**Questionnaire**

**The Special Rapporteur´s thematic report on the impact of mega-projects[[1]](#footnote-1) on the human rights to water and sanitation[[2]](#footnote-2)**

The Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller, will submit his thematic report on the impact of mega-projects on the human rights to water and sanitation to the seventy-fourth session of the United Nations General Assembly in 2019.

As part of his research, the Special Rapporteur welcomes responses to any of the following questions. **Response can be limited to selected questions as relevant.**

The questionnaire is organized according to seven stages of the human rights to water and sanitation in the mega-project cycle (See Annex), through which impacts of mega-projects on the human rights to water and sanitation can potentially take place.

Kindly submit response to srwatsan@ohchr.org **by 15 March 2019.**

**General questions**

1. **How do mega-projects contribute towards the progressive realization of the human rights to water and sanitation?**

 Some mega projects will enable the construction of communal infrastructure before the scheduled deadline, from which the local population will benefit (due to availability of water, treatment, and discharge control, etc.). On the other hand, there may be more pollution at the stage of construction and exploitation (which can be controlled with protection measures).

1. **What are the main positive and negative impacts, assessed by your Government, that mega-projects have on the normative content of the human rights to water and sanitation (quality and safety, accessibility, availability, acceptability, affordability, dignity and privacy) and the human rights principles (access to information, participation, equality and non-discrimination)?**

 If all prescribed measures and standards are implemented, the assessment is that the projects can be carried out in a safe and secure manner, with respect for human rights related to water and sanitation, notification of the public concerned and the availability of data. It has also been recognized that the area related to ex-post assessment has to be improved because it is not prescribed as mandatory in the regulations.

**Stage 1: Macro-planning**

1. **During the macro-planning (the stage when mega-projects are identified as part of the national development agenda of a country), how and in which forms has your Government introduced human rights-based approaches in national policies integrating mega-projects, in order to protect, promote and fulfil the human rights to water and sanitation?**

In accordance with the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", 064/17 of 6 October 2017, 044/18 of 6 July 2018, 063/18 of 28 September 2018, 011/19 of 19 February 2019), complex engineering facilities have been recognized in terms of: highways, fast roads, main and regional roads, tunnels over 200m long, bridges over 30m long, railway lines, airports, power lines and substations of 10 kV and above, underground cable installations of a voltage level of 10 kV and more, power plants of 1MVA and more (hydro power plants, thermal power plants, wind power plants, solar power plants, etc.), ports, oil pipelines, gas pipelines, dams and accumulations filled with tailings or ashes for which technical observation is prescribed; liquid natural gas storage and decantation facilities; liquid petroleum gas storage and decantation facilities, oil and oil derivatives storage and decantation facilities; petrol and gas stations for motor vehicles; heat energy production, transport and distribution facilities for district heating and/or cooling; facilities for production, transport and distribution of heat energy for industrial use and stable pressure vessels; facilities for producing and storing hazardous substances and similar facilities and installations that may endanger the environment; structures and plants for the chemical and heavy industry; landfills; waste-to-energy facilities; anaerobic digestion plants; water treatment plants.

1. **What type of participatory processes have been implemented by your Government to inform the public and the affected population and to facilitate the discussion on the option to include or not include mega-projects in national development policies?**

Under the legal regulations in Montenegro, each project must be defined by a spatial planning document for which a Strategic Environmental Impact Assessment (Environmental Impact Assessment) and public consultations are conducted, which includes two phases (consultative phase - public consultations in the initial stage of preparation, and public consultations on the draft document at a later stage (through forums, presentation of documents on the website and so on).

1. **What challenges exist to ensure transparency and participation as well as access to information in the macro-planning stage? How have they been addressed and guaranteed, if any?**

The Decree on the election of representatives of non-governmental organizations to the working bodies of state administration bodies and the conduct of public consultations in preparation of laws and strategies ("Official Gazette of Montenegro" 041/18 of 28 June 2018) provides for conducting public consultations on the preparation of laws and strategies by:

   1) Consulting bodies, organizations, associations and individuals (interested public) in the initial phase of preparation of the law or strategy;

   2) Organizing public consultations on a draft law or strategy text.

Consultations of the public concerned are carried out after the publication of a public call on the Ministry's website and the e-government portal. Consultations imply launching initiatives, making proposals, and providing suggestions and comments in the initial phase of preparation of a law or strategy.

