chain. This will enable the company to understand the extent to which its business activities may impact the human rights of its stakeholders and develop appropriate risk mitigation strategies.
- **Engage with stakeholders:** The company should engage with its stakeholders, including rights-holders (miners, local communities), civil society organisations, and human rights experts, to understand their concerns and perspectives on what are the problems and how can/should they be addressed. This will ensure that its actions are profiting from insights and opinions provided by the affected people and communities in which it operates.
- **Establish grievance mechanisms:** The company should establish effective grievance mechanisms (ideally meeting the effectiveness criteria listed in UNPG 31) that would enable individuals and communities to raise concerns about human rights abuses associated with the company's operations. The mechanisms should be accessible, transparent, and responsive, and should allow for remediation of any harm caused.
- **Provide human rights training:** the company should provide training to its employees, suppliers, and contractors on human rights issues and the company's commitment to respecting human rights. This will ensure that all parties are aware of their responsibilities and can take appropriate action to prevent and address human rights risks.

It is important to note that to avoid the situation altogether, the company should have conducted human rights due diligence and also assessed its business model against it. This would have involved identifying potential and actual human rights risks and implementing measures to prevent or mitigate them. Given that the harm has occurred, the company should take immediate action to mitigate the harm they caused, such as providing remedies to affected individuals and communities. This could involve compensation, rehabilitation, or other forms of restitution.

The company should also be aware of the potential for environmental degradation and its impact on the right to a clean, healthy, and sustainable environment. This risk of adverse impacts can be mitigated by implementing sustainable practices and technologies that minimise environmental impact, such as responsible waste management, water conservation, and the use of renewable energy sources. The case study highlights the adverse impacts on human rights and labour rights as well as environmental damage at the Chiatura mines. The coal and manganese mining practices of imposing quotas, wage deductions for failure to meet quotas, and incentivising workers and supervisors to compromise worker safety have always been present in Georgian mining practice.

The adverse impacts (incidents etc.) described in the case study point to Georgia's much-needed labour reform as, after a decade of deregulation, labour rights' protection and government oversight had been dramatically reduced. Despite the changes introduced in the company, there is still a danger that the same adverse impacts or that other related harms will occur again.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

International law sets high human rights standards in treaties that Georgia has ratified, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), as well as regional instruments like the European Convention on Human Rights (ECHR), and the European Social Charter (ESC). The Universal Declaration of Human Rights (UDHR) also articulates basic human rights.

Several international procedures and mechanisms could be used to address and challenge the company's behaviour and enhance the chance of victims for remedy.

- The International Labour Organization (ILO): The ILO has a complaints mechanism that allows individuals or groups to submit complaints alleging violations of international labour standards. The procedure involves a tripartite committee and can lead to recommendations for remedial action.
- The Human Rights Committee (HRC): Individuals can submit complaints about human rights violations by a state or a business under the jurisdiction of that state. The complaint mechanism is called the individual communication procedure.
- The Committee on Economic, Social and Cultural Rights (CESCR): Under the Option Protocol to the ICESCR, individuals or groups can submit complaints against states that have ratified the convention, for alleged violations of economic, social, or cultural rights.

- The European Court of Human Rights (ECHR): To submit a complaint to the ECHR, an individual or their legal representative must complete an application form and provide relevant evidence to support their claims. The complaint must be submitted within six months of the final domestic decision, and the ECHR may decide to either dismiss the complaint or proceed with a full examination of the case. (However, because all available domestic remedies have not been exhausted, this will not be possible yet).

This situation also contradicted the legislation of Georgia, which mandates employers to provide a safe and healthy work environment and objective information about all factors affecting employees' life and health or the safety of the natural environment. Thus, it would be possible to challenge the company in court.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE.**

The international and national documents that set the legislative framework for the case study are the following:

- The UN Guiding Principles on Business and Human Rights
- 'The Aarhus Convention in Georgia: the long road to implementation', Maia Gachechiladze, Alexios Antypas, January 2009
- Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71
- International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force Jan. 3, 1976, ratified by Georgia in 1994
- International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI)
- The European Convention on Human Rights (ECHR)
- The European Social Charter (ESC)
- Labor Code of Georgia
- Law of Georgia on Occupational Safety and Health
- Law of Georgia on Environmental Protection
- Criminal Code of Georgia



## CASE STUDY 9.

# THE FASHION INDUSTRY IN POLAND

**AUTHOR: MARIUSZ KOŚLA**

This case study describes a situation in a company located in a small town in Poland. It is a Polish (domestic) company established in 2000 after the transformation of a state-owned company. In the region there are few employers, particularly large ones and the unemployment rate in this region is among the highest in Poland. The mentioned company employs ca. 350 employees, the vast majority of them women. It is a company from the garment industry manufacturing men's suits, jackets, and trousers, supplying big brands (hereinafter referred to as the company's customers) in Poland and abroad. Fast fashion customers demand very low prices and very short delivery times, impacting the company's behaviour and workers' situation. Since 2014, there have been articles<sup>1</sup> in the Polish press about the situation in the garment industry generally, and in this company particularly, showing the following:

1. Remuneration. A monthly salary was set at the so-called 'minimum wage', below EUR 300. It did not allow workers to sustain themselves, particularly in the case of a family with kids. Receiving remuneration that would allow making ends meet was possible only when working overtime. Each day, each production shift had to meet a minimum daily production norm as a condition for getting paid. The norm was set so high that it was usually impossible to deliver it within eight working hours.
2. Forced overtime. The employer insisted on overtime during regular working days and on Saturdays. Sometimes literally forcing employees to stay until the production output met the managers' expectations. The cumulative overtime hours exceeded the limits allowed by the law, and the company didn't register it to avoid potential fines from State Labour Inspection. The overtime hours were often not paid in full or were sometimes unpaid. The women who decided to speak openly about this situation claimed that they were permanently exhausted and overwhelmed to the extent that it was tough to endure; they kept asking to be released from working overtime. The employees who refused to work overtime or to come in on Saturday were frequently punished with a deduction of ca. EUR 25–30 from their salary. Moreover, they were insulted, intimidated, and threatened with dismissal.
3. No autonomy. Workers could not decide when to have days off or holidays – particularly in the summertime – depriving them of contact with their families and kids. People who went on sick leave were more frequently dismissed, so people worked even when sick and feeling ill.

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1 G. Latos, Fundacja Kupuj Odpowiedzialnie; 'Dlaczego szwaczki nie strajkują', *Ekonsument* [website], 21.01.2022, [https://www.ekonsument.pl/a67274\\_dlaczego\\_szwaczki\\_nie\\_strajkuja.html](https://www.ekonsument.pl/a67274_dlaczego_szwaczki_nie_strajkuja.html) (accessed 20 December 2022); G. Latos, Fundacja Kupuj Odpowiedzialnie; 'Gdzie sa polskie szwaczki', *Ekonsument* [website], 09.01.2020, [https://www.ekonsument.pl/a67182\\_gdzie\\_sa\\_polskie\\_szwaczki.html](https://www.ekonsument.pl/a67182_gdzie_sa_polskie_szwaczki.html), (accessed 20 December 2022); G. Latos, Fundacja Kupuj Odpowiedzialnie; 'Made in Poland', *Ekonsument* [website], 09.01.2020, [https://www.ekonsument.pl/a67184\\_made\\_in\\_poland\\_jak\\_wyglada\\_zycie\\_szwaczki.html](https://www.ekonsument.pl/a67184_made_in_poland_jak_wyglada_zycie_szwaczki.html), (accessed 20 December 2022); G. Latos, *Swiat Kobiet*, '40 stopni na hali', *Ofeminin* [website], 04.05.2021, <https://www.ofeminin.pl/swiat-kobiet/to-dla-nas-wazne/40-stopni-na-hali-wyczerpanie-i-pampersy-wyzysk-polskich-szwaczek/h6evfjz>, (accessed 19 Decemeber 2022).

4. Dangerous working conditions. The constantly leaking roof posed a real danger of electric shock when it rained, as the sewing machines that used electricity got wet. Because of this, one woman suffered an electric shock and was unable to work for some time; the employer didn't accept and didn't pay her total sick leave. No air-conditioning: extreme heat in summer (over 40 and 50 C) and very cold in winter. Neither disinfectants nor other anti-COVID measures were available during the peak pandemic period.
5. Social security. The employer did not pay or paid social security with delays – resulting in problems for workers accessing the national health system and, in the future, lower pension/retirement salaries.
6. Drinking water and toilet-break limitations. It was forbidden to have and to drink water or other drinks (tea, coffee) in the workplace or go to a toilet or a kitchen to drink something. Women described it as humiliating and very hard to bear. Only one 15-minute-long break per day was allowed to use the restroom or to eat/drink something.
7. Unlawful dismissal. In 2018, for many months, workers asked for a meeting with the CEO but he never agreed to hold it. Frustrated, women spontaneously refused to work on one Saturday (in overtime) and asked to start negotiations. On the next day, three strikers were punished by a disciplinary dismissal with immediate effect – to intimidate the entire crew. The consequence of this type of release was no right to severance pay and a real problem for getting a new job. The women who were fired in this way went to court, and after three years, they won. The court deemed the disciplinary dismissal unsubstantiated and ordered the company to pay severance pay.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- Employees (seamstresses) of the company producing clothes for fashion brands and families of the employees.

Stakeholders include:

- The factory owners
- The company's customers
- Local and national governments
- Trade unions.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

There are very short lead times in the garment industry. Fast fashion brands introduce new collections many times a year, and the entire process from design, production, and market introduction happens quickly. Companies producing clothes need to deliver ordered goods quicker than the production assets would allow in normal circumstances. This, in turn, generates risk of excessive overtime, extra production days (including weekends), and pressure on workers to increase their productivity. This also has a major impact on workers' welfare (physical and mental health) and by extension also has an impact on their families.

Low prices. Brand benchmarks are set by the low prices in Asia (Bangladesh, India, Vietnam). Customers drive the price down by seeking cheap fashion. This makes an impact on the company's business model, and on the pay and working conditions in the factory.

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

The principal rights-holders are the workers. Many international human rights treaties cover their rights. For example, the International Covenant on Economic, Social, and Culture Rights (ICESCR) and International Covenant on Civil and Political Rights – (ICCPR).

- The right to work (ICESCR Art. 6.1) 'Right to work which includes...to gain his living by work which he freely chooses or accepts.' The application in this case: in this region, there were no real alternatives for this job. The employer abused the employees (threatened to throw them out), and the employee had little choice but to accept the job and its harmful conditions.
- The right to just and favourable conditions or work (ICESCR Art.7) – in particular:
  - The right to a fair living wage (ICESCR Art.7 (a) (ii)) 'remuneration which provides a decent living for themselves and their families.' Application in this case: the wages were too low to meet basic needs.
  - The right to safe and healthy working conditions (ICESCR Art.7 (b)). Application in this case: the leaking roof, lack of access to drinking water, extreme temperatures in the workshop, being forced to work during the COVID pandemic without any protection methods.
  - The right to rest and leisure (ICESCR Art.7 (d)) 'Rest, leisure and reasonable limitation of working hours and periodic holidays (and public holidays) with pay.' Application in this case: permanently working overtime, denied holidays and free weekends.
  - The right to join trade unions for the promotion of economic and social interests (ICESCR Art.8.1 (a)). Application in this case: the employer dismissed or 'bribed' (giving promotions for giving up) persons active in the fight for the employees' rights.
  - The right to strike (ICESCR Art.8.1. (d)). Application in this case: the employer refused to talk to strikers, and randomly dismissed employees who participated in the strike.
  - The right to social security including social insurance (ICESCR Art.9). Application in this case: the employer didn't pay social insurance depriving employees of access to the social health system and from retirement salary in the future.
  - The right to desirable work and to join trade unions (ICCPR Art.22, and also UDHR and ILO Convention (1948) Freedom of Association and the Right to Organise). Application in this case: the management refused to talk to employee representatives and unlawfully dismissed strikers. Freedom of association was not allowed.
  - Exploitation (ICCPR Art. 8 (c)). 'No one shall be required to perform forced or compulsory labour.' Application in this case: the deliberately low remuneration, fake part-time contracts, and unrealistic daily production norms created the forced overtime system that made employees work over their physical limits and will.
  - Prohibition of discrimination. Application in this case: against workers, mainly women using toilets on demand led to humiliating situations when women needed to wear diapers, for example, during menstruation.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The company's customers expect goods to be cheap – at the price level of garment producers from Asia, and they expect frequent changes of collections, which results in very short lead times for delivery – it is a part of 'fast fashion.'

Thus, it is challenging to mitigate the risks associated with such behaviour, i.e. causing extreme risks to employees of the garment companies, when the competitors employ the same approach. Any extended lead on times for delivery or increase in payments for the garments will result in lower income margin for the company, while the company needs to be profitable and competitive.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The situation could have been avoided:

If the employer:

- had done due diligence, according to UNGPs, to understand potential risks to the employees;
- had entered a stakeholder dialogue;
- had been active in contact with the state to understand the legal context;
- had put in place an effective site-level grievance mechanism;
- had permitted the establishment trade unions.

Or if:

- state labour inspection had sufficient ability to enforce the labour law. The inspections did not reveal essential irregularities because the visits were not a surprise to the company, which allowed managers to hide the authentic employee records and prepare accordingly for these visits. In addition, interviews with employees were conducted in the presence of their superiors, which caused legitimate concerns about the consequences if they revealed the truth about the company's abuses;
- large brands (Polish and international) for which the company made clothing conducted due diligence and audits and felt responsible for respecting human and labour rights in their supply chain;
- the garment industry's profit would be fairly divided between companies along the value chain: workers of the farms, fabric manufacturers, garment producers (the company in our case study), and brand owners;
- end-consumers preferred to buy fair trade, ethically produced goods, and would be ready to pay a reasonable, higher price, if necessary.

