FACTA UNIVERSITATIS
Series: **Architecture and Civil Engineering** Vol. 23, N° 1, 2025, pp. 101 - 118
https://doi.org/10.2298/FUACE241221009M

Original research paper

THE LEGAL FRAMEWORK FOR SOCIAL IMPACTS IN SPATIAL PLANNING OF MINING REGIONS

UDC 711:622.2(497.11)
711:340.134(497.11)

Tamara Maričić[1], Mark Oranje[2]

[1]Instititute of Architecture and Urban & Spatial Planning of Serbia, Belgrade, Serbia
[2]University of Pretoria, Pretoria, South Africa

ORCID iDs: Tamara Maričić https://orcid.org/0000-0003-4827-5065
Mark Oranje https://orcid.org/0000-0003-4844-4025

Abstract. *Spatial planning of development in mining regions is directed by the legislative framework, since mining activities, in addition to positive ones (economic progress), have numerous negative impacts at the local and regional level. Beside environmental degradation, social & community consequences of the planned development in mining regions (involuntary resettlement, company and boom towns, endangered indigenous rights, impoverishment) are very complex and demanding to direct and mitigate.*
The paper is devoted to analysis of the international legislation regulating social impacts of mining activities, including both hard and soft laws. This is followed with the critical analysis of appropriate national legislation of the Republic of Serbia, including the most relevant strategies and laws. The main aim is to identify existing problems and inconsistencies, as well as to provide proposals for improvements to facilitate more sustainable and socially sound development of mining regions. The resulting indications regarding Serbia reveal: (1) partial and delayed inclusion of international norms and standards, including transposition of the EU legislation; (2) social impacts are briefly mentioned, without elaboration of mitigation measures (declarative approach), (3) several relevant strategies are outdated, or even abolished without proper replacement; and (4) the emphasis is on environmental aspects, while consideration of other social impacts is poor and sporadic. Adoption of a single act to regulate mining-related development would overcome hierarchical and horizontal inconsistency, omissions, and include neglected aspects i.e. social impacts of resource extraction.

Key words: *mining, legislation, social impacts, spatial planning, Serbia*

Received December 21, 2024 / Revised February 13, 2025 / Accepted February 15, 2025
Corresponding author: Tamara Maričić - Institute of Architecture and Urban & Spatial Planning of Serbia, Belgrade, Serbia
e-mail: tamara@iaus.ac.rs

1. INTRODUCTION

A mining region refers to a part of a country where a certain ore production (mining) and processing play a dominant role. Managing the development of mining regions by encouraging sustainability approach and social prosperity is conditioned by several factors. The most important are: the existing legislative and normative framework; institutional solutions; the quality of planning, investment and technical documentation; appropriate operational databases; as well as organizational and professional skills of the competent national and local bodies and professional institutions for efficient implementation of planning and investment decisions [1].

Considering social aspects is very important during the process of spatial planning of mining regions [2-4]. A variety of positive and negative impacts on the population can be classified into three basic dimensions: economic, social and environmental. The most important social impacts of mining refer to: involuntary displacement, loss of agricultural land, indigenous rights, boom towns and company settlements, gender dimension, physical cultural resources, workforce migration, endangered health, and impoverishment. Several instruments have been used for their assessment in the last decades, including environmental impact assessment (EIA), strategic environmental assessment (SEA), social impact assessment (SIA) and other similar tools recognized regionally or internationally.

The legislative-normative framework of each country is formed based on its political and cultural-historical heritage, but also under the influence of the international environment (i.e. accepted trends and values). There is a large number of binding ("hard law") and non-binding (optional, "soft law") legal documents, regulations, declarations, contracts, policies, etc., which directly or indirectly relate to the impact of mining activities on social development. They can be in the field of mining, social development, human rights, regional planning, cultural rights, public participation, nature and environmental protection, etc. We can divide them in relation to the geographical scope (international, regional, national), they can refer only to members of a certain alliance (such as the UN, the EU) or they can apply only to projects financed by a certain organization or institution (e.g. the World Bank, USAID, EBRD).

The law and governance of mining is a largely neglected, unsystematised and under-theorised field of study [5], and this is even more pronounced when it comes to legislation covering social aspects in spatial planning of mining regions. The international scientific literature devotes attention to countries where mining has a pertinent role, such as Australia, Brazil, South Africa, Latin America (e.g. [6-10]) or where it once played an important role as in UK or Germany (e.g. [11]). However, research on the legal and regulatory framework of mining, and especially when related to social impacts, in Serbia is rather scarce and dominantly conducted in the Institute of Architecture and Urban & Spatial Planning of Serbia – IAUS (see [1,12-13]). A comprehensive overview of normative-legislative framework for social aspects in spatial planning of resource extraction regions in Serbia is missing.

In an attempt to contribute to overcoming of the forementioned shortcomings, this paper aims to present an overview of legal boundaries of social impacts of mining at the international level. The main focus will be to present and critically analyse the legislative and regulatory framework related to social aspects in planning and development of mining regions in the Republic of Serbia. International law has a strong role in shaping the contemporary norms and regulations in Serbian society.