Public consultations on the text of a draft law or strategy are carried out by:

   - Organizing roundtables, forums, presentations, etc.;

   - Providing comments, proposals and suggestions in writing or in electronic form.

Public consultations begin on the day of publication of a public call on the Ministry's website and the e-government portal and lasts for 20 to 40 days, depending on the importance and complexity of the subject matter regulated by the draft law, i.e. strategy that is the subject matter of consultations.

Also, for each individual project for which public consultations have already been conducted and the public has been informed within the framework of drafting plans, strategies and laws, citizens have the right to seek additional information in accordance with the Law on Free Access to Information (“Official Gazette of Montenegro” No 44 / 12).

**Stage 2: Planning and designing**

1. **What measures have been adopted by your Government to ensure that the framework on the human rights to water and sanitation is implemented in the planning and designing phase, both within and outside of the territory of the State? Please provide information on the challenges or good practices faced during the planning and designing stage to respect, promote and fulfil the human rights to water and sanitation.**
* Under the Constitution of Montenegro ("Official Gazette of Montenegro", 001/07, 038/13), everyone has the right to a healthy environment. Everyone has the right to be timely and fully informed about the state of the environment, the possibility of influencing decisions on issues of importance to the environment and the legal protection of these rights. Everyone, especially the state, is obliged to preserve and improve the environment.
* The Law on Waters (“Official Gazette of the Republic of Montenegro” 027/07, 084/18) regulates the legal status and manner of integral management of waters, water and coastal land and water facilities, conditions and manner of carrying out water activities and other issues of importance to water and water resource management.
1. **What legal and policy framework is in place to clarify the roles and human rights obligation and responsibilities of actors involved in the planning and designing stage? What legal and policy framework is in place to regulate actors - both within and outside of the territory - to perform in accordance with human rights obligations and responsibilities and to conduct human rights assessments of impacts of such projects?**

The Law on Communal Services ("Official Gazette of Montenegro", 055/16, 002/18) stipulates that public water supply and wastewater management activities are communal activities. This Law regulates the conditions and manner of providing communal services and other matters of importance for communal services. Also, public interest and communal services are defined within the meaning of this Law, as the communal services that are indispensable to the life and work of citizens, economic and other entities in the territory of the local self-government units and maintenance of communal infrastructure, equipment and resources for carrying out these activities. The municipalities, in accordance with the Law on Local Self-Government ("Official Gazette of Montenegro", 002/18) also have other regulations in their respective territories that regulate and provide for the performance and development of communal services, maintenance of communal infrastructure and communal order.

1. **Please provide examples of ex-ante impact assessments where the human rights framework, particularly the rights to water and sanitation, has been successfully or unsuccessfully integrated in the planning and designing phase.**

This assessment is not done specifically for projects, but within the EIA and Strategic Impact Assessments for the implementation of certain plans and programs. With an average runoff of 40 liters/s/km2, about 19.5 km3 in volume terms, Montenegro belongs to 4% of the world's territory with the highest average runoff. Bearing in mind the fact that even 95.3% of watercourses in Montenegro are formed in the national territory, i.e. the source and the catchment area are in the national territory, it can rightly be said that water is our greatest natural resource and we have not recorded any cases where a project jeopardized anyone’s right to water.

1. **What consultation and participation processes are in place during the planning and design phase? Please provide information on measures adopted by your Government to ensure the active, free and meaningful participation of affected populations in such processes.**

The Government of Montenegro adopted the Decree on the election of representatives of non-governmental organizations to the working bodies of state administration bodies and the conduct of public consultations in preparation of **laws and strategies** ("Official Gazette of Montenegro" 041/18 of 28 June 2018), which enabled active participation of interested parties and it is envisaged that public consultations in the preparation of laws and strategies will be implemented by:

   1) Consulting the bodies, organizations, associations and individuals (interested public) in the initial phase of preparation of the law or strategy;

   2) Organizing public consultations on the text of a draft law or strategy.

Also, for each individual project for which public consultations have been conducted and the public has been informed within the framework of drafting plans, strategies and laws, citizens have the right to seek additional information in accordance with the Law on Free Access to Information (“Official Gazette of Montenegro” 44/12).