What can be done now to solve the identified problems?

The state needs to enforce labour laws i.e. by introducing more frequent inspections and by increasing fines for non-compliance with the law.

The company should:

- implement the court order and obey Polish labour law and international standards;
- start stakeholder engagement with employees and involve external experts in the process. This helps organisations proactively consider the needs of stakeholder groups, in this case employees, and can help find adequate solutions aimed to mitigate potential risks and conflicts;
- stop obstructing the establishment of trade unions or appoint workers' representatives for collective bargaining and agree on regular negotiation rounds – at the beginning with the participation of external bodies, such as representatives of the company, preferably from the same industry, which is a known example of the effective implementation of such a collective bargaining agreement, or a mediator from a mediation centre located at the local court;<sup>2</sup>
- in dialogue with the rights-holders and stakeholders, develop and implement an effective code of conduct and a complaint mechanism that meets the effectiveness criteria listed in UNGP 31 (with active involvement of customers of the company and NGOs specialised in the garment industry);
- introduce more strict health & safety procedures.

Brands (the company's customers) should:

- change malpractices on their own side, i.e., extend the time for the order completion and place orders sufficiently in advance;
- introduce fair prices for suppliers;
- perform human rights due diligence in their supply chain and agree with the company on an audit plan.

In addition:

- free media is needed to inform the public about cases like this, brands' roles and responsibilities, and the effectiveness of local institutions (State Labour Inspection).

This case shows the importance of the different stakeholders knowing about human and labour rights and implementing measures to safeguard human dignity and decent work. International human rights law and the UNGPs and OECD Guidelines for Multinational Enterprises provide the framework for companies and employees to show what respect for human rights looks like. Moreover, the case indicates a lack of reaction from customers after it was revealed in the press. Neither the company involved in this case suffered any legal consequences.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

It would be possible to inform the International Trade Union Confederation (ITUC), which defends trade unionists and takes action against other violations of labour rights and other violations of human

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<sup>2</sup> Związek Pracodawców i Pracodawców, 'Proceduralne aspekty mediacji', *ZPP.NET* [website], <https://zpp.net.pl/proceduralne-aspekty-mediacji-w-miejscu-pracy/>, (accessed 20 January 2023).

rights.<sup>3</sup> As a result, the company may be on the ‘red’ list of companies violating labour rights, published by the ITUC.

The described case is quite common in this industry in Poland. If employees of affected companies join forces, it may be worth considering a collective complaint to the United Nations Working Group on Business and Human Rights.<sup>4</sup>

Reporting violations of the rights to collective bargaining, safe working conditions, the prohibition of discrimination in the workplace to the ILO, to the ‘Management, Rights and Dialogue’ cluster.<sup>5</sup> Based on the ILO Declaration on Fundamental Principles and Rights at Work

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- Universal Declaration on Human Rights (1948)
- International Covenant on Economic, Social and Culture Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- ILO Declaration on Fundamental Principles and Rights at Work
- Polish Labour Code and Health & Safety Regulations
- The Polish Civil Code

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<sup>3</sup> International Trade Union Confederation, ‘Legal Unit’, *ituc-csi.org* [website], <https://www.ituc-csi.org/legal-unit?lang=en>, (accessed 22 January 2023).

<sup>4</sup> United Nations Human Rights, ‘Reporting violations’, *ohchr.org* [website], [https://www.ohchr.org/en/reporting\\_violations](https://www.ohchr.org/en/reporting_violations) (accessed 24 January 2023); United Nations Human Rights, ‘Access remedy’, *ohchr.org* [website], <https://www.ohchr.org/en/special-procedures/wg-business/access-remedy> (accessed 24 January 2023).

<sup>5</sup> International Labour Organization, ‘Special procedures’, *ilo.org* [website], <https://guide-supervision.ilo.org/defending/a-complaint-alleging-violation-of-freedom-of-association-can-be-lodged-by-any-ilo-constituent-a-government-employers-or-workers-organizations-against-a-government/> (accessed 21 January 2023); International Labour Organization, ‘Q&As on business and collective bargaining’, *ilo.org* [website], [https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_CB\\_FAQ\\_EN/lang-en/index.htm](https://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang-en/index.htm) (accessed 21 January 2023).

## **CASE STUDY 10.**

# **MINING COMPANY'S ADVERSE IMPACTS ON MINORITIES' RIGHTS IN GEORGIA**

**AUTHOR: AKAKI KUKHALEISHVILI**

Rich Metals Group (RMG) is a mining company that operates in Tbilisi, Georgia, and is involved in the mining and smelting of ore, copper, and gold. The company plans to conduct open mineral extraction in Mushevani, a village in Georgia with a population of about 600, where a majority of the residents are Azerbaijani. The company may face language barriers as the environmental impact assessment and scoping report were prepared only in Georgian without translation into Azerbaijani language, thus making it more difficult to engage meaningfully.

RMG intends to conduct 55 drilling and blasting activities per year, mining gold and copper for six years, potentially extending to future permits, at a distance of 808 meters from residential areas. The current environmental decision covers only 11.27 hectares, despite the total licensed area being 175.8 hectares, and allows for potential future permits. However, the environmental assessment only considers current mining areas, neglecting the cumulative impacts of future mining.

The local population in Mushevani expressed strong resistance to the project during a public discussion organised by RMG on July 14, 2022, where a small number of people from the village attended, representing only a fraction of the population. The villagers of Mushevani founded a village initiative group and submitted a complaint to the National Environment Agency (NEA) in July 2022, citing various human rights concerns related to the right to information, participation as well as free, prior, and informed consent (FPIC), health and livelihood, and cultural heritage.

The complainants allege that there was no prior consultation with the local population regarding the environmental impact assessment plan and that the public discussion organised by RMG was not inclusive enough, potentially violating the local population's right to participation. Furthermore, the company representatives allegedly misled the local population by promising water supply systems and gasification for the village in exchange for signing a consent form, which raises concerns about the adequacy and genuineness of the FPIC process.

The local population also raises concerns about the potential impacts of mining activities on their ecosystem, housing, and health, as well as the absence of provisions for compensating them in case of damage, which may impact their right to health and livelihood. The complainant also mentions risks related to the distraction of cultural heritage as a result of the mining activities, potentially violating the local community's right to cultural heritage.

Despite the protests and complaints, RMG Gold was granted a permit for gold and copper mining in Mushevani by the National Environment Agency (NEA) on November 1, 2022. NEA determined that

the complaints were ill-founded during the administrative proceedings and concluded that RMG had fulfilled its obligations in good faith. NEA cited that RMG had organised a public discussion that was attended by NEA representatives, local authorities, RMG Copper, RMG Gold, and other stakeholders. According to NEA, RMG Copper also submitted reports outlining socio-economic, educational, and infrastructural measures to be undertaken by the company.

As part of the permit, RMG Copper is required to monitor the project's impact on cultural heritage sites and implement environmental monitoring and emergency response plans. The company must also adhere to the recommendations and findings of the Environmental Impact Assessment (EIA) report for mitigating and preventing impacts on biodiversity. RMG Copper further stated that the heritage monuments are located far from the planned activities and vibrations will not cause damage, as per the NEA's argumentation.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- Population of the village Mushevani
- Mining company employees.

Stakeholders:

- Government
- Ministry of Environment Protection and Agriculture of Georgia
- National Environment Agency
- Trade unions
- CSOs, Human Rights Defenders.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

As the company is bound to conduct its activities where the mineral resources are located, and additionally it operates in an accident-prone sector, a number of human rights issues are intrinsically linked with its core business model, including:

- the right to health of the miners;
- the right to life of the miners;
- loss of livelihood and negative health impacts on the local population;
- the right to health (as its operations might affect access to clean water);
- violation of the right to a clean, healthy, and sustainable environment (current activity leads to environmental damage);
- the loss of cultural heritage;
- potentially also the violation of the minorities' rights.



### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

Members of the local populations' rights at risk of being adversely affected:

- the right to life;
- the right to equal treatment and freedom from discrimination;
- the right to health;
- the right to a healthy environment;
- the right to property;
- the right to an adequate standard of living (including housing);
- the right to development;
- the right to social security;
- the right to participate in cultural life.

### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Legal risks arise as RGM does not follow international standards on Free, Prior, Informed Consent (FPIC), so it risks facing legal action locally or internationally. For instance, a local social justice centre NGO has filed a complaint to the national court, and they plan to use all the international mechanisms available.

Operational risks as protests from the local population can create operational risks for the company as well as security risks for company staff and local communities.

### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The company should have done the following before starting the project:

- Establish a human rights policy commitment.
- Conduct human rights due diligence to identify and assess the nature of actual and potential adverse human rights impacts with which their operations may be associated and involved.
- Prepare a human rights (stand-alone or as part of the social impact assessment) and environmental impact assessment that covers internationally recognised human rights as a reference point and draw an action plan to address issues identified. The results should be translated into a language that is understandable for the local population.
- Take an obligation to conduct human rights impact assessment in general or at regular intervals.
- Engage in stakeholder dialogue and engagement with the local communities to ensure communication and develop trusted and effective complaints/notification/grievance procedures that meet the UNGP 31 criteria.

The company should do the following now:

- The Environmental Impact Assessment (EIA) plan should be translated into Azerbaijani language and presented to ensure that all relevant stakeholders are able to understand and provide feedback on the proposed project.
- Another round of consultations should be conducted, specifically targeting the majority of the village population, to gather their concerns and incorporate them into the decision-making process. This will help ensure that the project is aligned with the needs and priorities of the local community and, indeed, is compliant with the UNGPs.
- Based on the consultations, a new action plan should be created that addresses all major concerns of the local population, including socio-economic issues such as water supply systems, gasification in the village, and employment opportunities for the local population. This will help ensure that the project not only minimises its environmental impact but also maximises its positive socio-economic impacts on the local community.
- The impact assessment document must include provisions for compensating the population in case of damage to their rights to health and livelihood resulting from the mining activities.
- The impact assessment should also include an analysis of the risks associated with the potential destruction of cultural heritage due to the mining activities, as well as potential mitigating measures to address these risks.

The case of RMG's mining operations in Mushevani highlights the importance of respecting and protecting human rights in business operations. Despite complaints and concerns raised by the local community regarding language barriers, lack of meaningful participation, and potential adverse impacts on their health, livelihood, and cultural heritage, RMG was granted a permit for mining.

This case emphasises the need for companies to conduct human rights due diligence, engage in meaningful stakeholder dialogue, and respect the right to free, prior, and informed consent of local communities. It also underscores the importance of holding companies accountable for their human rights impacts and providing effective remedies for affected communities.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

### UN Mechanisms

- Submitting the information to the Working Group on Business and Human Rights as well as UN treaty bodies mandated to accept individual complaints
- UN Human Rights Council Complaint Procedure
- UN Special Rapporteur on minority issues
- UN Special Rapporteur on Human Rights and the Environment
- UN Special Rapporteur in the field of cultural rights
- Aarhus Convention Compliance Committee
- NGOs can send shadow reports to treaty bodies and UPR in order to bring the case to the attention of a broader audience and exert pressure on state authorities.

#### Regional Mechanisms (Council of Europe)

- Submitting a case to the European Court of Human Rights once all judicial measures in Georgia are exhausted
- Collective complaints procedure under The European Committee of Social Rights (ECSR)
- Advisory committee under the Framework Convention for the Protection of National Minorities in Europe.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

### **NATIONAL LEGISLATION**

- Constitution of Georgia (Articles 10, 11, 19, and 29) that includes the right to life, right to equality, right to property, and right to environmental protection
- The Law of Georgia on Environmental Protection of 1996
- Law of Georgia environmental assessment code
- Law of Georgia on the system of protected areas

### **INTERNATIONAL LAW AND STANDARDS**

- The European Convention on Human Rights (ECHR)
- International Covenant on Civil and Political Rights (ICESCR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Framework Convention on the Protection of National Minorities (ratified in 2005)
- Association Agreement with EU, which mentions OECD guidelines
- The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Issues
- (Rio) Convention on Biological Diversity, 1996
- UN Guiding Principles on Business and Human Rights (A/HRC/17/31)

### **CASE LAW**

- The case law of the Human Rights Committee under the Covenant (see f.ex. the Lansman cases against Finland).
- Taşkın and Others v Turkey, 2004, §§ 133
- Tătar v Romania, 2009
- Bumbuş v Romania, 2022, §§ 92–102

### **UN DOCUMENTS**

- Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises: ‘Corporate human rights due diligence – emerging practices, challenges and ways forward’, UN Doc. A/73/163.
- UN General Assembly, Indivisibility and interdependence of economic, social, cultural, civil and political rights: resolution / adopted by the General Assembly, 13 December 1985, A/RES/40/114

- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23
- UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2006/48 (3 March 2006)

## CASE STUDY 11.

# MEGA AIRPORT IN TIMES OF CLIMATE CRISIS

**AUTHOR: FRANCISZEK NOWAK**

In November 2017, the Polish Council of Ministers decided to create one of the largest airports in Europe, called the Central Transportation Port (hereinafter: CPK).<sup>1</sup> The airport is set to occupy more than 3 000 hectares of land and ultimately serve 100 million passengers a year. The CPK project includes not only the construction of the airport, but also a network of railroad and automobile roads. Work is to be completed in eight years, which would be a record speed on a European scale.

To implement the project, in 2018 with a dedicated act, the Polish government established Central Transportation Port<sup>2</sup> as a limited liability company owned completely by the state. CPK, being a state-owned enterprise, fuses the roles of the state and business and not only has the duty of business to respect but also the duty of the State to protect human rights<sup>3</sup>. CPK will cooperate with other companies, but it is still unclear which ones.