This study draws upon a secondary research methodology - desk review and literature review. The primary step was a desk review and examination of existing literature on national and international legislation, as well as the relevant regulation, laws and treaties. The primary objective of desk review is to identify relevant data sources, assess the quality of data, and identify gaps where further research may be needed. This was followed with a literature review [14] i.e. an in-depth analysis of the existing knowledge in available relevant academic literature (including hard copies published by IAUS), relevant legislation and regulations, discussions with individuals, online material, and databases (EBSCO, Google scholar, SCIndeks, COBISS, NaRDuS; searched in English and Serbian) with a view to synthesize and summarize the findings.

2. INTERNATIONAL LEGISLATION

In the last six decades states became more interdependent and with more obligations toward international community [15]. International legal scholarship has been preoccupied with analyzing why and when do national states comply with international law as, according to Moremen [16], it constrains state behavior. Guzman [17] thinks that is due to states' concern about the reputational and direct sanctions that follow international law violation. Posner [18] introduces the issue of justice and moral obligation of states to obey international law, concluding that compliance with international law is merely a prudent behavior.

The conventional model of international law implies respect for the independence of the territorial authority and the consent of the state. The obligation for its implementation begins only after integration into the legal system of the state. Transnational law increasingly takes on an important role, as a special, unconventional model. It includes "all rights governing activities or events that transcend national boundaries. State and private international law are also included, as well as other rules that do not fully fit into such standard categories" (Jessup 1956, in [19]). Diverse participants are involved in the formation of transnational legal institutions, from professional networks of entrepreneurs, networking of state regulators such as central/national bankers, to private and public actors who try to apply global control mechanisms in different areas such as standardization, mining or environmental protection [19].

Until the 1970s, international legislation did not deal much with mining, environment, and human rights issues, recognizing that within their territory "States have the sovereign right to exploit their own resources pursuant to their own environmental policies" [20], but they also have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction" ([21], principle 21).

Human rights regulation is of particular importance for regulating the behavior of both large mining companies and government structures towards impacted populations, especially vulnerable groups: the poor, indigenous peoples, the elderly, women and children, etc. Rapid development in this area occurred especially after the adoption of the United Nations Universal Declaration of Human Rights (UNDHR) in 1948, which was signed and ratified by the largest number of countries. Although not legally binding, it is considered the most important document in the field of human rights. It has inspired numerous binding international agreements and conventions both at the global level (International Covenant on Civil and Political Rights; International Covenant on Economic,

Social and Cultural Rights, both adopted in 1966) and at the regional level (African Charter on Human and Peoples' Rights adopted in 1981, American Convention on Human Rights adopted in 1969, came into force 1979; etc.). More recently, the adoption of the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, 1998) has been significant.

Developed countries started to implement various regulations and instruments with an attempt to limit the negative effects of mining on the environment, cultural heritage, and the population well-being and health [11, 22-23]. This was later followed by the developing countries [12, 24]. These instruments include various types of impact analyses: environmental impact assessment - EIA, social impact assessment - SIA, strategic environmental assessment - SEA; as well as environmental management plans - EMP, mine closure plans - which are prepared ex-ante, i.e. before the opening of the mine/the start of exploitation, environmental quality monitoring plans (during operation and after closure), etc.

Several factors have contributed to the more widespread application of regulations on the protection of the population and the environment in countries with weak regulatory systems. Those factors include development of the international legislation, spread of democratic principles, as well as local pressures – protests of endangered and neglected population (in the World Bank terminology they are defined as PAPs - Project Affected Persons). According to Paehlke [25], only a few international environmental agreements have been effectively enforced so far and some have had positive effects. More worrying are the constant global pressures on national environmental legislation and its implementation, as well as the relocation of problematic activities (such as mining) from wealthy nations to countries with weak legislation (such as Indonesia, Mexico, Kazakhstan or Guyana [25]).

In Europe, the following legal acts are particularly important: the European Social Charter (1961), the European Convention on Human Rights (adopted in 1950, came into force 1953; the Republic of Serbia ratified it in 2004) and the accompanying First Protocol (1952), which establishes the obligation of the state to guarantee to everyone the "peaceful enjoyment of his possessions", except in the case of expropriation based on the public interest (Art. 1); also the Protocol No. 12 (2000) which prohibits public authorities from discriminating on any ground (e.g. sex, religion, property, etc.; Art. 1).

The European Union (EU) member states have the obligation to incorporate and apply EU laws (Regulations, Directives and Decisions) in their national context. Directives lay down certain results that have to be achieved, but each Member State can decide how to transpose directives into national law. In the practice, transposition was often delayed [26]. For further consideration of environmental and social impacts of plans and projects, the EIA Directive (Directive 2011/92/EU on the Assessment of the Effects of Certain Public and Private Projects on the Environment) and the SEA Directive (EU Directive 2001/42/EC on the Assessment of Certain Plans and Programmes on the Environment) have been developed. Despite their long-term transposition into the legislation of old EU member states, there is a need for improvement (e.g. [27]). Countries that gained the candidate status from the European Council, as Serbia, must align their domestic legislation with the acquis communautaire before joining.

The non-binding declarations, which are mainly recognized under the term soft laws, include as the most significant: the UN Declaration on the Right to Development (1986), UNESCO Universal Declaration on Cultural Diversity (2001), the UN Declaration on the Rights of Indigenous Peoples (2007), and others. The majority of the UN member states have incorporated the most important principles of the UN Declaration of Human Rights (UNDHR, 1948) into their national legislation. However, Dolinger [28] considers those

efforts insufficient ("a failure") as majority of them does not comply with the principles of the UNDHR.

