

Lessons learned from the Kolubara 'environmental improvement' project and recommendations for the current EBRD Environmental and Social Policy revision

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CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

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The decision on the Kolubara lignite mine 'environmental improvement' project in Serbia was made in July 2011, at the time when the forced removal of the local graveyard of the Vreoci community was initiated. The Vreoci cemetery lies on an estimated 50 million tonnes of coal and its exhumation was a precondition for digging an additional 600 million tonnes of lignite. The village was 'under siege'¹ with hundreds of police forces securing the smoothness of the operation in front of the eyes of the helpless people. The forced removal of the remains of the deceased family members was done without the necessary church ceremony, against the community's religious beliefs and customs, and in breach of Serbian law. The graveyard was guarded by police forces for months until the exhumations took place, while Vreoci people were not allowed to enter.

In spite of the protest in front of the EBRD office in Belgrade and the appeals to the EBRD Board of Directors from the local community² and from NGOs, and in spite of on-going corruption investigations of the company,³ the loan for the Kolubara project was approved. Indirectly a message was conveyed by the EBRD's decision-makers, that the corporate social responsibility practices of the EPS company satisfy the high standards that the bank claims to promote. The EBRD responded with arguments about the project's narrow area of influence, failing to demonstrate the level of concern needed to signal to the company that it must tidy up its act with regards to human rights.

Following the removal of the Vreoci graveyard, owners of more than 120 graves and tombstones initiated appeals to the Administrative Court of Serbia on the illegal transfer of their relatives' remains, yet the Court has not ruled on these. Prior to that private land and home owners have submitted numerous claims for compensation for their property, but have found no redress for their grievances. A 2011 Resolution of the Serbian Ombudsman⁴ concluded that the allegations by communities affected by the Kolubara mine are justified and confirmed violations by the company of Serbian law and the Constitution.

A year after the approval of the project, two community complaints were submitted to the EBRD's Project Complaint Mechanism, claiming a number of violations of human rights, predominantly related to two problems: 1) the harm to living conditions in the area around the mine due to environmental pollution from coal extraction, processing and transportation and 2) unresolved problems with land expropriation and resettlement.

Claims in the two PCM complaints sharply contradict information in the Stakeholder Engagement Plan and the Environmental and Social Action Plan, prepared by the ESP company, for example the SEP claims that "EPS and RB Kolubara do not anticipate any significant issues concerning communication with and equitable treatment of stakeholders that could be adversely influenced by the proposed improvements to the coal mining equipment at the Kolubara Mining Basin." Two years after project approval, information on the implementation of the above plans is impossible to find on either the EBRD's or the client's web sites. Monitoring by CEKOR, Bankwatch member in Serbia, of the resettlement and expropriation processes confirms that these are significantly delayed.

What are the lessons learned from the Kolubara project?

Based on the Kolubara case, Bankwatch has the following recommendations for the Environmental and Social Policy of the EBRD with regards to human rights:

1. Country strategies (CSs) should include an assessment of the capacity of the

- state institutions to protect human rights and to provide redress for grievances of citizens from harm caused by business, including by state-owned giants, like the ESP in Serbia. Additionally, CSs should set concrete strategic objectives for promotion of better respect and protection of human rights that investments in the given country will aim to achieve.
2. Sectoral strategies and policies should similarly assess the capacity of the industry (the energy and mining industry in the case of Kolubara) and of the countries of operation to Protect, Respect and Remedy⁵ and should set strategic sectoral objectives with regards to human rights. Currently Section F of the ESP states that country and sectoral strategies should simply 'summarise' and 'describe the country's key environmental, social and human rights issues.'
 3. In order to prevent reputational and operational risk, and to improve the overall social corporate responsibility of its clients, due diligence should be improved to better pick up human rights problems as social factor investment risks. For example, due diligence should acknowledge disputes and pending court cases against the company, as part of setting a less biased baseline against which Stakeholder Engagement Plans (SEPs) and Environmental and Social Action Plans (ESAP) should be designed.
 4. As part of Social Impact Assessment, Human Rights Impact Assessment should be carried out for the whole operation, without a limitation being imposed by a narrowly defined project area of influence. This approach should especially apply for regular clients of the bank, who repeatedly receive investments for various sides of their business.
 5. SEPs should define clearly the communities and households, whose rights will be threatened or negatively impacted by the project. They should be distinguished from the range of institutional stakeholders, such a police forces or fire departments,⁶ and should be consulted separately prior to approval of the SEP by the EBRD and signing of the project.
 6. Progress with implementation of the SEP or ESAP – for example by setting up a grievance mechanism for project-affected people – should be a contractual condition for disbursement of investments.
 7. The EBRD should provide up-to-date information on the implementation of the project, on mitigation of anticipated human rights and other adverse impacts, including progress with SEO and ESAP implementation. This should be done through PSD up-dates, as well as monitoring data disclosure on the client's web site, and disclosure by the bank upon request.

Notes

1. Provost, C., 24 April 2013, "Serbia's unabated quest for coal causes tremors among mining communities", The Guardian, on-line at: <http://www.theguardian.com/global-development/2013/apr/24/serbia-coal-tremors-mining-communities>
2. Council of the local community Vreoci, 05.07.2012, Letter to the Board of Executive Directors of the EBRD, annex to the Vreoci PCM complaint.
3. CEE Bankwatch Network, Press Release EBRD should not condone illegal resettlements and corruption by investing in Kolubara, on-line at: <http://bankwatch.org/news-media/for-journalists/press-releases/ebrd-should-not-condone-illegal-resettlements-and-corrupti>
4. Serbian Ombudsman, 21 April 2011, Resolution # 8260/21.04.2011.
5. Protect, Respect And Remedy: A United Nations Policy Framework For Business And Human Rights
6. The Lazarevac police department is identified in the Kolubara project SEP as a stakeholder, due to 'increased engagement of police forces in the case of local population or focus groups protests.'