According to the Supreme Audit Office, CPK does not provide complete and reliable financial information, raising questions given the spending of public money.<sup>4</sup> Baranów city was chosen as the location of the airport, but the will of the local government in relation to the investment was not taken into account.<sup>5</sup> The exact location of the airport has not been indicated yet.

CPK created a Social Dialogue Council, to which residents of Baranów were invited, but not residents of the towns through which train tracks connecting larger cities with the airport are to be routed. The public consultations were held in relation to the route of the railroads, but the forms provided to residents did not allow them to express their total opposition to the construction of the train tracks, but only to choose one of the options that CPK considers possible. Residents who choose not to sell their homes will be forcibly expropriated with compensation that is unlikely to enable them to start living elsewhere at the same level.<sup>6</sup>

Inhabitants of villages that will be affected by the CPK speak of the destruction of entire villages, the deprivation of homes for which loans are still unpaid, and some of them have to receive psychological

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1 Resolution of the Council of Ministers of November 2017 on the adoption of the Investment Preparation and Implementation Concept: Solidarity Airport – Central Transport Hub for the Republic of Poland, [https://www.gov.pl/static/mi\\_arch/files/0/1798278/CPKengver.pdf](https://www.gov.pl/static/mi_arch/files/0/1798278/CPKengver.pdf), (accessed 19 February 2023).

2 Ustawa z dnia 10 maja 2018 r. o Centralnym Porcie Komunikacyjnym (t.j. Dz. U. z 2021 r. poz. 1354 z późn. zm.).

3 OECD, 'OECD Guidelines on Corporate Governance of State-Owned Enterprises', 2015 Edition, OECD Publishing, Paris, <https://doi.org/10.1787/9789264244160-en>, (accessed 19 February 2023).

4 Najwyższa Izba Kontroli, 'Centralny Port Komunikacyjny – czy to się może udać?', 2022, <https://www.nik.gov.pl/aktualnosci/centralny-port-komunikacyjny-czy-to-sie-moze-udac.html>, (accessed 19 February 2023).

5 Resolution of the Council of Ministers..., p. 58.

6 Domiporta, 'Ciekawe, czy księdza odważą się wywłaszczyć' – mieszkańcy Baranowa nie chcą oddawać swoich działek pod CPK', 2020, <https://www.domiporta.pl/informacje/a/ciekawe-czy-ksiedza-odwaza-sie-wywlaszczyc-mieszkancy-baranowa-nie-chca-oddawac-swoich-dzialek-pod-3954>, (accessed 19 February 2023).

help. Investments in Baranów not related to the airport have been stopped leaving inhabitants in a permanent state of waiting and uncertainty. The above circumstances have led to many public protests and the adoption of official resolutions by local governments opposing the investment.<sup>7</sup> In 2022, a law was passed extensively increasing CPK's powers, allowing it, among other things, to carry out expropriations.<sup>8</sup> According to the Ombudsman, the law may violate the right to property and the principle of just compensation for expropriation as well as other values protected by the Polish Constitution.<sup>9</sup> Negative views towards the investment were also expressed by NGOs<sup>10</sup> and citizens, and towards the manner of its realisation by the Supreme Audit Office.

CPK aims to develop a 'climate-neutral airport' but 'climate-neutrality' will not include flight operations accounting for more than 90% of all the investment's emissions.<sup>11</sup> Moreover, even if CPK had plans or goals in relation to plane emissions, they still would be highly hazardous since even in the opinion of the International Air Transport Association (IATA) is that it is impossible to completely eliminate aviation emissions at source.<sup>12</sup> CPK will 'only' provide an infrastructure for aviation operations but according to a report of the Special Rapporteur of the UN on Human Rights and the Environment, a business's responsibility in relation to climate change is to reduce greenhouse gas emissions from their own activities and their subsidiaries and their products and services.<sup>13</sup> Therefore, business responsibility in relation to airport construction cannot be limited only to the airport's building but also to the services it enables.

Additionally, the new airport is not only expected to take over flights from other airports, but seeks to create new, non-existent air routes and serve passenger volumes that would be impossible without the new airport with the goal to significantly increase air traffic in Poland.<sup>14</sup> Therefore, the airport will increase Polish emissions, which will make counteracting the climate crisis more difficult. The CPK already violates the human rights of local residents by the way it is being delivered, but because of its representation of the aviation sector, according to available knowledge, it will violate human rights of a virtually unlimited number of people in the future by its contribution to the climate crisis.

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7 Gmina Mikołów, 'Koleje CPK w Mikołowie', 2020, <https://mikolow.eu/koleje-cpk/> (accessed 19 February 2023).

80 Money.pl, 'Sejm uchwalił ustawę dot. usprawnienia procesu inwestycyjnego Centralnego Portu Komunikacyjnego', 2022, <https://www.money.pl/gospodarka/sejm-uchwalil-ustawe-dot-usprawnienia-procesu-inwestycyjnego-centralnego-portu-komunikacyjnego-6793136402574176a.html> (accessed 19 February 2023).

90 Rzecznik Praw Obywatelskich, 'Nowe zasady ustalania odszkodowań za wywłaszczenie nieruchomości na potrzeby Centralnego Portu Komunikacyjnego. Uwagi RPO dla Senatu', 2022, <https://bip.brpo.gov.pl/pl/content/rpo-senat-uwagi-odszkodowania-wywłaszczenie-cpk> (accessed 19 February 2023).

10 K.Guzek, 'Megalotnisko sposobem na kryzys? Nie tędy droga', 2020, <https://www.greenpeace.org/poland/aktualnosci/27775/megalotnisko-sposobem-na-kryzys-nie-tedy-droga/> (accessed 19 February 2023).

11 K. Majczyk, 'CPK w projekcie SMART AIRPORTS. Dofinansowania dla zielonej energii i ograniczenia emisji CO<sub>2</sub>', 2020, <https://www.cpk.pl/pl/aktualnosci-2/cpk-w-projekcie-smart-airports-dofinansowanie-dla-zielonej-energii-i-ograniczenia-emisji-co2> (accessed 19 February 2023).

12 S. Ellerbeck, 'The aviation sector wants to reach net zero by 2050. How will it do it?', 2022, <https://www.weforum.org/agenda/2022/12/aviation-net-zero-emissions> (accessed 19 February 2023).

13 UN Human Rights Council, Special Rapporteur on Human Rights and the Environment, 'Safe Climate Report', 2016, <https://www.ohchr.org/en/special-procedures/sr-environment/safe-climate-report#:~:text=Conclusions%20of%20the%20report,human%20life%20and%20well-being> (accessed February 23, 2023).

14 CPK, 'Prognoza IATA dla CPK: 40 mln przepustowości w pierwszym roku', 2022, <https://www.cpk.pl/pl/aktualnosci-2/prognozy-iata-dla-cpk-40-mln-przepustowosci-w-pierwszym-roku> (accessed: 8 April 2023).

## 1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?

Rights-holders:

- Inhabitants of Baranów and neighbouring cities.

If the project goes ahead: also workers and other groups, and people affected by climate change to which CPK will contribute with increased emissions.

Stakeholders:

- NGOs trying to protect the environment and the rights and interests of the inhabitants of Baranów and neighbouring cities
- Local authorities
- Inhabitants of the Global South.

## 2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?

The air-traffic sector relies almost completely on fossil fuels, and is a sector which, if not transformed quickly enough, will threaten almost all human rights. It does this through its contribution to the climate crisis since it is projected to become the sector responsible for more transport-related emissions.<sup>15</sup> Hence, this investment, by its very nature, will contribute to increased emissions and thus climate change. Such large-scale projects are also intrinsically linked with the need to evict and relocate people living there. Additionally, the speed with which the project will be executed is likely to increase the probability of the occurrence of health and safety risks. Finally, the project timelines undermine consultation with communities.

## 3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED

Rights of the inhabitants of the city of Baranów and neighbouring cities affected:

- the right to privacy and right to property – inhabitants are uncertain due to a lack of clear decision as to which property will be expropriated, as well as the prospect of the project affecting the value of properties – which no one wants to buy;
- the right to adequate standards of living – due to the lack of final decisions vis-à-vis the location of the airport, the investment processes in the region have been halted, with the result that living standards for residents are not being improved and their property values are falling despite the failure to initiate large-scale expropriations;<sup>16</sup>

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<sup>15</sup> M. Istel, 'Horata broni samolotow i mowi o 'paru procentach emisji'. A co to znaczy?', 2023, <https://konkret24.tvn24.pl/nauka/emisja-co2-horala-broni-samolotow-i-mowi-o-paru-procentach-emisji-a-co-to-znaczy-6833444> (accessed 8 April 2023).

<sup>16</sup> Prawo.pl, 'Wywłaszczenia pod centralny port komunikacyjny', 2020 <https://www.prawo.pl/biznes/wywlaszczeni-pod-centralny-port-komunikacyjny,513345.html> (accessed 19 February 2023), Domiporta, "Ciekawe, czy księdza odważą się wywłaszczyć" – mieszkańcy Baranowa nie chcą oddawać swoich działek pod CPK, 2020, <https://www.domiporta.pl/informacje/a/ciekawe-czy-ksiedza-odwaza-sie-wywlaszczyc-mieszkanicy-baranowa-nie-chca-oddawac-swoich-dzialek-pod-3954> (accessed 19 February 2023).

- the right to health – inhabitants suffer from anxiety, depression, and other health issues due to the uncertainty of the situation.<sup>17</sup>

Rights of workers that will be involved in the project at risk:

- labour rights – due to the planned very short time for the CPK investment execution, there is a potential risk that the CPK will put too much pressure on workers to finish the construction very fast.

Based on the Special Rapporteur of the UN's report on who will be affected by climate change to which the CPK will contribute, the rights at risk of inhabitants of the Global South are:

- the right to life;
- the right to health;
- the right to food;
- the right to water and sanitation;
- the right to a healthy environment;
- the right to an adequate standard of living;
- the right to housing;
- the right to property;
- the right to self-determination;
- the right to development and culture.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

In Poland, for the past eight years the principle of the rule of law has been violated in multiple ways, a fact acknowledged inter alia in the European Court of Justice (ECJ) rulings.<sup>18</sup> With CPK being an SOE, it is unlikely that its actions would be successfully challenged in courts and the public authorities most likely will ignore or change legal provisions creating obstacles to the project (a similar situation happened in the case of wall construction in the Białowieża forest).<sup>19</sup>

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

Before the project was started, the company should have consulted residents about the location of the airport before deciding to build it in Baranów and should have developed a plan of action that would have addressed the concerns of those (potentially) affected and minimised the negative impact on their rights.

<sup>17</sup> S. Żyśko, 'Zbudowane na krzywdzie, władza wysiedla ludzi pod CPK', <https://www.tygodnikpowszechny.pl/zbudowane-na-krzywdzie-wladza-wysiedla-ludzi-przez-cpk-178333> (accessed 8 April 2023)

<sup>18</sup> Judgment of the Court (Grand Chamber) of 15 July 2021, C-791/19, ECLI:EU:C:2021:565, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62019CJ0791> (accessed 8 April 2023)

<sup>19</sup> P. Wroński, 'Mur na granicy polsko-białoruskiej bez przetargu, by nie opóźnić inwestycji', 2021, <https://wyborcza.pl/7,75398,27767588,mur-na-granicy-polsko-bialoruskiej-bez-przetargu-by-nie-opozniac.html> (accessed 8 April 2023)



The residents threatened with displacement by the construction of the railway tracks should have been invited to the Social Dialogue Council as well. Additionally, residents of the areas through which the train tracks are to be routed should also have been ensured real engagement/participation in the consultations and the opportunity to voice their objections, not just choose from a number of unacceptable options.

At this stage of the life of the project, the company should carry out a human rights impact assessment of its activities and develop – in dialogue with (potentially) affected rights-holders – a corrective action plan and undertake remedy efforts.

If the investment is to go ahead, it is important to establish the exact location of the airport and the train tracks as soon as possible. This will prevent prolonging the current state of uncertainty that has resulted in a total lack of investment in the region and decreasing property value, as well as the negative impact on the mental health of the rights-holders. It is also important to engage in dialogue to the maximum extent with all affected people via the Social Dialogue Council or another effective format.

Additionally, expropriations should be carried out in a manner that enables rights-holders to start a new life elsewhere. Currently, CPK has been authorised to carry out expropriations under unfavourable conditions, in a way that does not provide sufficient funds to allow the purchase of a similar house or the construction of a new house in a different location. The average estimates are around PLN 100–140 000, which – for comparison – is hardly sufficient to purchase even half of a one-room flat in Warsaw.

The CPK should also adopt credible targets relative to making airport infrastructure available only to zero-emission aircraft. Given that all anthropogenic emissions should be decreasing now, the goal for new investments should be zero emissions now, not in 10 or 20 years. Adopting targets by the CPK to achieve zero emissions in, for instance, 2050 would not be satisfactory as in the period in between, it would continue to contribute to the negative impact on human rights of those affected by climate change.

Taking advantage of the fact that groundwork has not begun, it would be preferable to abandon the idea of building an airport and remedy the negative impacts that have occurred so far.

Instead of the CPK, investment of public funds could go into the railway network to provide better connections between smaller towns, villages and cities. This would help decrease transport exclusion and contribute to improving access to work opportunities, access to health care, and other social services.

In the era of the climate crisis, certain economic activities should not be undertaken to not contribute to the irreversible changes in nature that will permanently adversely affect humans and human rights, including the right to life.