The issue of direct and indirect implementation of international norms has been particularly highlighted in scholarly discussions. Many researchers [29-30] conclude that signing an international convention or agreement does not mean that there will be a visible direct impact. This is explained by the fact that the impacts are indirect and difficult to measure [29] or by the fact that good practice in the protection of human rights was actually the reason for joining the convention, and that sometimes agreements are ratified without the will or capacity to implement them [30]. In the analysis conducted for the period 1981-2007, Cole [30] concludes that positive effects will certainly be evident in the long term, but that they do not always depend on ratification itself.

There are several dominant areas when it comes to the potential negative impacts of large-scale mining operations. For successful spatial planning of mining regions, it is important to comply with international legal instruments that regulate the areas of forced evictions/involuntary resettlement including housing, and rights of indigenous peoples, which stand out in particular. Other important and delicate issues include boom towns, female population, health care and education, forced and child labor, use of force, but they will not be analyzed in detail here.

2.1. Forced evictions and involuntary resettlement

The obligation of States to refrain from forced evictions, and at the same time to implement protection against forced evictions from homes and land derives from several international legal instruments. The most relevant are:

- the Universal Declaration of Human Rights (1948, Article 25, Paragraph 1);
- the International Covenant on Economic, Social and Cultural Rights (1966, Article 11, Paragraph 1) guarantees the right to housing as part of the right to an adequate standard of living;
- the Convention on the Rights of the Child (1989, Article 27, Paragraph 3), where States Parties agree to implement the right of every child to an adequate standard of living, and to provide material and other assistance;
- the Convention on the Elimination of All Forms of Discrimination Against Women (1979, Article 14, Paragraph 2 [h]) requires the elimination of discrimination against women in rural areas and the right to ensure that such women "enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications";
- the International Convention on the Elimination of All Forms of Racial Discrimination (1965, Article 5), "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, …" to enjoy, inter alia, the right to housing (UN Human Rights Council, 2007;
- the International Covenant on Civil and Political Rights (1966), e.g. in Article 17 states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, ...", and that "everyone has the right to the protection of the law against such interference or attacks"; and
- Agenda 21 (a non-binding action plan of the United Nations turned to sustainable development; a product of the Earth Summit held in Rio de Janeiro, Brazil, 1992) states that "the right to adequate housing as a fundamental human right…" (Paragraph 7.6) and "people should be protected by law against unfair eviction from their homes or land" (Paragraph 7.9 [b]).

There are also a considerable number of declarations, resolutions and other non-binding legal documents that affirm the human right to adequate housing: the UN Declaration on Social Progress and Development (1969), the Declaration on the Rights of the Child (1989), the Vancouver Declaration on Human Settlements (1976), the UNESCO Declaration on Race and Racial Prejudice (1978), the Declaration on the Right to Development (1986), etc.

Several documents have been adopted that are exclusively devoted to the obligation of the State to refrain from and to provide protection against forced evictions from homes and lands: Resolution on Forced Evictions (UN Commission on Human Rights, Resolution 1993/77), General Comment No. 7 of the Committee on Economic, Social and Cultural Rights: The right to adequate housing: forced evictions, Art. 11 (1) (Committee on Economic, Social and Cultural Rights, General Comment n°7: The right to adequate housing: forced evictions), Resolution on the Prohibition of Forced Evictions (Commission on Human Rights Resolution 2004/28). Comprehensive human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex) have been also developed, and later supplemented by the Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1).

Despite a vast bunch of international legislation preventing and limiting forced evictions and involuntary resettlement, vulnerable groups in both developed and developing countries face forced evictions often due to poorly enforced laws [31-32]. NGOs play important role by increasing pressure on governments to respect the accepted norms [31]. In case of development-induced resettlement, the major international actors are financial institutions and development agencies (as World Bank, OECD) as their resettlement policies are mandatory for borrower governments [33].

2.2. Indigenous peoples

The emergence of human rights standards and control mechanisms marked a turning point for traditional peoples - the concern for respecting the rights of all citizens was no longer an internal matter of the state, but also a concern of the international community. For traditional populations, this meant progress in the dimension of substantive rights, including the right to exist as a distinct community (the adoption of the International Convention on the Prevention and Punishment of the Crime of Genocide in 1948 is significant), the right to self-determination, the right to equality and non-discrimination (International Convention on the Elimination of All Forms of Racial Discrimination, 1965), etc. (for more details see: [34]). To demonstrate the operational significance of this convention, Orellana [34] cites the example of the adoption of the Native Title Amendment Act, which allowed the Australian government to unilaterally abolish native land rights. The Committee of the International Convention on the Elimination of All Forms of Racial Discrimination reacted against this, concluding that such doctrines were illegitimate and racist.

The right of indigenous peoples to meaningfully participate in the management of natural resources is recognized in numerous international agreements, including: The Rio Declaration on Environment and Development, the International Convention on the Elimination of All Forms of Racial Discrimination, Indigenous and Tribal Peoples Convention No. 169 by the International Labour Organization, Agenda 21, the OAS Declaration on the Rights of Indigenous Peoples, UNDRIP - the UN Draft Declaration on

the Rights of Indigenous Peoples, and the UN Convention on Biological Diversity. These declarations recognize the right of indigenous peoples to land, to traditional resource management, equal rights to participate in public affairs, the need to protect indigenous territories from threats to their environment quality, and the need to obtain the prior informed consent of indigenous peoples before decisions are made that affect their rights and interests.