**Stage 3: Licensing and approval**

1. **What licensing or approval procedures are in place for construction and operation? What actors are involved in granting licensing or approval for mega-projects and how does the existing procedures related construction and operation of mega-projects incorporate a human rights perspective?**

In accordance with the Law on Spatial Planning and Construction of Structures ("Official Gazette of Montenegro", 064/17, 011/19), a building permit for the construction of a complex engineering structure is issued by the Ministry of Sustainable Development and Tourism.

An application for a building permit is submitted by the investor.

The building permit is issued by a decision based on:

1) Preliminary Design, or Main Design, certified in accordance with this Law;

2) Report on a positive review of the Preliminary Design or the Main Design;

3) evidence of ownership, or other right on building land (title deed, concession agreement, decision on determination of public interest, etc.) or proof of the right of construction or other right to the building;

4) Approvals, opinions and other evidence specified by special regulations if the building permit is issued on the basis of the Main Design, and

5) Proof of liability insurance of a company that has drawn up and reviewed the Preliminary Design, i.e. the Main Design.

1. **What guarantees, safeguards or monitoring measures are in place to ensure that the framework of the human rights to water and sanitation is reflected in the licensing agreement?**

In accordance with the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", 064/17, 011/19), the use permit for a complex engineering structure is issued by a decision of the Ministry of Sustainable Development and Tourism.

The investor is obliged to apply for the issuance of the use permit prior to the use of the building.

With the application for issuing a use permit, the investor shall enclose:

1) The Contractor's statement that the building was constructed in accordance with the construction permit and the reviewed Main Design;

 2) The Supervisory Authority’s statement that the building was built in accordance with the construction permit and the reviewed Main Design;

 3) A statement by technical inspection that the works have been carried out in accordance with the reviewed Main Design, as well as regulations, standards, technical norms and quality standards applicable to certain types of works, i.e. materials, equipment and installations;

4) Evidence of the obligations met, in accordance with special regulations;

5) The reviewed Main Design, in case the building permit is issued for the Preliminary Design, and

6) As-built drawings of the building, in case of modifications during the construction.

The application for the issuance of a use permit shall be published on the Ministry's website within seven days of the date of submission of the application.

The use permit license shall be issued within seven days of receipt of the complete documentation referred to in paragraph 4 of this Article.

The Ministry is obliged to publish the use permit on its website within seven days from the date of issue.

The monitoring of municipal waste water discharges (frequency and type of tests), as well as the control of safe water supply is carried out under the Law on Municipal Wastewater management (“Official Gazette of Montenegro” 02/17), Law on Water Management (027/07, 084/18) and the Law on Provision of Healthy Water for Human Use ("Official Gazette of Montenegro", 080/17).

**Monitoring of drinking water and associated licence regarding radioactivity impact**

Pursuant to Article 9 of the Law on Ionizing Radiation Protection and Radiation Safety (Official Gazette of Montenegro 56/09, 58/09, 40/11, 55/2016), the Nature and Environmental Protection Agency **prepares proposal of annual programme of systematic examination of radioactivity in the environment**, which is adopted annually by the Government of Montenegro. This programme has been performed since 1998, to establish presence of radionuclide in the environment and assess the level of exposure of the population to ionizing radiation in normal conditions, and in case of suspected radiation accident and during radiation accident.

**The systematic examination of radionuclide is performed in**: the air, soil, rivers, lakes and the sea, solid and liquid precipitation, construction material, **drinking water**, provisions and feed, general use products. In addition, measuring includes intensity of absorbed dose of gamma (γ) radiation in the air and the level of radon exposure in residential areas is examined. It is important to highlight that monitoring of radioactivity in drinking water also covers measurements of radon concentration.

Costs of implementation of national monitoring programme of systematic examination of radioactivity in the environment (regular and extraordinary) and assessment of the level of exposure of the population to ionizing radiation are covered from the budget of Montenegro.

Center for Ecotoxicological Research (CETI) – Podgorica is **national referent laboratory,** legal entity, recognised by the Law on Environment (Official Gazette of Montenegro 52/16) and the Law on Ionizing Radiation Protection and Radiation Safety to conduct national programme of systematic examination of radioactivity in the environment and to measure radioactivity of drinking water for all other interested parties on their request.