If it is decided to undertake projects that may be harmful to the climate and thus to people, additional care must be taken to ensure that the project does not worsen the situation. However, it is important to prioritise those negative impacts on people and their enjoyment of human rights that have already materialised and deal with the most immediate risks first. In the case of state-owned

enterprises, expectations to adhere to international human rights standards being placed on these particular entities are higher than on privately-owned companies.<sup>20</sup>

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

With regard to the reduction in the value of the property, the CPK could be sued under the Civil Code, which provides for ex-delicto liability. However, as it is the state that authorised and obliged the CPK to undertake the project, there is a risk – given the strong political influence of the politicians on the judiciary, including the Constitutional Tribunal, and the fact confirmed by the ECJ, that the rule of law is compromised – that the question of the legality of the expropriations and fair compensation will not be handled in an unbiased manner by the court.

While the expropriation will be carried out in line with the law adopted at the national level, any efforts by the affected right-holders to challenge the compatibility of that law with the constitution are highly unlikely to result in a ruling by the Constitutional Tribunal that would be unfavourable to the government project. If so, the path will be open to filing a complaint with the European Court of Human Rights under Article 34 of the European Convention of Human Rights, arguing that the law adopted by Poland does not meet human rights standards.

When it comes to the issue of the climate crisis, the company's behaviour can be seen both as its own business activity and through the prism of the implementation of the government project, representing the state. Regarding the business activity of CPK, the company can be sued according to civil procedure based on environmental law prohibiting causing an unlawful impact on the environment. An unlawful impact can be understood as being contrary to the law or to the principles of social intercourse.<sup>21</sup>

The principles of social intercourses can be interpreted in a similar way as the unwritten standard of care laid down in the Dutch Civil Code, which means that acting in conflict with what is generally accepted according to unwritten law is unlawful. The Dutch court in *Milieudefensie et al. v Royal Dutch Shell plc.* held that the concept of an unwritten standard of care includes obligations arising from the UN Guiding Principles, which set a universally accepted standard of conduct by businesses with respect to human rights.<sup>22</sup> Additionally, it would be potentially possible to sue CPK because of its unlawful activity and demand compliance with the Paris Agreement while pursuing its activity.

It would also be possible to sue the government under civil procedure for pursuing the construction of an airport that will exacerbate the climate crisis – with the core demand being the abandonment

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20 C. Wee, 'Regulating the Human Rights Impact of State-owned Enterprises: Tendencies of Corporate Accountability and State Responsibility', 2008, <https://media.business-humanrights.org/media/documents/files/reports-and-materials/State-owned-enterprises-Oct-08.pdf> (accessed 8 April 2023).

21 G. Karaszewski [in:] *Kodeks cywilny. Komentarz aktualizowany*, red. J. Ciszewski, P. Nazaruk, LEX/el. 2022, art. 415.

22 *Milieudefensie v. Royal Dutch Shell PLC*, [2021], C/09/571932 / HA ZA 19-379 [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526\\_8918\\_judgment-1.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210526_8918_judgment-1.pdf) 4.4.11. (accessed 19 February 2023).

of the project or ensuring that the project will not make Poland unable to meet its Paris Agreements goals. One may use similar legal reasoning that was used in the *Urgenda Foundation v State of the Netherlands*,<sup>23</sup> where it was stated that the government has an obligation under the ECHR to protect human rights from the real threat of climate change.

## 7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)<sup>24</sup>
- Charter of Fundamental Rights of the European Union, 2016/C 202/02<sup>25</sup>
- Constitution of the Republic of Poland of 2 April 1997 [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.]<sup>26</sup>
- Paris Agreement, L 282/4<sup>27</sup>
- Law of 10 May 2018 on the Central Transportation Port [Ustawa z dnia 10 maja 2018 r. o Centralnym Porcie Komunikacyjnym]<sup>28</sup>
- Law of 22 July 2022 on the improvement of the investment process of the Central Transportation Port [Ustawa z dnia 22 lipca 2022 r. o usprawnieniu procesu inwestycyjnego Centralnego Portu Komunikacyjnego]<sup>29</sup>
- Law of April 23, 1964 Civil Code [Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny]<sup>30</sup>
- Law of 27 April 2001. Environmental Protection Law [Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska]<sup>31</sup>
- Universal Declaration of Human Rights,<sup>32</sup> 1948
- Council of Ministers of the Republic of Poland, ‘Resolution of the Council of Ministers of November 2017 on the adoption of the Investment Preparation and Implementation Concept: Solidarity Airport – Central Transport Hub for the Republic of Poland’, 2017

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23 The Global Climate Change Litigation database, *Urgenda Foundation v. State of the Netherlands*, [2020], 19/00135, <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/> (accessed 19 February 2023).

24 Convention for the Protection of Human Rights and Fundamental Freedoms, <https://www.unhcr.org/4d93501a9.pdf>.

25 Charter of Fundamental Rights of the European Union, 2016/C 202/02, [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf) (accessed 8 April 2023).

26 Constitution of the Republic of Poland of 2 April 1997 [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.], <https://www.sejm.gov.pl/prawo/konst/polski/kon1.htm>;

27 Paris Agreement, L 282/4, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2016:282:FULL&from=HR> (accessed 8 April 2023).

28 Law of 10 May 2018 on the Central Transportation Port [Ustawa z dnia 10 maja 2018 r. o Centralnym Porcie Komunikacyjnym], <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180001089> (accessed 8 April 2023).

29 Law of 22 July 2022 on the improvement of the investment process of the Central Transportation Port [Ustawa z dnia 22 lipca 2022 r. o usprawnieniu procesu inwestycyjnego Centralnego Portu Komunikacyjnego], <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220001846> (accessed 8 April 2023).

30 Law of April 23, 1964 Civil Code [Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny], <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19640160093> (accessed 8 April 2023).

31 Law of 27 April 2001. Environmental Protection Law [Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska], <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20010620627> (accessed 8 April 2023).

32 Universal Declaration of Human Rights, 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 8 April 2023).

## CASE STUDY 12.

# FAILING TO RESETTLE THE CITIZENS OF BELI BRYAG

**AUTHOR: OLYA PENEVA**

Maritsa East EAD is a national mining company and the largest producer of lignite coal in Bulgaria. It contributes to 45% of the gross power production in the region. In 2005, the company was granted a concession for coal exploration in the region of Stara Zagora. Known as the Maritsa Iztok Complex, it is the largest energy complex in South-eastern Europe. The planned mining activities have significantly affected several villages in the region, including the former village (now the settlement) of Beli Bryag. The case presents a failure to provide an adequate Resettlement Action Plan and compensation for the residents.

In 2005, the local municipality abandoned the village, including the provision of medical support for the residents. Despite numerous attempts to resolve the dispute since 2007, the remaining residents have been exposed to a range of human rights violations by the company and the state. It appears that the company was treating the sale of the land and houses as ‘an ordinary sale of property’, whereas for the remaining residents, it was a forced eviction from their homes and land.<sup>1</sup>

In 2016, the European Bank for Regional Development (EBRD) approved a grant for the purchase of excavators needed for the expansion of the mine.<sup>2</sup> This project was unclear to the residents as they never saw the project summary. It remains unclear why the EBRD failed to comply with its Environmental and Social Policy 2014 during the grant’s approval process.

If an adequate Resettlement Action Plan had been in place, the people would have been resettled and compensated which would have minimised the negative effects of the resettlement while considering the socioeconomic factors and providing appropriate compensation.

If the conflict had been resolved earlier, the people would not have suffered such harm as exposure to pollution and harmful substances, environmental degradation, psychological and emotional harm, health deterioration, and exposure to crime.

The case presents the complex intersection between the operations of a state-owned company in the extractive sector, and the EBRD supporting the company’s expansion that saw a local village destroyed.

The gap in the Bulgarian legislation and the requirements of the EBRD’s policy probably explains the lack of adoption of a Resettlement Action Plan. However, by protecting the energy reserves’ interest, the state is in breach of its human rights obligations under international human rights treaties

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<sup>1</sup> Maritsa East Mines, ‘BEH Bond Issue’, IPAM Case Number 2017/09, <https://www.ebrd.com/work-with-us/projects/ipam/2017/09.html> (accessed 1 February 2023).

<sup>2</sup> EBRD, ‘Grant Approval’, <https://www.ebrd.com/work-with-us/projects/ipam/2021/03.html> (accessed 1 February 2023).

it has ratified. The case raises a concerning question about the process of just transition. Vulnerable rights-holders have to be protected by the state, however, the reality reveals the contrary – a lack of transparency, accountability, and breach of human rights obligations by the state.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- The residents of Beli Bryag who present different vulnerabilities, including old age, chronic illness, mental illness, and low socioeconomic status
- Mine workers.<sup>3</sup>

Stakeholders:

- KNSB, the trade union representing the mine workers who may also reside in Beli Bryag
- Bankswatch and For the Earth are the NGOs representing the residents of Beli Bryag
- The state as the owner of the company
- The company board and management of Maritsa Iztok EAD
- The European Bank for Reconstruction and Development
- The local municipality of Radnevo.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

The execution of the project relies on private land which is occupied by vulnerable people – elderly residents and families without the necessary means to move away from the land.<sup>4</sup> The main risks to human rights enjoyment concern the right to own land because the process was conducted without adequate consultation, compensation, and/or relocation. The risk extends to the right to earn a living – by contaminating the agricultural land adjacent to the houses, the elderly who receive a very low pension are unable to earn an additional income and produce food to sustain their needs.

## **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

Elderly residents' individual human rights at risk of being adversely affected are:

- the right to own land is an individual right under Article 17 of the Universal Declaration of Human Rights (UDHR);
- the right to property under Protocol 1 of the European Convention on Human Rights (ECHR);

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<sup>3</sup> Maritsa Iztok, 'Resettlement Action Plan MME', 2018, [https://www.marica-iztok.com/cms/user/files/infocenter/RAP%20MME\\_FINAL\\_ENG\\_25%20May%202018\\_%203.pdf](https://www.marica-iztok.com/cms/user/files/infocenter/RAP%20MME_FINAL_ENG_25%20May%202018_%203.pdf) (accessed 1 February 2023).

<sup>4</sup> Shift, 'Business Model Red Flags', <https://shiftproject.org/resource/business-model-red-flags/menu-of-red-flags/> (accessed 1 February 2023).

- the loss of the adjacent land and agricultural land is an economic loss which is a violation of the right to an adequate standard of living under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to work under Article 23 of the UDHR;
- the right to cultural heritage can also be affected as the expansion of the mining project requires the removal of the local cemetery.

All residents are exposed to pollution, noise, and respiratory problems and they do not have access to a doctor or a medical centre in the village, violating:

- the right to health under Article 12 of the ICESCR.

The environmental pollution from the mining activities affects the right to a healthy environment, including:

- the right to safe drinking water and sanitation under Article 11 ICESCR).

The abandoned buildings purchased by the company have become subject to thefts and the destruction of building materials, increasing the risks of injuries and safety of people, thus affecting:

- the right to life and security of people under Article 3 of the UDHR;
- the right to health under Article 12 of the ICESCR.

The families do not have access to social services such as transport, infrastructure, shops, health services, childcare and schools. The human rights in violation are:

- the right to family life under Article 8 of the ECHR;
- enjoying the right to peaceful enjoyment of your home under Article 1 of the ECHR;
- the right to education under Articles 13 and 14 of the ICESCR;
- the right to health and the impact on mental health due to ongoing stress under Article 12 of the ICESCR.

The families are unable to work on their land, violating:

- the right to food under Article 11.1 of the ICESCR.

In addition, people would have limited opportunities to access paid work due to a lack of transportation and travel to their work, impacting:

- the right to work under Article 23 of the UDHR.

The families live with the threat of eviction and loss of private land without procedural transparency or any support from the government or the company; thus it could be argued there is:

- an interference with a person's personal life under Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
- an impact to the right to health, namely mental health, due to increased anxiety and depression;
- in rare cases, risks related to suicide or self-harm under Article 12 of the ICESCR.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The salient human rights risk relevant to the extractive industries and present here are human health risks, associated with:

- air pollution and environmental degradation;
- agricultural land degradation;
- poor water quality;
- vibrations and noise pollution;
- hazardous materials;
- unemployment.

The environmental risks are associated with pollution and degradation of agricultural land which becomes unusable are:

- the risk to the quality of water;
- noise;
- air quality;
- infrastructure;
- use of heavy machinery;
- the use of hazardous materials.<sup>5</sup>

Along with the advancement of mining activities, it remains unclear whether the legal requirements for 'sanitation zones' around industrial sites have been met.<sup>6</sup>

The economic and social disruptions comprise of loss of homes and basic and additional income for many families who were dependent on vegetable production and were able to earn additional income by selling it.

The lack of municipality services and other social services leads to social disruption and zero support for the vulnerable residents.

The land acquisition process has been delayed and relies on the existing legislative gaps that serve the best interest of the state. Some examples of the gaps between the local legislation and the EBRD requirements are: no requirement for a Resettlement Action Plan; the valuation process not taking into account the full replacement cost; lack of clear definition of vulnerable people; and assessment of their needs.<sup>7</sup>

Cumulative impacts presented by the polluted environment are: questionable land acquisition practices; withdrawal from essential services; delay in the negotiation process; lack of transparency; and clear disregard for the vulnerabilities of the people.

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5 BSR, '10 Human Rights Priorities for the Extractive Sector', <https://www.bsr.org/en/primers/10-human-rights-priorities-for-the-extractives-sector#risk> (accessed 1 February 2023).

6 *Dimitar Yordanou v Bulgaria*, Application no. 3401/09 (ECHR, 24 January 2012).

7 Maritsa Iztok, 'Resettlement Action Plan MME', *op. cit.*

The compensation offered is disproportional to the harm suffered and it explains why people are incapable of relocating because of financial reasons. Due to the different vulnerabilities, people are unable to move away and do not have the necessary means to do it. There is a clear power imbalance that has exacerbated the situation of the people.

## **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

The state of Bulgaria, as the principal owner of the company, is in breach of its international human rights obligations by failing to resettle the citizens of Beli Bryag and violating their human rights, as explained above.