The degree of acceptance of the aforementioned declarations on the international stage varies. For example, countries in the Asia-Pacific region have ratified only some of the most important documents. Although hosting almost two-thirds of the global population, Asia-Pacific region is the only global macro-region without applied regional mechanism for the protection of human rights. The USA is a special example, as it insists on the promotion of human rights worldwide, but at the same time has not ratified a large number of international documents on the protection of human rights (this refers to a wide range of different international conventions in the areas of civil and political rights, the rights of children, women, workers, people with disabilities, torture, forced evictions, etc.).

2.3. The role of international financial institutions

International financial institutions, i.e. development banks play a crucial role in supporting realization and development of mineral extraction projects in developing countries, due to high amounts of initial investment required [35]. The World Bank is among the most influential. At the end of the 1980s, after significant international pressure due to major damages of the ecosystems in Third World countries [36], the World Bank understood the importance of ex-ante analysis of possible negative impacts of projects on the populations and environment. Since 1986, the World Bank has introduced social impact assessments as an integral part of the evaluation procedure for projects it finances (as Burdge [22] states, by then it was already clear that many projects financed by the Bank had failed due to environmental problems and neglect of the social and cultural milieu), which is being followed by most regional banks. In 1989 the Bank introduced the policy of environmental assessments as Operational Directive - OD 4.01. This Directive has suffered numerous criticisms, primarily due to the lack of an alternative to stop the project if the environmental risks are too big, as well as the failure to mention binding requirements on informing local residents and their right to participate in the assessment process [37]. In order to solve these and other issues, the Directive was transformed in 1999 into an Operational Policy - OP 4.01, whose implementation was explained in Bank Procedures - BP 4.01. This policy applies to every investment loan of the World Bank if there is a possibility that the project will have a negative impact on the environment (understood in the broadest sense: natural environment; human health and safety; social aspects - forced displacement, indigenous people and cultural wealth; transboundary and global aspects of the environment), regardless of whether the creation of an environmental assessment study is mandatory according to regulations of the country in which the project is implemented. These assessments are also a means of improving project performance and increasing its quality and sustainability. By the mid-1990s, the Bank had promulgated social safeguard policies, established a Social Development Department within the World Bank and a Social Audit Unit within the IFC, promoting the adoption of SIA principles for public and private sector projects. Despite developed and improved safeguard policies, research shows that mistakes

and miscalculations in World Bank operations from 1990s continued, mainly due to low policy enforcement [38].

A similar policy of environmental protection was introduced by the European Bank for Reconstruction and Development (EBRD) in 1991 and, in the meantime, it has developed into a joint policy of environmental protection and social development (Environmental and Social Policy).

Well before the World Bank, many international institutions began requiring social impact analyses of projects they finance in less developed countries. The United States Agency for International Development (USAID) has been implementing a Social Soundness Analysis (SSA) since 1974, using an independently developed methodology.

The International Financial Corporation (IFC), a member of the World Bank Group, is the largest global development institution focused on the private sector in emerging markets. IFC introduced an Environmental and Social Review Procedure only in 1998, although it has been shown that it is not fully adhered to. It is only since 2011 that the IFC has required its clients to apply the "free, prior and informed consent" of the affected population. IFC Performance Standards on Environmental and Social Sustainability are effective since January 1, 2012 [39]. They apply to all projects that IFC supports, with an aim to significantly improve the business practices of mining industries in developing countries. The leading world banks accepted IFC proposal to implement the Equator Principles for all project loans above $10 million and (since 2014) corporate loans above $50 million. This set of guidelines for managing social and environmental issues associated with project financing, including mining projects, now includes 10 principles. Today, 131 financial institutions globally are Signatories to the Equator Principles, but some research (e.g. [40] show that their implementation could be better.

2.4. Approaches to mining legislation

Political power has long had a decisive influence on the approach to regulating mining activities: directing all mining revenues to the central treasury, setting low fees to attract foreign companies, eliminating the participation of affected parties, ignoring traditional land rights, etc. But pressure from workers, the public, and civil society organizations, along with the promotion of novel approaches such as "sustainable development", "resilience" or "just green transition" has in recent decades significantly influenced changes in this regard in developed as well as developing countries (Table 1). Mining industry is largely undertaxed in many countries to attract investors, but the attitude that their taxes should be increased is growing. Although the middle column in Table 1 looks like "Miner's Heaven", it is disputable if such legislation really supports investors or actually leads to a series of potential conflicts [41].

3. SERBIAN LEGISLATION

National legislation of the Republic of Serbia respects to a high degree the international conventions, declarations and treaties that the country has signed and ratified. Serbia has ratified the majority of aforementioned international instruments, and incorporated many of their provisions and recommendations into national legislation.