CETI is obliged to submit to the Agency the Report on monitoring radioactivity in the environment until 1 March of the current year for the previous year. In case of radiation accident, the legal entity is obliged to immediately notify the Agency. After that, the Nature and Environmental Protection Agency prepares **consolidated Information about the environment condition with Proposal of measures for mitigating negative environmental impact with the Action Plan.**

Concentration of analysed radionuclide in all segments of the environment, and in food **and drinking water** in the reporting period was within the prescribed limits. In addition, in the territory of Montenegro, or outside its borders, there have been no nuclear/radiological accidents/incidents which could have threatened the population of Montenegro and the conclusion is that the population of Montenegro has not been under excessive radiological pressure.

Ministry of Sustainable Development and Tourism is regulatory authority, **responsible for transposition of the COUNCIL DIRECTIVE 2013/51/EURATOM** of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption into national legal system. Currently, the draft of the new Law on Ionising Radiation Protection, Radiation and Nuclear Safety and Security is under development in order to have better alignment with EU Acquis and it is foreseen to be approved by the Government by the end of 2019. The development of the draft of the new Law has been supported by the European Commission through the IPA project EuropeAid/136376/DH/SER/Multi/2 „Further Enhancement of the Technical Capacity of Nuclear Regulatory Bodies in Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, as well as Kosovo (1244)“.

**Stages 4 - 6: Construction, Short-term operation, and Long-term operation**

1. What are the specific impact of mega-projects on the human rights to water and sanitation when mega-projects are in construction, in short- and long-term operation? What measures are in place to prevent, mitigate and monitor those impacts?

The Law on Environmental Impact Assessment ("Official Gazette of Montenegro" 075/18 of 23.11.2018) specified the projects that shall be subject to Environmental Impact Assessment. EIA usually includes:

   1) Information on the project holder (name and headquarters, name and address);

   2) Location description;

   3) Description of the project;

   4) A report on the existing state of the environment segment must be drafted for projects in the areas of protected natural and cultural assets, tourism and complex engineering structures;

   5) A description of possible alternatives;

   6) A description of the environment segments;

   7) A description of possible significant environmental impacts of the project;

   8) Description of measures envisaged to prevent, reduce or eliminate significant adverse environmental impacts;

   9) Environmental impact monitoring program;

   11) Information on the potential difficulties encountered by the project holder in the collection of data and documentation;

   12) Results of the implemented procedures for assessing an impact of the planned project on the environment in accordance with special regulations.

The competent authority shall within a period of five working days from the date of receipt of the application for EIA approval, organize public consultations and notify the interested bodies and organizations and the public concerned about the manner, time and place of public review, the manner of submitting observations and comments, and time and place of holding a public panel on the EIA.

The EIA for which public consultations have been organized is published on the website of the competent body and the e-Government portal on the day of the commencement of the public consultations.

The EIA scope and content are established and its impact is assessed by the impact assessment committee established by the competent authority.

1. **Please specify challenges faced or good practices adopted by actors - both within and outside of the territory of a State - involved in mega-projects to ensure the human rights to water and sanitation of affected populations in the construction, short- and long-term operation phases.**

The Law on Environmental Impact Assessment ("Official Gazette of Montenegro" 075/18 of 23 November 2018) stipulates the obligation to notify transboundary impacts.

If the project may have a significant impact on the environment of the other country or if a country whose environment may be significantly threatened, at the request of that State, the Ministry of Sustainable Development and Tourism shall, as soon as possible, notify the State of the following:

   1) The project together with all available data on its possible impact;

   2) The nature of the decision that can be made;

   3) A time limit in which another country may indicate its intention to participate in the impact assessment process.

The decision to grant consent to the impact assessment or the refusal of the application for consent, shall be notified by the Ministry of Sustainable Development and Tourism to the State which has participated in the Impact Assessment procedure by submitting a notice of:

   1) The content of the decision and conditions if they are determined;

   2) The reasons on which the decision is based, including the reasons for accepting or rejecting the submitted objections, proposals and comments of the interested bodies and organizations and the public concerned;

   3) The most important measures the project holder has to undertake in order to eliminate, prevent, mitigate or remedy the adverse consequences.

The Ministry shall notify the interested public of the received notifications of transboundary impacts of another country’s project, in accordance with Article 28 of this Law.

The received comments of the public concerned are taken into account by the Ministry when giving opinions on the transboundary impacts of the other country's project.

Notification and consultation with other States on possible transboundary impacts shall be conducted in accordance with this Law and confirmed by international treaties.

The notification and consultation referred to in paragraph 5 of this Article may be conducted through a joint body formed on a bilateral and multilateral basis.