To minimise the adverse impact on the right-holders, the board of Maritsa Iztok EAD should now implement a human rights-based approach throughout the whole business operations, adopt a policy commitment to respect human rights, conduct human rights due diligence, and remediate. This is in accordance with the Principle 15 of the UN's Guiding Principles on Business and Human Rights (UNGPs).

The situation could have been avoided if the company had conducted human rights and environmental due diligence in accordance with UNGP17.

If the company conducts Human Rights & Environmental Due Diligence (HREDD) now it would be able to assess the human rights violations, how to best mitigate their adverse impact, and the environmental impact.

Human rights violations: To mitigate the risks, the company should engage in meaningful discussions with the rights-holders to identify solutions to problems caused, such as:

- transportation that would allow citizens to regularly visit the doctor, purchase medicine and groceries or run other errands;
- psychosocial support – regular visits of a professional to support the citizens;
- establish a grievance channel with clear communication and transparency about the Resettlement plan;
- collaboration with NGOs and trade unions to respond to the right-holders needs’;
- adequate compensation for the harm suffered and loss of income, loss of land, the cost for relocation support;
- a clear plan on how the cemetery will be relocated.

Environmental impact: The company should ensure that until the resettlement is completed, they conduct regular Environmental Impact Assessments and ensure that the residents are not exposed to additional noise and dust and pollution and that they have access to clean water.



The company should make the necessary arrangements to ensure that the residents have adequate sanitation and water. Once the residents are relocated, it is important to ensure that they are settling well and, if needed, they are supported with employment opportunities or training.

They could also be facing health problems, social anxiety, and difficulty adjusting thus exacerbating their mental health conditions; therefore, it is important to provide them with adequate social support for at least 12 months after the resettlement or more, depending on each case.

To sum up: The failure to resettle the residents of Beli Bryag for more than 15 years has resulted in gross human rights violations by the state. The company is fully aware of the local legislation and EBRD requirements, yet has not taken action to address these gaps that are adversely affecting the residents.

The rights-holders have been seeking a reasonable solution to participate in meaningful discussions with the company to engage in a fair resettlement process that provides just compensation and relocation of the cemetery. Instead of the current lack of transparency and limited communication, the company can engage in more meaningful dialogues with the rights-holders. Both the company and the state could engage in responsible business conduct by engaging with everyone, assessing their needs, providing fair and just compensation, relocating the cemetery, and complying with their obligations to respect human rights.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

The compensation could be sought under the European Convention on Human Rights, where the decision of *Lopez Ostra v Spain* establishes that environmental pollution impacts the private and family life of the individuals.

In the case *Dimitar Yordanou v Bulgaria*, the Court found violations under Article 6 and Article 1 Protocol 1,<sup>8</sup> stating that the mining activities caused damage to the property which resulted in interference of public authority with the peaceful enjoyment of the land. The Independent Project Accountability Mechanism of the EBRD is the mechanism invoked to establish whether the residents have suffered harm and whether the EBRD complied with the ESP policy in 2021.<sup>9</sup>

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

### **BULGARIAN LEGISLATION**

- Concession Law (SG no.36/2006)
- Constitution of Bulgaria No. 56/1991 Article 17
- Energy Law (SG no. 107/2003)

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<sup>8</sup> *Dimitar Yordanou v Bulgaria*, Application no. 3401/09 (ECHR, 24 January 2012), *op. cit.*

<sup>9</sup> EBRD, *Maritsa East Mines (BEH Bond Issue)*, IPAM Case Number 2017/09, <https://www.ebrd.com/work-with-us/projects/ipam/2017/09.html> (accessed 1 February 2023).

- Environmental Protection Law (SG no. 91/2002)
- Ordinance No. 7 of 25 May 1992 concerning the health and safety requirements for the protection of health in residential areas
- Ordinance on the procedure for determining agricultural lands prices
- Ownership and Use of Agricultural Land Act (SG no. 17/1991)
- Public Health Act (see paragraph 27 below) failure to create sanitation zones around industrial installations which represented an environmental hazard
- Spatial Development Law (SG no. 1/2001)
- State Property Act of Bulgaria (SG no. 44/1996)
- Underground Resources Law (SG no. 23/1999)

## **INTERNATIONAL REGULATIONS**

- Council of Europe Treaty Series, no. 5 (1950), Convention for the Protection of Human Rights and Fundamental Freedoms (better known as the European Convention on Human Rights)
- Dimitar Yordanov v Bulgaria, Application no. 3401/09. European Court of Human Rights. 24 January 2012
- Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>10</sup>
- Directive 2003/35/EC of the European Parliament and of the Council, Official Journal L146, 10 June 2003<sup>11</sup>
- United Nations, International Covenant on Civil and Political Rights, Treaty Series. Originally published 1966, entered into force 3 January 1976
- United Nations, Universal Declaration of Human Rights, Adopted 10 December 1948
- OHCHR Special Procedures<sup>12</sup>
- United Nations, United Nations General Assembly. International Covenant on Economic, Social and Cultural Rights. 16 December 1966. United Nations, Treaty Series, Vol. 993<sup>13</sup>
- United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, Remedy’ Framework (UNGPs) (2011) HR/PUB/11/04<sup>14</sup>
- UNECE Convention on Access to Information, Public Participation in Decision-making signed on 25 June 1998

## **ARTICLES AND WEBSITES**

- BSR, ‘10 Human Rights Priorities for the Extractive Sector’<sup>15</sup>
- EBRD, ‘Grant Approval’<sup>16</sup>

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0099> (accessed 1 Feb 2023)

<sup>11</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC_1&format=PDF) (accessed 1 February 2023)

<sup>12</sup> <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications> (accessed 1 February 2023)

<sup>13</sup> <https://digitallibrary.un.org/record/625292?ln=en> (accessed 1 February 2023)

<sup>14</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>15</sup> <https://www.bsr.org/en/primers/10-human-rights-priorities-for-the-extractives-sector#risk> (accessed 1 February 2023)

<sup>16</sup> <https://www.ebrd.com/work-with-us/projects/ipam/2021/03.html> (accessed 1 February 2023)

- EBRD, ‘Independent Project Accountability Mechanism EBRD’<sup>17</sup>
- EBRD, ‘Maritsa East Mines’<sup>18</sup>
- EBRD, Maritsa East Mines (BEH Bond Issue), IPAM Case Number 2017/09<sup>19</sup>
- Maritsa Iztok Mines<sup>20</sup>
- Maritsa Iztok, ‘Resettlement Action Plan MME’. 2018<sup>21</sup>
- OHCHR, ‘What are communications?’<sup>22</sup>
- The United Nations Economic Commission for Europe. ACCC/C/2016/144<sup>23</sup>
- OECD, OECD Investment Policy Review: Bulgaria<sup>24</sup>
- OECD, OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. OECD Publishing, Paris, 2017<sup>25</sup>
- Richell, J, ‘Environmental Procedural Rights before European Courts: Still Searching for a Common Script or Multiplying Avenues of Protection?’ Review of European Administrative Law 1, no. 1 (2007): 1–16<sup>26</sup>
- Shift, ‘Business Model Red Flags’<sup>27</sup>

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17 <https://www.ebrd.com/project-finance/independent-project-accountability-mechanism/about.html> (accessed 1 February 2023)

18 <https://www.ebrd.com/work-with-us/projects/ipam/2021/03.html> (accessed 1 February 2023)

19 <https://www.ebrd.com/work-with-us/projects/ipam/2017/09.html> (accessed 1 February 2023)

20 <https://www.marica-iztok.com/en/page/corporate-responsibility-4-1.html>, (accessed 1 February 2023)

21 [https://www.marica-iztok.com/cms/user/files/infocenter/RAP%20MME\\_FINAL\\_ENG\\_25%20May%202018\\_%203.pdf](https://www.marica-iztok.com/cms/user/files/infocenter/RAP%20MME_FINAL_ENG_25%20May%202018_%203.pdf) (accessed 1 February 2023)

22 <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications> (accessed 1 February 2023)

23 [https://unece.org/env/pp/cc/accc.c.2016.144\\_bulgaria](https://unece.org/env/pp/cc/accc.c.2016.144_bulgaria) (accessed 1 February 2023)

24 <https://www.oecd-ilibrary.org/sites/e8d07030-en/index.html?itemId=/content/component/e8d07030-en#section-d1e17764> (accessed 1 February 2023)

25 <https://doi.org/10.1787/9789264252462-en> (accessed 1 February 2023)

26 <https://www.ingentaconnect.com/content/plp/real/2007/00000001/a00101s1/art00001;jsessionid=c7sd5d9sr3mp2.x-ic-live-03> (accessed 1 February 2023)

27 <https://shiftproject.org/resource/business-model-red-flags/menu-of-red-flags/> (accessed 1 February 2023)

## CASE STUDY 13.

# UKRAINE – BORZHAVA WINDMILLS: JUST TRANSITION OR JUST A DISASTER?

**AUTHOR: VALERIYA POIEDYNOK**

The case deals with the proposed construction of a 120 MW wind power plant (WPP) comprising 34 wind turbines on the site named Polonina Borzhava in the Ukrainian Carpathians.

The investor behind the project is the Turkish company Enisolar Energy (hereinafter referred to as Enisolar), a trade and manufacturing company of renewable energy system components.<sup>1</sup> Enisolar claims to operate worldwide, so it can be described as a multinational company. In 2017, Enisolar signed a memorandum with the regional state administration on a green energy development in the Transcarpathian region. The project developer is a Ukrainian company Atlas Volovets Energy LLC (hereinafter referred to as Atlas). According to the Ukrainian commercial register, not Enisolar but another unknown Turkish company is a founder of Atlas Volovets Energy.<sup>2</sup> Complex ownership structures are rather common practice of doing business in Ukraine and often are created to obscure the corporate links.

For the construction of the WPP, the developer leased land plots that are scattered throughout the whole Borzhava mountain ridge. The creation of supporting infrastructure requires large-scale land and construction works on an area far beyond the leased land plots. The construction was about to start in June 2019.

Polonina Borzhava has been an Emerald Network site (registry number UA0000263) since 2016. The Emerald Network was established under the Bern Convention on the Conservation of European Wildlife and Natural Habitats and includes areas of special conservation interest (ASCI). Borzhava is a natural habitat for 31 species of plants and 26 species of animals listed in the Red Book of Ukraine (2009) and for 96 species of animals protected by international agreements. Cross-border migratory routes of protected birds and bats pass through the Borzhava massif. Borzhava is important in terms of water resources, as numerous small rivers and streams originating there feed the river Tysa, which is a cross-border water artery and an important tributary of Europe's main watercourse, the Danube. It is also a tourist highlight of the region, offering the following activities: tourism, recreation, weekend hikes; trekking, mountain climbing; collecting berries, mushrooms, and herbs; cycling sports; paragliding; and winter sports<sup>3</sup>.

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1 ENISOLAR Energy Solutions; Solar – Wind Power, Engineering, Contracting & E-Mobility, <https://enisolar.com/en/> (all websites last accessed 20 February 2023).

2 Ministry of Justice of Ukraine, Free search, <https://usr.minjust.gov.ua/content/free-search>.

3 K. Derevska, J. Burlachenko, and K. Borysenko, Problema vyboru mist roztashuvannia VES. Pryklad polonyny Borzhava v Ukrainskykh Karpatakh [The problem of selection of wind power plants' locations. The example of Borzhava massif in the Ukrainian Carpathians] Electronic Kyiv-Mohyla Academy Institutional Repository, 2019, p. 321–322, <http://ekmair.ukma.edu.ua/handle/123456789/17283> (in Ukrainian).

The project implementation will cause irreversible changes to the landscape during the construction works (levelling the mountain ridge, digging pits, traversing slopes for road construction, etc.), and on putting the WPP into operation (visual distortion of the landscape, since the wind turbines up to 180m high, installed on a ridge of 1 300–1 500 m above sea level, will be visible for tens and hundreds of km).

The inevitable construction of new roads requires the partial destruction of unique protected forest ecosystems. The activity will lead to the mechanical destruction of the wildlife and natural habitats protected by the Bern Convention.

The Transcarpathian region is in 2nd place in terms of landslide hazard in Ukraine. Dislocation of rocks during the land and construction works can lead to landslides and collapses.

Interfering with the integrity of the soil during the construction will cause a disruption of the hydrological and geochemical regime of local rivers, namely, their dehydration, an increase in the mineralisation of groundwater, depletion and disappearance of springs, and changes in the groundwater level. At the same time, erosion processes and disruption of vegetation cover in the mountainous area where over 1200 mm of rainfall is observed, posing a threat of floods during heavy rains and snowmelt.<sup>4</sup> This may harm the economy of the surrounding areas and also impair the quality of life of the local residents.

In January 2019, the developer published the Environmental Impact Assessment (EIA) Report on the construction of the WPP, and, in March 2019, obtained a positive final EIA statement from the Department of Ecology of the Transcarpathian regional state administration. This happened despite the fact that stakeholders provided numerous comments and raised a lot of concerns about the irreversible harm to the ecosystem and local economy within the framework of the EIA procedure (a total of 110 pages from citizens, academic organisations, and NGOs). None of them were taken into account by the authorities. Public hearings were held in rooms too small to accommodate all of the interested people (even in a cold and dark corridor in one of the villages) and the opponents of the project had no time to speak.<sup>5</sup>

The environmental NGOs filed several lawsuits and complained to the Standing Committee of the Bern Convention.<sup>6</sup>

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4 On the risks of the project see: K. Derevska, J. Burlachenko, and K. Borysenko, Problema vyboru mist roztashuvania VES, p. 322–323; K. Borysenko, Khto i chomu mozhe znyshchyty Polonynu Borzhava – odne z naimalovnychishykh mist Ukrainykh Karpat [Who and why can destroy Polonyna Borzhava – one of the most picturesque places of the Ukrainian Carpathians] *Ukrainska Pravda. Zhyttia*, 22.10.2018, <https://life.pravda.com.ua/columns/2018/10/22/233721/>; K. Borysenko, Zelena enerhetyka vs pryroda. Yak vitriaky zmiat unikalnu polonynu Borzhava [Green energy vs nature. How wind turbines will change the unique Polonina Borzhava] *Ukrainska Pravda. Zhyttia*, 7.08.2019, <https://life.pravda.com.ua/travel/2019/08/7/237794/> (all in Ukrainian).