Table 1 Traditional and sustainable approaches to mining related legislation (based on Danielson, 2004)

	The "Investor Friendly" Approach	The "Sustainable Approach"
Taxes	Taxes as low as possible	Taxes based on the concept of a "fair share" of the cost of supporting government
Public participation	Kept to a minimum, and limited in time	Real engagement and dialogue instead of a "checklist" approach
Indigenous land claims	Not recognized except in a few carefully defined areas; many indigenous organizations dissatisfied	Based on agreement between government and indigenous groups on core issues and ongoing process to resolve conflicts
Central versus Local Government: Conflict Over Share of Revenues	Revenues go to central government; investors do not care if anything is received locally	Seeking agreement between central and local government over sharing of revenues
Protected Areas		Legislation based on strict rules for protection of significant natural and cultural assets

Serbia has been aspiring for membership in the European Union (EU) since the beginning of 2000s, and in March 2012 the European Council granted Serbia official candidate status for the EU membership. By signing the Stabilization and Association Agreement Serbia has committed to a gradual harmonization of national legislation with the acquis of the European Communities, as well as to its consistent application. Till January 2025, 22 out of 35 chapters have been opened, of which only two chapters have already been provisionally closed.

For the regulation of mining and related activities, the legislation governing the areas of: mining, spatial and urban planning, environmental protection, social development, human rights, protection of cultural assets, public participation, and agriculture is of the greatest importance. State policy significantly affects the development of the mineral resources sector. The basic strategic commitments in this area are expressed in the following national strategies:

- the National Sustainable Development Strategy (2008),
- the Industrial policy strategy of the Republic of Serbia from 2021 to 2030 (2020),
- the Energy Development Strategy of the Republic of Serbia until 2040 with projections up to 2050 (2024),
- the Strategy for development and promotion of socially responsible business (2010),
- the Regional Development Strategy from 2007-2012 (2007),
- the Strategy for Poverty Reduction in Serbia (2003),
- Strategy for the management of mineral resources in the Republic of Serbia until 2030 (2012), (a new one for 2025-2040 is in the formation process),

but some of them are outdated (they have not been updated since more than a decade). On the other hand, the National strategy of sustainable use of natural resources and goods (2012) was abolished in 2021, although a new one has not been enacted.

Very important roof document, The Strategy for the management of mineral resources in the Republic of Serbia until 2030, adopted in 2012, emphasizes the importance of the "social pillar", i.e.: promoting the essential contribution of the mineral sector (MS) to

society, promoting transparency at all levels (from local to national; in order to avoid conflicts and provide support by clear and timely decisions in the field of research, exploitation and processing of MS), and promotion of corporate social responsibility of the mining sector. But apart from declarative recognition, concrete measures and instruments for the implementation of these principles are not stated anywhere. It is also required to prepare a "preliminary feasibility study, as well as EIA and SIA studies for each specific locality" for programs of promotion and sustainable development of mining and geology, but nowhere is it stated what the content and methodology of these "SIA studies" would be, nor the obligation to adopt rulebook that would prescribe it. Finally, this document ceased to be valid by Decision in 2021. Compilation of the new Strategy for the management of mineral and other geological resources in the Republic of Serbia for the period from 2025-2040, with projections until 2050, was announced in March 2024 with Minister's projection for finalization till the end of 2024, but there has been no official update since.

Beside strategies, important role in this respect have a number of related laws that regulate one or more of the social aspects of mining, including: Law on the Spatial Plan of the Republic of Serbia from 2010 to 2020 (2010), the Law on Mining and Geological Explorations [42], Law on Planning and Construction [43], the Law on Environmental Protection (2004), the Law on Expropriation [44] and others (Table 2). The Draft Law on the Spatial Plan of the Republic of Serbia to 2035 has been on public insight in May 2021, but four years later still not adopted. It provides framework for future mining development and supports "ecological" mining methods, mentions obligation of EIA and SEA creation, but fails in recognising other (except environmental) important social impacts of development. The Law on Public Health [45] and especially Regulation on closer conditions for the implementation of public health in the field of the environment and population health (2019) recognizes need for monitoring and analysis of the health status of the population and assessment of health risks related to environmental impacts of development.

The Law on Strategic Environmental Assessment (SEA) and the Law on Environmental Impact Assessment (EIA), both first adopted in 2004, and the new ones in November 2024, in major parts represent transposition of the relevant European EIA and SEA Directives. The national regulation does not prescribe obligation for compilation of social impact assessment (SIA) as an independent process, while social impacts get addressed during the EIA and SEA process. For plans and programs in the field of spatial and urban planning or land use, energy and mining, as well as other fields, the preparation of SEA is mandatory and the SEA report represents their integral part (as regulated by the Law on SEA, 2024). For projects in the field of mining, it is mandatory to prepare an EIA as part of the technical documentation (regulated by the Law on EIA, 2024).

In fact, the obligation to prepare a special SIA study, as well as a Resettlement Study/Plan exists only if the project is, at least partially, financed by some international financial institutions as the World Bank, EIB, EBRD, or others which have adopted related policies.