In addition, the exchange of information on transboundary impacts of the plan and program that is related to the environment is carried out by the state administration body responsible for environmental protection activities and in accordance with the Law on Strategic Environmental Impact Assessment (“Official Gazette of the Republic of Montenegro”, 080/05, 052/16).

1. What legal and policy framework is in place to clarify the roles and human rights obligations and responsibilities of actors who are involved in the construction, short- and long-term operation phases? What legal and policy framework exists to regulate, oversight and monitor their performance from a human rights perspective?

The Law on Municipal Wastewater Management (“Official Gazette of Montenegro” 002/17 of 10 January 2017) stipulates the obligation to treat municipal wastewater, WWTP construction deadlines, monitoring and method of monitoring discharged municipal wastewater. The owner of a building must connect his or her building to a collector system connection within a period of not more than 12 months from setting the collector system into operation and the wastewater which is discharged into the recipient must be previously treated in accordance with the standard.

Also, the program of building collector systems and wastewater treatment plants is determined by the Government of Montenegro at the proposal of the Ministry. Collecting, treating and discharging municipal wastewater, for facilities located outside the agglomeration boundaries covered by the program, shall be carried out in a manner, under the terms and conditions prescribed by the Ministry.

1. **What procedures and aids to access remedy are available when negative impacts of mega-projects amounts to violation or abuse of the human rights to water and sanitation?**

According to the Law on Municipal Wastewater Management ("Official Gazette of Montenegro", 002/17 of 10 January 2017), in accordance with the Law on Spatial Development and Construction of Structures ("Official Gazette of Montenegro", 064/17, 011/19), the Law on Waters (“Official Gazette of the Republic of Montenegro” 027/07, 084/18), Law on Environmental Impact Assessment ("Official Gazette of Montenegro", 075/18 of 23.11.2018) and the Law on Strategic Environmental Impact Assessment ("Official Gazette of the Republic of Montenegro", 080 / 05.052 / 16), strict penalties are stipulated in the event of a violation.

1. What are the main human rights challenges faced by home-States and host-States in relation to mega-projects constructed or operated within and outside of its territory?

**Stage 7: Ex-post assessments**

1. How are ex-post impact assessments of mega-projects carried out in practice? Are they required by law or regulations?

No enforcement obligation is prescribed.

1. What human rights elements have been incorporated in ex-post impact assessments conducted shortly after the construction, at the commencement of operation or during long-term operation? What measures could be adopted to improve the successful integration of human rights approaches in such impact assessments?

No enforcement obligation is prescribed.

1. How does the ex-post impact assessment contribute to the learning process and the feedback mechanism to provide guidelines for other similar projects?

No enforcement obligation is prescribed.

**Annex: Human rights to water and sanitation in the mega-project cycle**

**4. Construction**

* Initiation of actions by actors involved.
* Monitoring of physical or legal impact on lands and natural resources.
* Impacts due to pollution or depletion or blockades by affected populations.

**3. Licensing and approval**

* Validation of megaproject by public authorities.
* Environmental and social impact assessments.
* Authorisation for actors involved to undertake next stages.
* Control of megaprojects that do not fulfil human rights standards.

**1. Macro Planning**

* Integration of mega-projects in national development agenda.
* Decision of the legal and policy framework applicable to mega-projects.
* Consideration of alternative development models.
* Contingency and redress plans.

**2. Planning and designing**

* Practical and technical aspects defined.
* Designation of concrete roles and responsibilities of actors involved.
* Ex-ante assessment and participatory processes.

**5. Short-term Operation**

* Operation of the project after construction.
* Monitoring of impacts due to construction errors.
* Assessment of possible gaps between outputs expected and real outputs.

**6. Long-term Operation**

* Operation of the project after an extended period
* Deterioration of infrastructure (increased risk of disaster).
* Monitoring of long-term negative impacts may appear.

**7. Human rights assessment and monitoring**

feeding back different stages of subsequent mega-projects

1. For the purpose of this questionnaire, the term “mega-projects” refers to projects that causes significant impacts on the human rights to water and sanitation and on other related rights and that meet at least one of the following criteria: (1) wide land use and/or large modification of water resources; (2) long-implementation period. [↑](#footnote-ref-1)
2. The scope focuses on the access to drinking water services for human consumption and access to sanitation services including toilets and shower facilities as well as personal hygiene. [↑](#footnote-ref-2)