5 Presumed threat to Emerald site 'Polonina Borzhava' (UA0000263) from wind energy development (Ukraine) – Report by the Complainant T-PVS/Files(2019)15, <https://rm.coe.int/other-complaints-presumed-threat-to-emerald-site-polonina-borzhava-ua0/1680925c02>.

6 European Diploma Areas, 'Presumed threat to Emerald site 'Polonina Borzhava' (UA0000263) from wind energy development', [https://www.coe.int/en/web/bern-convention/european-diploma-areas-detail/-/asset\\_publisher/LehiJ1J6p53k/content/presumed-threat-to-emerald-site-polonina-borzhava-ua0000263-from-wind-energy-development?inheritRedirect=false](https://www.coe.int/en/web/bern-convention/european-diploma-areas-detail/-/asset_publisher/LehiJ1J6p53k/content/presumed-threat-to-emerald-site-polonina-borzhava-ua0000263-from-wind-energy-development?inheritRedirect=false)

The Standing Committee, at their 40<sup>th</sup> meeting (30 November – 4 December 2020), expressed its concern at the worrying situation in Ukraine and mandated a mission to take place during 2021, calling on the Ukrainian authorities to not commence any works before the conclusions of the mission were accessed. On 3 December 2020, the Standing Committee recommended cancelling the plans for the development.<sup>7</sup>

The developer emphasises the economic rationale of the project and promotes it as the driver for regional development. The construction hasn't begun so far.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- Local residents in general
- Farmers
- Green tourism operators
- Tourists
- Professional sportspeople.

Stakeholders:

- The broader community
- Investors
- Local and central government
- Environmental scientists
- Civil society organisations.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

According to the Business Model Red Flags,<sup>8</sup> the following risks are inherent in the energy utilities sector.

- Construction or commencement of projects with timelines that do not allow sufficient time for consultation with groups affected by the projects (Red Flag No.3, though in this case, one shall talk not so much about the timeline but about unwillingness to engage with stakeholders).
- Depleting natural resources or public goods such that it undermines access or health (Red Flag No.13). The project implementation will deplete the natural resources of Borzhava and affect public goods like biodiversity, natural ground stability, clean air and water, and scenic beauty.

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<sup>7</sup> Convention on the Conservation of European Wildlife and Natural Habitats, Recommendation No. 213 (2021) of the Standing Committee, <https://rm.coe.int/2021-rec-213e-polonina-borzhava/1680a4c2c4>.

<sup>8</sup> Shift, 'Business Model Red Flags', <https://shiftproject.org/resource/business-model-red-flags/red-flags-about/>

### **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED**

Local residents in general:

- The right to a clean, healthy, and sustainable environment. The project implementation threatens to make the Borzhava ecosystem unsustainable. Landslide and flood hazards, depletion of water resources, massive loss of biodiversity and the resulting decline in services provided by the ecosystem interfere with the enjoyment of a clean, healthy, and sustainable environment and has negative implications, both direct and indirect, for the effective enjoyment of other human rights.<sup>9</sup>
- The right to private and family life (Article 8 of the ECHR). Environmental degradation will worsen life conditions in the area and thus adversely affect the private and family sphere of local residents.
- Access to information, public participation, and access to justice. Right-holders and stakeholders were not consulted effectively, hence consultations were only a tick-box exercise.

Farmers and green tourism operators:

- The right to work, as the project threatens to destroy the main sources of income of local residents who depend on agriculture and tourism.

Erosion, landslide and flood hazards, and the deterioration of water resources may significantly impact local agriculture. In addition, large areas of blueberry plants will be destroyed, which will also affect people from the nearby villages involved in the seasonal picking of blueberries.

Borzhava will also lose its tourist appeal because of the visual distortion of the landscape, discomfort due to flickering shadows, noise, and vibration, and the inaccessibility of the existing tourist trails which coincide with the line of the wind turbines.

Local residents and tourists:

- The rights to life and right to health (potentially). One observes glaciation on Borzhava from November to April. The weight of ice fragments that can fall from wind turbines can reach up to 5 kg. The radius of the dangerous zone of ice debris flying around the WPP in winter amounts to 267 m. The ridge is much narrower, which makes it impossible to relocate tourist routes beyond the dangerous zones.

Tourists and professional sportspeople:

- The right to free development of one's personality (Article 22 of the Universal Declaration of Human Rights, Article 23 of the Constitution of Ukraine).

The natural beauty of Borzhava, its convenient location not far from a railway station, the availability of a cable car, and the uncomplicated terrain attract tourists of all age groups – from families with small children to seniors; organised groups of local schoolchildren also visit frequently.

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<sup>9</sup> UNGA, 'The human right to a clean, healthy and sustainable environment' (A/76/L.75), <https://digitallibrary.un.org/record/3982508?ln=en>

For many people, green tourism activities are an essential part of their personal identity. Borzhava is the site of the Ukrainian Downhill Championship. It is the only mountainous site in Ukraine for performing training flights and holding competitions, including international ones, in paragliding. Other Ukrainian paragliding sites are flat and do not allow athletes to properly prepare for international competitions, which, for the most part, take place in the mountains. The coexistence of wind turbines and paragliding activities in Borzhava is impossible due to the specifics of the Borzhava Ridge topography.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

WPPs are strongly associated with the loss of biodiversity, which the UN links to the right to enjoyment of a clean, healthy and sustainable environment. The specifics of the Borzhava site make the implications for this right more far-reaching, as the whole ecosystem goes under threat. Other rights like the right to private and family life, the right to work, and even the right to life and health also get involved. The risks are directly caused by the developer's activities, so to address them the developer needs to change its own course of action. Alternative sites should be sought where the impact would be much less and would not impinge on an Emerald Network site but would allow a similar contribution to Ukraine's renewable energy targets.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

UNGP 18 (b) states that in order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

In this case, the EIA report prepared by the developer didn't address impacts on human rights. In particular, the report didn't at all consider the modern tourist use of Borzhava, as well as the project's impact on the incomes of the locals. The comments and concerns of the stakeholders, although available, were not taken into account without any reasonable justification.

The situation could have been avoided altogether if the developer had:

- incorporated processes for assessing human rights within the EIA (the EIA procedure itself was not held properly, and the EIA statement was incomplete and lacked data, required by Article 6 of the Law of Ukraine on EIA);
- established productive dialogue between itself, local communities as principal right holders, and stakeholders. Given the high level of public awareness and the presence of active civil society organisations, such a dialogue could have taken the form of a discussion table with broad coverage in the media.



The best solution in this case might be to relocate the project to a different area which is not a protected site and needs a boost in its economic development. To avoid just shifting the problem elsewhere, one should develop the countrywide ‘opportunity maps’ in the first place.

Assuming that the project is nevertheless implemented, the company must apply mitigation measures to reduce adverse effects, in particular, measures aimed at the prevention of destruction of the protected plant and animal species, and at the prevention of landslides and floods. Collaborating with independent experts might help.

Still, to a large extent, the environmental consequences of the project are unpredictable, which precludes effective mitigation. Moreover, some of the adverse impacts are inherent in the project and cannot be avoided or mitigated unless it is relocated to another area, like the loss of tourism and sports value.

Meanwhile, the Ukrainian state did not meet its own duty to protect, as it also ignored voices other than the company’s due to the presumed impacts of the project.

There is a tension between the pressing need of transition to renewable energies and the negative impacts such transition may have on the environment, biodiversity, and human rights, which, in some cases, may devalue its contribution to combating global climate change and adversely affect the image of the entire renewables industry. One shall take a thorough approach to the selection of new WPP locations. In particular, it is necessary to take into account the nature conservation and related human rights concerns. The best solution in this case seems to relocate the project to an area where too many values won’t be compromised.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

There is the case-file system, a monitoring tool based on complaints for possible breaches of the Bern Convention that can be submitted by NGOs or even private citizens.<sup>10</sup> The NGOs successfully used this instrument in the Borzhava case.

There has been extensive litigation over the attempts of the NGOs to strike down the positive EIA statement in Ukrainian courts. On 13 April 2022, the Supreme Court of Ukraine upheld the position of the developer.<sup>11</sup> However, the state prosecutor filed a lawsuit in the interests of the state, challenging the leases of the land plots that allegedly breach the land use laws;<sup>12</sup> the case is still pending.

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<sup>10</sup> COE, ‘Case-files’, <https://www.coe.int/en/web/bern-convention/case-files>.

<sup>11</sup> Judgement of the Supreme Court of 13 April 2022 in Case No260/771/19, <https://reyestr.court.gov.ua/Review/103944039> (in Ukrainian).

<sup>12</sup> Resolution of the Transcarpathian commercial court of 24 January 2023 in Case No 907/801/20, <https://reyestr.court.gov.ua/Review/108580043> (in Ukrainian).

Similar cases can be found in the European Court of Justice jurisprudence. In 2007, the ECJ ordered Poland to immediately suspend several road projects connected to the construction of the Via Baltica highway. The proceedings were initiated by the European Commission because Polish authorities planned a route through several Natura 2000 sites, with serious environmental consequences.<sup>13</sup> Natura 2000 is the EU equivalent of Emerald Network.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

- Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979)
- Recommendation No. 213 (2021) of the Standing Committee, adopted on 3rd December 2021, on the presumed threat to Emerald Network site ‘Polonina Borzhava’ from wind energy development (UA0000263) (Ukraine)
- Law of Ukraine on the environmental impact assessment of 23 May 2017

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<sup>13</sup> Case C-193/07: Action brought on 5 April 2007 — *Commission of the European Communities v Republic of Poland*, OJ C 199, 25.8.2007, p. 14–16.

## CASE STUDY 14.

# LIVESTOCK FARMING IN UKRAINE: LESSONS LEARNED, PROBLEMS, AND CHALLENGES

**AUTHOR: SNIZHANA SHEVCHENKO**

Ukraine's agriculture sector is an important source of livelihood for roughly 13 million Ukrainians.<sup>1</sup> Livestock farming has a unique place in the Ukrainian agriculture sector because it has a dual structure consisting of large-scale export-oriented producers (hereinafter referred to as enterprises or corporations) and small-scale farms<sup>2</sup> (hereinafter referred to as family farms or households). Currently, family farms produce around half the production of livestock,<sup>3</sup> and the other half is produced by enterprises.

It is more beneficial for rural communities to have enterprises in their region to create jobs, develop infrastructure, and enable a local workforce to work locally without the need to look for work in cities. It also fills the local budget with taxes, etc. On the flip side, rural communities struggle to avoid the exploitation of natural resources (e.g., water, land, etc.) by large-scale export-oriented producers, which is frequent in agriculture and is contrary to the interests of the local communities.

It can, though, result in numerous negative long-term consequences on:

- the environment (e.g., due to non-compliance with norms of the operation of animal farming, unscrupulous handling of waste);
- employment conditions (e.g. health and safety, a living wage, possibility to conduct other types of works such as agro-tourism that is nearly impossible in the areas affected by odour from chicken farms, etc.);
- the right to information (including opaque communication with civil society in situations when NGOs and media are trying to put pressure on business and government to act compliantly).

This case study presents two cases of livestock farming in Ukraine: one in poultry<sup>4</sup> – private joint-stock company MHP<sup>5</sup>, in the Vinnytsia region (hereinafter MHP); and one in the pork sector<sup>6</sup> – Rural Traditions, LLC<sup>7</sup>, in the Poltava region (hereinafter RT, LLC).

1 FAO (2022), 'Ukraine: Impact of the war on agriculture and rural livelihoods in Ukraine – Findings of a nation-wide rural household survey', December 2022, Rome.

2 Lex – 52022DC0407 – en – EUR-lex (no date) Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine's application for membership of the European Union COM/2022/407 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0407> (accessed 10 April 2023).

3 Ibid.

4 Cleanair (2017), 'Life in Vinnytsia is highly affected by massive chicken industry', <https://cleanair.org.ua/en/884/life-in-vinnytsia-is-highly-affected-by-massive-chicken-industry/> (accessed 3 January 2023).

5 YouControl (2023), [online] Available at: [https://youcontrol.com.ua/catalog/company\\_details/25412361/](https://youcontrol.com.ua/catalog/company_details/25412361/) (accessed 3 January 2023).

6 Environmental Law Alliance Worldwide (ELAW) (2021), 'Taking On Polluting Pig Farms in Ukraine.' <https://elaw.org/taking-polluting-pig-farms-ukraine> (accessed 10 April 2023).

7 OpenDataBot, <https://opendatabot.ua/c/36156348> (accessed 3 January 2023).

Both businesses are held by Ukrainian-based large-scale enterprises. It is common in Ukraine for enterprises in this sector to unify all production cycles: fields and grain production; fodder production and rearing facilities operating; slaughterhouses and meat processing, wastewater treatment facilities, etc. For instance, MHP is not only the leading producer of poultry meat in Europe but also one of the largest grain producers and the largest producer in the meat processing market in Ukraine. The linkage between meat production, grain growing, trade, and the environment brings with it an even broader challenge. In the case of the violation of their rights, it is hard for rural communities to stand up against big businesses cross-connected in the supply chain – not least due to a lack of resources, primarily financial.