The Law on Mining from 1995 was amended in 2005 to introduce the obligation to show the impact of the exploitation of mineral deposits on the social community (this obligation was taken over by the later Law on Mining and Geological Explorations from 2011) as a part of the feasibility study. The current Law on Mining and Geological Explorations [42] prescribes the obligation to prepare a feasibility study for the exploitation of mineral deposits, that must include the impact of mining activities on the social community, along with environmental impact analysis with environmental protection and remediation measures, and

reclamation measures (Article 87). The Rulebook on the content of the feasibility study of the exploitation of mineral deposits ([46] Article 9) prescribes a presentation of: (1) impact on the

Table 2 Important laws of the Republic of Serbia regulating social impacts in spatial planning of mining regions

	Year of adoption (amendment)	Comments
Law on the Spatial Plan of the Republic of Serbia to 2035	draft	Fails in recognizing broad social impacts, except environmental; EIA and SEA.
Law on Mining and Geological Explorations	2015 (2018, 2021)	Feasibility study must include social and environmental assessment; compliance with EU regulations and IFC guidelines. Detailed regulation on considering social aspects is missing. No mention of global mining standards.
Law on Planning and Construction	2009 (2010, 2011, 2012, 2013, 2014, 2018, 2019, 2020, 2021, 2023)	Since 2018 early public insight; since 2014 does not refer to mining facilities and devices.
Law on Environmental Protection	2004 (2009, 2011, 2016, 2018, 2024)	Framework for environment protection, EIA, SEA.
Law on Strategic Environmental Assessment (SEA)	2024	transposition of the SEA Directive, mandatory for mining plans, includes social aspects, does not fully comply with the Aarhus Convention
Law on Environmental Impact Assessment (EIA)	2024	transposition of the EIA Directive, mandatory for mining projects
Law on Expropriation	1995 (2001, 2009, 2013, 2016)	omissions in favor of the expropriation beneficiary. Government determines public interest; no deadlines for compensational construction plot; hollow notification procedure.
Law on fees for the use of public goods	2018 (2019, 2023)	60% to national budget (or 50% to national and 10% to administrative province budget), 40% to local level.
Law on Free Access to Information of Public Importance	2004 (2007, 2009, 2010, 2021)	stricter deadlines than the Aarhus Convention.
Law on Public Health	2016	Framework for risk assessment, environmental monitoring and analysis related to health impacts

social structure of the population, (2) public and other facilities in the mining works impact zone, (3) categorization and changes in the structure of the land structure, and (4) relocation of infrastructure facilities. Amendments to the Law on Mining and Geological Explorations from 2021 emphasize social sustainability as one of the main aims (Article 2), and point out that the mineral policy must be harmonized with the regulations in the field of mining of the European Union on environmental protection; and with guidelines on the environment, health and safety of the International Finance Corporation (IFC) ([39] Article 11). Although the latest amendments to the Law stand out as a significant step towards environmental and social

sustainability, there is still no by-law that would elaborate aspects of social impacts in detail, there is no mention of social responsibility, nor global norms and standards such as EITI, GRI, etc., which represents a major drawback and shows the inconsistency of this law, which ignores widely accepted contemporary world trends and initiatives in this area, including the obligations that the Republic of Serbia assumed by ratifying international documents.

In case of a planned permanent suspension of mining activities, the public company that performs exploitation is obliged to prepare a mine closure program in advance ([42] Article 152). Besides rehabilitation, revitalization and environment protection measures, this program contains measures for solving the problems of local communities caused by the termination of mining activities; and the adoption of a program for resolving redundancy. The funds required for the implementation of the Program are provided from the budget of the Republic of Serbia and other sources. However, the Law does not prescribe this obligation for private company.

Since 2018, the Law on fees for the use of public goods [47] regulates fees for the use of mineral resources and reserves, namely: the payer, the basis, the amount, the method of determination and payment, the allocation of revenue from the fee, as well as other important issues. Article 36 of the Law stipulates that 60% of the funds generated from the fee for the use of mineral resources belong to the budget of the Republic of Serbia, and 40% to the budget of the local self-government unit, and if the exploration is carried out on the territory of an autonomous province - 10% is directed to the provincial budget instead of the republican budget. Fees for geological explorations go entirely to the budget of the Republic of Serbia (Article 19).

The instrument of expropriation has appeared in Serbian legislation since 1844 (The Serbian Civil Code). Although the Constitution of the Republic of Serbia [48] guarantees the peaceful enjoyment of property as one of the fundamental human rights, it may be taken away or restricted in the public interest in accordance with the law (Art. 58), in exchange for compensation that cannot be lower than the market value (Law on Expropriation [49] amended 2009, Article 1). The analysis of the use of the instrument of expropriation in Serbia since 1866 by Stojanović [50] has shown the possibility of its application for the abuse of power, violation of legal certainty, violation of fundamental human rights and constitutional guarantees.

If the expropriation of arable agricultural land is carried out for the exploitation of mineral resources or the construction of energy facilities, the owner for whom the income from that land is a condition for existence does not have the right to acquire ownership of other suitable land in the same place or in the vicinity (Article 15), but is paid compensation in cash (for which, however, he often cannot buy suitable land nearby if speculation and higher demand lead to an increase in prices). The legislative framework provided for broad discretionary powers of state authorities in determining the (general) public interest, as well as in assessing the amount and form of compensation, which according to Stojanović [50] can be subject of abuse. This was finally regulated with the adoption of the Rulebook on the Valuation of Real Estate (2014).

There are other (un)intentional omissions in the Law on Expropriation [49] that are in favor of the expropriation beneficiary. The expropriation beneficiary is not obliged to provide suitable accommodation for the property owner who has already left the plot or facility due to inconvenience, which is particularly present on the edges of open pit mines. A household whose residential facility has been expropriated due to mining works has the right (within the total compensation) to one construction plot in the event of the

displacement of the part or the entire settlement. However, no deadlines for their provision or selection of the location are specified, i.e. shall be determined by agreement between the parties, or by a court decision (Article 16-17).

A significant shortcoming of the Law on expropriation is the lack of an obligation for the beneficiary of expropriation or the state to notify the affected population that the expropriation procedure (over their land) has been initiated, nor to inform them of their rights. Law only states that "notification of the submitted proposal for expropriation shall be delivered to the previous owner by the body competent for making a decision on expropriation" (Article 50, Paragraph 2), but it is not specified in what manner and when. According to Petovar and Jokić [51], this is of particular importance in areas inhabited by a rural, poorly educated and poorly informed population, where there are no independent institutions, nor are there lawyers or legal services available that could provide citizens with reliable and timely information about their rights and the conditions of expropriation.

The amendments to the Law on Expropriation from 2009 took a major step backwards, introducing that the Government may decide on the determination of public interest without prior hearing of the parties (Article 20, Paragraph 10). Paragraphs 12 and 13 were also added, stipulating that the decision shall be published in the "Official Gazette of the Republic of Serbia" and is considered to have been delivered to the parties on the day of publication, while an administrative dispute may be initiated against the decision within 30 days. Paragraphs 12 and 13 were invalidated by the Decision of the Constitutional Court (26th June 2013) due to the violation of the Constitution (i.e., limiting the rights of owners of immovable property) and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Citizens exercise the right to access information held by state bodies that relate to the protection of public health and the environment based on the Law on Free Access to Information of Public Importance ([52], Article 4). If necessary, citizens can also contact the Commissioner for Information of Public Importance, and request information and legal protection. There is a possibility that state bodies quite arbitrarily refuse requests for information, which is not in line with the Aarhus Convention. On the other hand, this law prescribes stricter deadlines (than the Aarhus Convention): a response must be made within only 15 days, and if the information is of importance for the protection of health and the environment, within 48 hours; a subsequent deadline of a maximum of 40 days may be granted if the data is extensive or complex.

The issue of public participation in spatial planning and development is regulated by the Law on Planning and Construction, the Law on EIA, the Law on SEA, etc. (including indirectly, such as the Law on State Administration, the Law on Free Access to Information of Public Importance, and others). In the Law on Spatial Plan of the Republic of Serbia (2010), the general principles of spatial development of the Republic of Serbia include "active implementation of spatial development policy and public participation" and "greater transparency in decision-making on spatial development". The Law on Planning and Construction ([43] emphasizes the importance of horizontal coordination, which includes the connection and participation of all actors in spatial development (also citizens and civil sector); planning documents are mandatory for public insight to enable citizens to submit comments; planning commission submits the report on public insight with decisions (per each comment) to entity responsible for drafting the planning document, who must act on the decisions, and if the adopted comments substantially change the planning document - the entity responsible for drafting must draft a new version

(Art. 50 and 51). Amendments from 2018 (Article 16a) introduced early public insight when interested individuals and legal entities can get familiar with the concept of the planned development, and provide suggestions for plan coordinator. Information about public insight is most often published on the notice board of the competent authority (possibly on the website) or in local newspapers, so it often happens that citizens in rural settlements are not informed in time about the plan proposal that may significantly affect their property and the local community. Petovar and Jokić [51] point out that even when it comes to plans/projects that will result in expropriation and other ways of restricting residents in the disposal of property, the Law does not postulate the obligation of public involvement and cooperation between the Plan developer and the local community and citizens living in that area.

The Law on SEA ([53] Article 27) prescribes the presentation of plans/programmes for public inspection and holding of public debate. However, the Law does not fully comply with the Aarhus Convention, which insists on "... ensuring public participation at an early stage, when all options are open and when effective public participation is possible..." (Art. 6), but rather prescribes public involvement only at the final stage (decision-making on the SEA report), when the possibility of significant public input and influence is reduced. The Law on SEA has another shortcoming - it does not state how the assessment and results of the consultations will be taken into account. These shortcomings are inherited from the previous Law on SEA (2004).

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In general, the biggest shortcoming of all national regulations regarding public involvement is the declarative approach, as well as the lack of a participatory approach, since the participation of interested parties is reduced mainly to passive informing the public and the possibility of expressing objections. Instead of active participation in consultations, workshops, etc., attempts are most often made – especially in controversial projects (such as the opening or expansion of mines) that may have significant negative impacts – to provide the public with only a minimum amount of basic data. It is precisely such secrecy and concealment that often cause anxiety, fear and revolt among local interest groups, who can then use pressure to delay or completely stop the planned development.

When it comes to the development of large mining regions, decades of research and practice of planning and implementation of plans (started at the IAUS in the late 1970s) have shown that “the existing normative and planning regulations in Serbia do not provide optimal organizational and institutional assumptions for efficient management of spatial development” in these regions ([1] p.3), i.e. that its amendment and adaptation are necessary in order to achieve the greatest possible benefits for the local and wider social community. In this sense, and based on the experiences of developed countries (primarily Germany), Spasić et al. [1] propose the adoption of a special legal document that would regulate in more detail the conditions for planning, development and restoration of space in large mining basins, and thus avoid changes to regulations in the fields of mining, energy, agriculture, forestry, expropriation of real estate, etc. Such an integrated approach based on the results of multidisciplinary research will best direct the economic, environmental and social changes (i.e. achieve sustainable development) that are the result of the exploitation and processing of mineral raw materials, and harmonize the related, and mutually conflicting, interests.