For example, in the MHP case, the rural community lacked the resources to involve independent private laboratories to check the real scale of the water and air pollution. Additionally, it was also reported that ‘stalking of the activists’ (employees) leaders and cases of serious physical violence and beatings of activists by hired security services’ and ‘disrespect of a speed reduction’ in a rural area by drivers involved in the supply chain.<sup>8</sup> Also, ‘in 2015 and 2016, four protesters against the construction of poultry farms were beaten so badly that they had to be hospitalized...two more activists were urgently drafted into the army and sent to the front.’<sup>9</sup>

The final aim of this study is to address the broader systematic issues to balance business objectives, human rights, and cross-environmentally sustainable development goals. Livestock farming is an important component of a sustainable agricultural system. The problems raised in both cases are still relevant for Ukrainian livestock farming in general, which only puts extra emphasis on the deep roots and comprehensive character of the problems raised in the case study for sustainable development of the agriculture sector and nurturing responsible business conduct amongst enterprises. Nowadays, the challenges of war only highlight common problems in the field and provide additional factors to consider on how to prioritise resolving those issues correctly using the negative impact of the war as an opportunity to rebuild livestock farming from scratch compliantly.

## 1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?

Rights-holders:

- Employees of livestock enterprises (e.g., poultry, pigs)
- Local rural population
- Local activists
- Consumers.

Stakeholders:

- Livestock enterprise owners
- Investors

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<sup>8</sup> Cleanair (2017), ‘Life in Vinnytsia is highly affected by massive chicken industry’, Op. cit.

<sup>9</sup> Clasen, B. (2016). ‘The empire of ‘Our Ryaba’ against the peasants. The German mass media are shocked by the scale of the chicken business in Ukraine’, <https://glavcom.ua/publications/imperiya-nashoji-ryabi-proti-selyan-nimecki-zmi-shokovani-masshtabami-kuryachogo-biznesu-v-ukrajini-383076.html> (accessed 3 January 2023).

- State/local authorities
- NGOs
- Media
- Civic society.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

The risks inherent in the company’s business model reflect common risks typical for the Food, Beverage, and Agriculture sectors that include:

- threats to the local community members’ livelihood (e.g. the right to health, right to life, right to work, right to clean, healthy, and sustainable environment, right to information);
- employment rights (e.g. low compensation, informal employment, unsafe/unhealthy working conditions, workplace equity – those mostly involved in work are a rural population, long/excessive working hours);
- land rights (e.g. unfair land acquisition practices, including resettlement without adequate compensation to land users);
- occupational/health safety (e.g. exposure to poisons, pesticides, and zoonotic diseases).

## **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED.**

The human rights of employees of livestock farms (not only those working on the farms and in the field but all, including drivers, office staff, etc.) that are at risk of being adversely affected are:

- the right to the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration for work of equal value without distinction of any kind, with equal pay for equal work which at present is affected by excessive/long working hours, low compensation, informal employment, unfair dismissal;
- right to health and life affected by unsafe, unhealthy working conditions (exposure to poisons, pesticides, zoonotic diseases, etc.).

Human rights of local rural population/activists that are at risk of being affected are:

- the right to life (cases of stalking, physical violence, dangerous driving, etc.);
- the right to a clean, healthy, and sustainable environment (affected by pollution of air, water, and land);
- freedom of thought and expression and right of peaceful assembly (cases of threats to prevent media coverage);
- property rights (e.g. overloading of rural infrastructure, damages to property);
- the right to information (e.g. intransparent access to relevant, accurate information on business activities and impacts on human rights and the environment)

Also, it is worth mentioning that consumers' rights are at risk of being affected due to production methods' impacts on cost (accessibility of food issues), quality, food safety, and animal welfare. The current studies show that consumers are focused on how their food is produced and grown<sup>10</sup> and show readiness to pay more for welfare-friendly products.<sup>11</sup>

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

Within the sector, the following risks are common.

- Increasing the time and cost of meat production due to compliance with higher requirements than competitors (e.g. strong sanitary norms, waste management, sustainability standards, and conduct with animals) would increase the price of meat and make the company's products less attractive to buyers. From a short-term perspective, this demotivates enterprises from investing more in something that they will not benefit from that will result e.g. in a margin increase.
- Negative impact on cultural/economic activity in the rural area (e.g. non-feasibility of agro-tourism).
- Corruption (e.g. obtaining favourable permissions from local/state authorities). The regulatory process for approval of permissions (licenses, permits) must include the obligation to undertake human rights impact assessments and obtain community consent, sharing all information needed.
- Lack of transparency (e.g. reflected in non-cooperation with civic society, NGOs, and media, violation of the right to information).

The key risks and challenges are to balance the requirements of big and small market players to diversify the market and keep all enterprises up to the same standards. Power imbalances must be mitigated and outcomes that are not compliant with human rights standards should be avoided.

#### **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

Having assessed the cases, it seems that solving the identified problems and preventing/minimising adverse impacts on human rights could have been addressed by a range of actions.

Some simple actions that could have been implemented include:

- equipping workers with adequate individual protective gear;
- ceasing to employ workers on the grey market instead of offering formal employment contracts;
- introducing procedures that prevent the use of excessive/long working hours;

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<sup>10</sup> N. J. Olynk, 'Assessing changing consumer preferences for livestock production processes', *Animal Frontiers*, Volume 2, Issue 3, July 2012, Pages 32–38, <https://doi.org/10.2527/af.2012-0046>.

<sup>11</sup> Alonso ME, González-Montaña JR, Lomillos JM. 'Consumers' Concerns and Perceptions of Farm Animal Welfare', *Animals*, Basel, 2020 Feb 27;10(3):385. doi: 10.3390/ani10030385. PMID: 32120935; PMCID: PMC7143148.

- installing filters that prevent odours from farm facilities from affecting nearby areas;
- stopping the harassment of activists and other people who protest against company operations, etc.).

More complex actions include:

- improving facilities to prevent waste and emissions from livestock farming from affecting local communities and the environment;
- driving the structural changes by using a scale-neutral technology in production, breeding, and management techniques with a focus on making the end-to-end process more environmentally efficient and friendly;
- supporting better livestock management practices, including changing feed composition, manure extension practices, waste management, etc., and thus shifting conditions of animals to more natural habitats, which would also improve human employment conditions;
- re-evaluating the location of production, e.g. moving the production to a less populated area or investing in building infrastructure in rural areas that would be able to both satisfy the needs of business and enhance rural community life for the better;
- addressing the problem of the livestock production sector being concentrated in a few regions within the country, which could have led to resources extortion in the case of harsh exploitation;
- ceasing to lobby against legislation that imposes stricter standards on livestock producers.

The harm already caused by the company should have been mitigated by using the following instruments: conducting open public hearings between the local authority, business, local community, media, etc. to find what is the best way to improve the situation and ensure respect for human rights; ensure that people harassed by the company receive compensation and apology.

The harm caused to houses, water, and private farms should be compensated financially or via actions of businesses/local authorities to mitigate the damage done (restructuring of infrastructure, water well, water supply systems, etc.).

An adequate solution should be identified in dialogue with the affected rights-holders.

The company could also enter into alternative dispute resolution processes in good faith, e.g. through mediation with the other parties to the conflict to come to a mutually acceptable resolution. The company should ensure that there is a remedy provided to all harmed by its actions. In the future, the company should establish effective communication channels and grievance mechanisms that could be used by all those affected whenever their rights are at risk or are affected. For instance, the company can also have an audit conducted by independent experts directly at facilities of livestock farms to investigate the real situation.

To assess the real scale of pollution and risks, independent laboratories should be involved. In case of court litigation, companies should not obstruct or prolong the proceeding nor try to corrupt people but ensure that the right to a fair trial is not affected by their stronger financial position.

At the same time, the state should take appropriate steps to ensure access to dispute resolution through judicial, administrative, legislative, or other appropriate means. In particular, the state must amend related legislation to push for, e.g. increased sanitary standards (e.g. by prohibiting or limiting the direct discharge of pig/chicken manure into waters), rebuilding the effective legislation on the responsibility for environmental harm to water pollution, odour, ammonia, emissions, etc.

In the EU analytical report from 2022, it is emphasised that ‘significant legislative work and investments are needed for industrial and livestock rearing activities that fall under the EU’s industrial emissions legislation because the existing national limits for the emission of pollutants and discharge do not meet the Industrial Emissions Directive’s best available technique associated emission levels’.

This case study identifies the common issues in livestock farming in Ukraine, which require comprehensive work between business, state, and civic society if it is to be improved. The fact that one company covers all stages of the production/supply chain (from grain, meat production, slaughter, and meat distribution, to waste management) on the one hand makes it easier to address identified risks but on the other hand provides greater potential for abuse, particularly that the bigger the business, the more interdependencies there could be between public and private sectors, which usually make it hard to tackle the negative impacts of the company’s activity.

Second, business behaviour will more likely be changed if a comprehensive approach to addressing labour, corporate, and environmental rights is taken, while measures are introduced to encourage and reward the desired behaviour (e.g. additional points will be given in the public procurement to those companies that comply with higher standards).

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

It would be possible, if the case is not handled to the satisfaction of the affected by Ukrainian courts, to submit a complaint to the European Court of Human Rights pointing to the violation of Articles 2, 8, 9, 10, 11, and 13, due to insufficient legislation and enforcement by the state.

If international investors are involved in funding the operations of the livestock enterprises, investors can engage mediators or auditors. For instance, such an approach was used to negotiate/facilitate conflict between MHP and local communities in the Vinnytsia region.

## **7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE**

### **INTERNATIONAL**

- UN Guiding Principles on Business and Human Rights
- Universal Declaration of Human Rights
- European Convention on Human Rights



- International Covenant on Economic, Social, and Cultural Rights
- International Covenant on Civil and Political Rights
- Food Aid Convention
- UNs Declaration on the Rights of Peasants and Other People Working in Rural Areas
- OECD Guidelines for Multinational Enterprises

#### **NATIONAL**

- Land code of Ukraine
- Criminal Code of Ukraine
- Law of Ukraine 'On land lease'
- Law of Ukraine 'On environmental protection'
- Law of Ukraine 'On protection of animals from cruelty'

## CASE STUDY 15.

# RISK TO THE HEALTH AND SAFETY OF ROAD WORKERS IN POLAND

**AUTHOR: KAJA THIELE**

In the past three years, Poland has seen an increase in fatalities and injuries of road workers contracted by the General Directorate for National Roads and Highways (GDDKiA – in Polish: *Generalna Dyrekcja Dróg Krajowych i Autostrad*), a Polish state-owned company established by the Ministry of Transportation in 2001 to govern and develop the country's road infrastructure.

Concerns about road safety for workers in Poland have been raised by various organisations, unions, and advocacy groups. These include the National Labour Inspectorate (*Państwowa Inspekcja Pracy*), the Solidarity trade union (*NSZZ Solidarność*), and The All-Poland Alliance of Trade Unions (*Ogólnopolskie Porozumienie Związków Zawodowych*). The concerns are ongoing and have led to various measures aimed at improving road safety, such as new regulations introduced in 2020 that require drivers to use caution when passing roadworks and requiring workers to wear high-visibility clothing and helmets. However, road worker's unions have criticised GDDKiA's response, claiming it is not doing enough to protect workers and calling for, among others, better training and equipment.

In 2021, according to multiple news outlets, accidents involving road workers continued, although exact statistics are not available. In 2021, following a series of accidents, GDDKiA held a meeting with safety experts and the companies it contracts for road maintenance to look for solutions. It is unclear what decisions followed the meeting. The head of GDDKiA was cited stating that many of the companies hire inexperienced sub-contractors that enter the road without safety measures. The current approach of GDDKiA is to fine contractors when fatalities occur. However, Brd24, a portal on workplace safety, states that GDDKiA's procurement process may be an underlying reason for the safety incidents.

Grzegorz Baginski, director of Saferoad Poland (a European market leader in road safety equipment), considers the problem to be systemic, beginning with public tenders where exceptionally low-priced offers made to GDDKiA are not verified or eliminated by the company. This results in the selection of the cheapest contractors who are then forced to cut costs, for example, by investing fewer in health and safety measures.

## **1. WHO ARE THE RIGHTS-HOLDERS AND STAKEHOLDERS?**

Rights-holders:

- Employees working for companies contracted by GDDKiA, including sub-contractors of these companies
- Communities affected by environmental impacts
- All traffic participants, as the presence of road workers, especially with improper signalisation, poses a risk to their safety.

Stakeholders:

- National Labour Inspectorate
- The Solidarity trade union
- The All-Poland Alliance of Trade Unions
- All listed rights-holders as well.

## **2. WHAT ARE THE HUMAN RIGHTS RISKS INHERENT IN THE COMPANY BUSINESS MODEL?**

As GDDKiA is responsible for national roads and motorways in Poland, several human rights risks are inherent in its business model. These include:

1. **Worker safety:** The agency is responsible for ensuring the safety and well-being of road workers who carry out construction, maintenance, and repair work on national roads and motorways. This involves managing risks such as traffic accidents, exposure to hazardous materials, and working at heights, among others.
2. **Forced labour and trafficking:** There is a risk that the company's contractors and subcontractors may engage in forced labour or trafficking of workers, particularly migrant workers. This could result in exploitation, abuse, and other human rights violations.
3. **Community rights:** The company's operations may impact the rights of local communities, particularly in cases where roads and motorways pass through or near residential areas. This could include impacts on access to land and resources, noise pollution, and other social and environmental impacts.
4. **Environmental impacts:** The company's construction and maintenance activities may have adverse impacts on the environment, including air and water pollution, deforestation, and habitat destruction. These could have human rights implications for local communities, particularly those who depend on natural resources for their livelihoods.