4. CONCLUSIONS

Mining activities can induce significant economic progress of the local and regional level, but at the same time huge negative impacts, especially regarding environmental degradation and social decay (involuntary resettlement, boom towns, indigenous rights, impoverishment). Such contradictory effects can be highly complex and therefore demanding to direct, coordinate and mitigate. The legislative framework on international and national level provides both mandatory (binding) and voluntary (non-binding) guidelines to planning development of mining regions.

Through a large number of international and regional documents, international legislation has devoted significant attention to all relevant aspects of development in mining regions, as well as to the reduction of negative impacts on the environment and populations. Individual states have voluntarily decided to comply with international norms partially or completely. Although international law (both hard and soft) has been improved and rather satisfying in its scope, several researchers (25,38,40] point out that the main problem is their enforcement. This also refers to the case of Serbia, both regarding implementation of international and national legislation.

There is a long tradition of mining in the Republic of Serbia. The cultural-historical heritage, accepted values and trends, and political (internal and external) relations strongly shape attitude towards extraction industry and community protection. The country is a signatory of majority of international and regional documents and treaties that can refer to mining development. However, the international regulations mentioned are not yet fully transposed. There are certain shortcomings and inconsistencies in the legislative framework, especially when it comes to reducing the negative impacts of mining. There have been certain legislative improvements and attempts to comply with positive international trends (e.g. introduction of early public insight, or cancelling amendments to the Law on expropriation that attempted to further support the expropriation holder which was against the EC Charter on Human Rights) in recent years. At the same time, significant state strategies and other umbrella documents for successful management and sustainable use of mineral resources are still missing. However, Serbia does not have a strategy for the management of mineral and other geological resources (not valid since 2021) nor a Spatial Plan of the Republic of Serbia since 2020 (new draft passed public insight in 2021), which creates a specific vacuum enabling deregulated activities, and additionally contributes to insufficient compliance to international standards. Also, no legislation mentions the methods and instruments or means of financing to mitigate the consequences of opening mines – primarily the resettlement of the population, as well as the consequences of closing mines, i.e. eliminating the negative effects due to layoffs, migration, etc., as well. Relying on the research of Spasic et al., we propose introduction of a single legal act that would refer to overall regulation of different development aspects in mining regions and provide better harmonization and a just development in these specific areas.

Although the significance of social impacts is stated in relevant umbrella legislation of Serbia, it is dominantly purely declarative approach. There are no detailed elaborations and instructions for specific application (as rulebooks, by-laws, guidelines), except regarding solely environmental impacts. This analysis of relevant national legislation in the Republic of Serbia has helped to identify some of those problems and inconsistencies, whose improvements will certainly enable more sustainable and socially sound development of mining regions.

Acknowledgement. *This research was supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia (Grant No. 451-03-66/2024-03/200006), and by the Science Fund of the Republic of Serbia, Grant No 7598, Improving participation in spatial planning of mining regions - MINIPART.*

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ZAKONODAVNI OKVIR ZA DRUŠTVENE UTICAJE U PROSTORNOM PLANIRANJU RUDARSKIH REGIONA

Prostorno planiranje razvoja u rudarskim regionima je uslovljeno zakonodavnim okvirom, pošto rudarske aktivnosti, osim pozitivnih (ekonomski napredak), imaju brojne negativne uticaje na lokalnom i regionalnom nivou. Pored degradacije životne sredine, posledice planskog razvoja u rudarskim regionima (prinudno raseljavanje, kompanijski gradovi, ugrožavanje prava starosedelaca, osiromašenje) su vrlo kompleksne, a njihovo usmeravanje i ublažavanje je zahtevno.

Rad je posvećen analizi međunarodnog zakonodavstva koje reguliše društvene uticaje rudarstva, uključujući „tvrde" i „meke" zakone. Nakon toga sledi kritička analiza odgovarajućeg nacionalnog zakonodavstva Republike Srbije, uključujući najrelevantnije strategije i zakone. Glavni je cilj identifikovati postojeće probleme i nedoslednosti, kao i dati priedloge za poboljšanja kako bi se omogućio održiviji i socijalno prihvatljiviji razvoj rudarskih regiona. Dobijeni rezultati za Srbiju otkrivaju: (1) delomično i odgođeno uključivanje međunarodnih normi i standarda, uključujući transpoziciju zakonodavstva EU; (2) društveni utjecaji se kratko spominju, bez razrade mera za ublažavanje (deklarativni pristup), (3) nekoliko relevantnih strategija je zastarelo ili čak ukinuto bez odgovarajuće zamene; i (4) naglasak je na ekološkim aspektima, dok je razmatranje ostalih društvenih uticaja slabo i sporadično. Donošenjem jedinstvenog akta kojim bi se regulisao razvoj rudarstva prevazišle bi se hijerarhijske i horizontalne nedoslednosti i propusti, te uključili zanemareni aspekti, odnosno društveni uticaji ekstraktivne industrije.

Ključne reči: *rudarstvo, zakonodavstvo, društveni uticaji, prostorno planiranje, Srbija*