## **3. FOR EACH OF THE IDENTIFIED RIGHT-HOLDER GROUPS, IDENTIFY WHAT HUMAN RIGHTS ARE BEING (OR ARE AT RISK OF BEING) ADVERSELY AFFECTED.**

For workers, in relation to safety, the individual rights at risk include:

- the right to a safe working environment;
- the right to life;
- the right to health;
- the right to rest and leisure;
- the right to social security.

In relation to forced labour and tracking, the rights at risk include:

- the right to freedom from slavery;
- the right to work under just and favourable conditions;
- the right to freedom of movement;
- the right to protection from exploitation.

Other road users : The safety of other road users may be affected by road workers not adhering to health and safety procedures, e.g. leaving construction sites without proper signalisation or blocking roads in an unsafe manner. Additionally, mud from work sites carried onto local roads can contribute to unsafe driving conditions and accidents.

For members of local communities, the rights at risk include:

- the right to property;
- the right to a healthy environment;
- the right to participate in decision-making processes that affect their lives;
- the right to privacy;
- the right to access information.

For communities affected by environmental impacts, the rights at risk include:

- the right to a clean, sustainable, and healthy environment;
- the right to life;
- the right to water;
- the right to health.

Depending on the local context, the right to food and the right to culture may be affected by, for example, new motorways or road closures blocking access to resources previously accessible by foot, such as fields, grocery stores, churches, and cultural centres.

#### **4. WHAT RISKS ARE MORE CHALLENGING FOR THE COMPANY TO ADDRESS GIVEN ITS AREAS OF OPERATION/BUSINESS CONTEXT?**

The risks of violating or being complicit in the violation of the right to safety and right to life are particularly challenging for the company due to its business context. Roads with high-speed traffic, where accidents involving passenger vehicles regularly occur, expose employees to high-risk working conditions. Additionally, improper signalisation, safety features or faulty monitoring systems may increase the risk of traffic accidents and pose a threat to the right to safety and right to life of drivers and passengers.

The agency may also be at risk of corruption and bribery, particularly in relation to the awarding of contracts and the management of public funds. This could result in a range of human rights violations, including the diversion of resources from critical infrastructure projects and the denial of access to basic services for communities.

## **5. WHAT SHOULD HAVE BEEN DONE TO PREVENT THE ADVERSE IMPACT AND WHAT CAN BE DONE NOW TO SOLVE THE IDENTIFIED ISSUES AND PREVENT OR MINIMISE ADVERSE IMPACTS IN LINE WITH THE UNGPs**

GDDKiA should ensure road safety for all traffic participants, and in this case prioritise working conditions as the risk to the life of road workers was identified as the most salient and frequently occurring impact by civil society.

GDDKiA could take the following additional steps to cease the impact, prevent recurrence and provide remedies to affected stakeholders in alignment with the United Nations Guiding Principles on Business and Human Rights (UNGPs):

1. Implement a human rights due diligence process: the company should carry out a human rights impact assessment process to identify and assess the risks and impacts of its activities on the safety and well-being of road workers, communities and traffic participants. This would involve engaging with workers, unions, community representatives, and other stakeholders to understand their perspectives and concerns and identify the best ways to mitigate any adverse impacts, as well as implementing them in practice. In particular, this could include reviewing and inquiring about the contractors' health and safety policies and procedures, as well as ensuring the rates offered by labour providers are realistic and allow them to cover wage costs and investments in health and safety measures.

Currently, the conditions for competing for a contract, as listed in the information to contractors applying for public procurement contracts in Poland, include factors such as authorisation, knowledge and experience, appropriate technical potential of personnel performing a service, as well as economic and financial standing. The document stipulates that specifically in relation to 'the provision of services or execution of works, the contracting entity may evaluate the ability of economic operators to perform the contract in a correct manner in particular in relation to reliability, qualifications, efficiency and experience'. Health and safety or labour conditions are not specifically mentioned.

The company could and should identify the best ways to measure progress (indicators), set targets, and review on a regular basis whether it is moving closer to reaching them – and if not, it should consider reviewing the methods again.

2. Adopt a human rights policy: GDDKiA should adopt a formal human rights policy that outlines its commitment to respecting human rights, including the right to safe and healthy working conditions for road workers. The policy should be based on the UNGPs and other relevant international standards and should be communicated to all relevant rights-holders and stakeholders.
3. Ensure meaningful consultation and participation of workers: GDDKiA could ensure that road workers and their representatives are meaningfully consulted and have the opportunity to participate in decision-making processes that affect them, including their safety and well-being. This should include involving rights-holders, in particular workers and unions, as well as other stakeholders in the development and implementation of safety policies and procedures, and providing training and support to help workers exercise their rights.
4. Implement effective grievance mechanisms: the company must establish effective grievance mechanisms that are accessible to all rights holders, including road workers, communities, and

traffic participants, to report concerns or complaints related to safety and that provide a remedy for any harm caused. The mechanisms should be transparent, accessible, and responsive to the needs of workers and should be communicated to all relevant stakeholders.

5. Monitor and report on performance: the company could establish a system to monitor and report on its performance in relation to road worker safety, including tracking incidents, assessing the effectiveness of its policies and procedures, and reporting publicly on its performance. This would help to ensure accountability and transparency and would enable stakeholders to assess progress over time.

Additionally, to avoid similar incidents, GDDKiA could also have clear service agreements with contractors that ensure that the health and safety of workers is a shared responsibility. This could be strengthened further with checks and audits on the ground to ensure safety measures are of an acceptable standard.

The safety of road workers in Poland remains a significant concern despite the introduction of new regulations aimed at improving road safety. Despite GDDKiA's efforts to address the issue, criticism from road worker's unions suggests that more needs to be done to protect workers. As human rights due diligence is a continuous process, GDDKiA should seek to be proactive rather than reactive to such incidents by maintaining ongoing engagement with stakeholders and rights holders and translating these findings into mitigation actions identified in collaboration with them.

The underlying reasons for the safety incidents are said to be systemic, and stakeholders have pointed out the need for stronger human rights due diligence efforts and accepting greater responsibility for the safety of contracted road workers. Addressing these issues would require the involvement of multiple stakeholders, including the government, contractors, and labour unions, to ensure the safety and well-being of road workers and all other traffic participants.

## **6. WHAT OTHER INTERNATIONAL PROCEDURES AND MECHANISMS COULD BE USED TO CHALLENGE THE COMPANY BEHAVIOUR AND ENHANCE THE CHANCE OF REMEDY FOR THE VICTIMS?**

As a first step, victims or their representatives may begin on a national level by filing a grievance with Poland's State Labour Inspectorate and bringing the case to national courts. If the decision is unsatisfying, the case may be taken to Poland's Commissioner for Human Rights and ultimately to the European Court of Human Rights. Complaints may also be filed with the ILO's Committee on the Application of Standards, particularly those set out in the Promotional Framework for Occupational Safety and Health Convention, 2006, in relation to national preventative safety and health culture.

Additionally, UN mechanisms can provide recommendations to the Polish government and GDDKiA on how to address human rights violations and provide remedies to victims – these include the Office of the High Commissioner for Human Rights (OHCHR) or treaty bodies such as the Committee on Economic, Social and Cultural Rights (CESCR).

## 7. INTERNATIONAL AND NATIONAL REGULATIONS AND STANDARDS RELEVANT TO THIS CASE

### INTERNATIONAL DOCUMENTS

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- International Labour Organization (ILO) Convention No. 155 on Occupational Safety and Health and the Working Environment
- ILO Convention No. 167 on Safety and Health in Construction
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

### NATIONAL DOCUMENTS

- Poland – Labour Code of 26 June 1974 (Dz.U. 1974 Nr 24 poz. 141) (ilo.org)
- The Public Procurement Law of 11 September 2019
- Poland – Regulation of 2 September 1997 of the Council of Ministers on Occupational Safety and Health at Work (Dz.U. 1997 nr 109 poz. 704).
- Act on Public Roads of 21 March 1985 – Ustawa z dnia 21 marca 1985 r. o drogach publicznych. (sejm.gov.pl)

### BIBLIOGRAPHY

- BRD24, ‘Seria śmiertelnych wypadków z pracownikami drogowymi. GDDKiA szuka nowych rozwiązań.’ BRDL24.pl, 2021<sup>1</sup>
- GDDKiA, ‘Zarządzenie nr 52 Generalnego Dyrektora Dróg Krajowych i Autostrad z dnia 23 Grudnia 2020 r.’, Warsaw: GDDKiA, 2020<sup>2</sup>
- Polish Public Procurement Office, ‘Information about Polish public procurement system of relevance to contractors applying for public procurement contracts in Poland’<sup>3</sup>
- National Labour Inspectorate, ‘Raport o stanie bezpieczeństwa i higieny pracy w Polsce w 2019 roku [Report on the state of safety and occupational health in Poland in 2019].’ 2019, (accessed 6 February 2023)
- Organization for Economic Co-operation and Development, ‘OECD Guidelines for Multinational Enterprises’, OECD, 2018<sup>4</sup>
- Shift Project, ‘Business Model Red Flags’, Shift Project, no date<sup>5</sup>

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1 <https://www.brd24.pl/infrastruktura/seria-smiertelnych-wypadkow-z-pracownikami-drogowymi-gddkia-szuka-nowych-rozwiazan/>, (accessed 6 February 2023)

2 [https://www.archiwum.gddkia.gov.pl/frontend/web/userfiles/articles/z/zarzadzenia-generalnego-dyrektor\\_36266/zarzadzenie%2052.pdf](https://www.archiwum.gddkia.gov.pl/frontend/web/userfiles/articles/z/zarzadzenia-generalnego-dyrektor_36266/zarzadzenie%2052.pdf), (accessed 6 February 2023)

3 [https://www.uzp.gov.pl/\\_\\_data/assets/pdf\\_file/0017/21284/PP20system20in20Poland\\_final20version.pdf](https://www.uzp.gov.pl/__data/assets/pdf_file/0017/21284/PP20system20in20Poland_final20version.pdf), (accessed 6 February 2023)

4 <https://www.oecd.org/corporate/mne/>, (accessed 6 February 2023)

5 <https://shiftproject.org/resource/business-model-red-flags/red-flags-about/>, (accessed 6 February 2023)

- Polish Public Procurement Office, 'The Public Procurement Law of 11 September 2019,' 2019<sup>6</sup>,
- Office of the United Nations High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations »Protect, Respect and Remedy« Framework', (New York and Geneva: United Nations, 2011)<sup>7</sup>

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<sup>6</sup> [https://www.uzp.gov.pl/\\_\\_data/assets/pdf\\_file/0019/40177/Public\\_Procurement\\_Law\\_2018\\_consolidated.pdf](https://www.uzp.gov.pl/__data/assets/pdf_file/0019/40177/Public_Procurement_Law_2018_consolidated.pdf), (accessed 6 February 2023)

<sup>7</sup> [https://ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf), (accessed 6 February 2023)



# SELECTED STANDARDS AND TREATIES

European Union, Charter of Fundamental Rights of the European Union, 7 December 2000, available at [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, available at [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

International Labour Organization, Convention No. 105 on the Abolition of Forced Labour, 25 June 1957, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:CON,en,C105,/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C105,/Document)

International Labour Organization, Convention No. 143 Migrant Workers (Supplementary Provisions), 4 June 1975, available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/ILO\\_C\\_143.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/ILO_C_143.pdf)

International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour, 28 June 1930, available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029)

International Labour Organization, Convention No. 155 on Safety and Health in the Workplace, 3 June 1981, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C155](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C155)

International Labour Organization Declaration on Fundamental Principles and Rights at Work and its Follow-up, 18 June 1998, available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/normativeinstrument/wcms\\_716594.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf)

International Convention for the Suppression of Acts of Nuclear Terrorism, 7 July 2007, available at [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVIII-15&chapter=18&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-15&chapter=18&Temp=mtdsg3&clang=_en)

International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

OECD Due Diligence Guidance for Responsible Business Conduct, 31 May 2018, available at <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

European Union, Treaty on the Functioning of the European Union (TFEU), 13 December 2007, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

United Nations Convention on Discrimination in Employment and Occupation, 25 June 1958, available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_Ilo\\_Code:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111)

United Nations General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 28 March 2017, <https://digitallibrary.un.org/record/1298436>

United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998, available at <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

United Nations Guiding Principles on Business and Human Rights (UNGPs), 16 June 2011, available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro\\_Guiding\\_Principles-BusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_Principles-BusinessHR.pdf)

United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 20 June 2013, available at [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGPleasants/A-HRC-WG-15-1-2\\_En.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGPleasants/A-HRC-WG-15-1-2_En.pdf)

United Nations Food Aid Convention; 13 April 1999; available at [https://treaties.un.org/doc/Treaties/1999/04/19990413%2008-35%20PM/Ch\\_XIX\\_41\\_cp.pdf](https://treaties.un.org/doc/Treaties/1999/04/19990413%2008-35%20PM/Ch_XIX_41_cp.pdf)

Stockholm Convention on Persistent Organic Pollutants, 22 May 2001, available at <http://chm.pops.int/theconvention/overview/textoftheconvention/tabid/2232/default.aspx>

United Nations Universal Declaration of Human Rights, 10 December 1948, available at <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

Council of Europe, The European Social Charter (ESC), 16 October 1961, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048b059>

OECD Guidelines for Multinational Enterprises, 21 June 1976, available at <https://www.oecd.org/daf/inv/mne/48004323.pdf>

United Nations Security Council Resolution 2397, 22 December 2017, available at <https://daccess-ods.un.org/tmp/3279038.36965561.html>

United Nations, Rio Convention on Biological Diversity, 5 June 1995, available at <https://www.cbd.int/doc/legal/cbd-en.pdf>

United Nations Framework Convention on Climate Change, 9 May 1992, available at [https://treaties.un.org/doc/source/recenttexts/unfccc\\_eng.pdf](https://treaties.un.org/doc/source/recenttexts/unfccc_eng.pdf)



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