

Public participation experiences from IPA countries

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Case study 1

Albania

The exclusion of civil society organizations from transport project development in Albania

Since 1998 Albania has been a signatory of the Aarhus Convention, and the country has legislation that includes the law on environmental impact assessment (EIA). As such Albania should follow procedures laid down in these two acts, but in practice it fails to do so.

One such example is the Tirana outer ring road project, which began in September 2009 with the publication of the first EIA study by the Tirana municipality. The European Bank for Reconstruction and Development (EBRD) was at that time interested to provide a loan of EUR 25 million for the project but later dropped it due to change of the jurisdiction of authorities over the project.

The first route of the road was planned to pass near the botanical garden, with its surrounding walls set for destruction. The second route was prepared and promoted by the general road directorate and set to damage 25 percent of the botanical garden's territory. Construction works began 9 March 2011 without an environmental permit, and two days before the construction began, a group of 33 national NGOs sent an open letter to the Albanian prime minister against the destruction of the botanical garden. EDEN Center, a national environmental NGO, organised letters to the Ministry of public works and transportation and also to the Ministry of environment forestry and water administration.

Even though construction was already underway and under public pressure, the first public hearing on the EIA study was held 16 June 2011 in the Ministry of environment forestry and water administration. However as the EIA was disclosed only six days before the hearing was held, the public had little opportunity to be properly informed for the meeting. Both the EIA and public consultations for the project have been heavily criticised, and the public as well as NGOs have found wrong data and serious mistakes in the EIA report.

It is clear that in this case the legal obligations of the Albanian government and authorities to the public regarding decision-making process were clearly not fulfilled. Other similar cases including the construction of the Arbri road in the Brari canyon, a natural monument, demonstrate a pattern of poor project implementation. While Albanian authorities push forward EU integration and consequently transposing the EU acquis into national legislation, they ignore national obligations and procedures as well as international conventions to which Albania should adhere.

Case study 2

Bosnia and Herzegovina

Public consultation on the environmental impact assessment (EIA) for the Medna small hydropower plant on the Sana river

On 25 January 2006, the Republika Srpska government, the entity within Bosnia and Herzegovina, adopted a decision to give a concession to the “Energetic” company for the constructions of the Medna small hydropower plant (HPP) on the Sana river. Though the Law on Concessions stipulates that the concessionaire cannot transfer the concession to third parties before the construction of the HPP is finalised, the concession was transferred three times and none of concessionaires obtained the requisite environmental or construction permits. Moreover the upper stream of the Sana river is classified as a “park of nature” in the spatial plan of Republika Srpska, and the area of the Sana river springs where the HPP is planned, as a protected area known for its natural and ambient values.

The Republika Srpska Ministry of spatial planning, civil engineering and ecology initiated an EIA procedure and prior to the public consultations on the draft EIA, the Ministry asked numerous public institutions for comments, including the Institute for protection of cultural, historical and natural heritage of the Republic of Srpska. The Institute provided a list of reasons why the HPP project should not be build, but after political pressure the Institute offered a neutral opinion about project construction.

The public consultation was carried out in the following manner:

- The announcement for the public hearing on the draft EIA study for the HPP project was published in a newspaper and available in only four copies in the municipality nearest the project area. The date for the public hearing in the announcement was wrong and only after several days a correction was published.
- At the public hearing in Ribnik, the nearest municipality, the public was unanimously against HPP construction.
- The local parliament of the Ribnik municipality adopted a decision against construction of the HPP, because in its opinion the EIA study did not consider all environmental impacts and was not in line with the spatial plan.
- The Ministry adopted a decision for the approval of the EIA study, without taking into account the comments and opinions from the public consultation or the decision of the Ribnik municipality.
- The Ribnik municipality and the NGO Zelenkovac raised an appeal to the District court in Banja Luka regarding the flawed EIA document.
- The court's verdict ruled in favor of the Ribnik municipality and Zelenkovac and requested that the EIA study be amended.
- Yet without substantial improvements in the EIA, the Ministry released a new decision to approve the study.
- The Ribnik municipality and Zelenkovac appealed again, and again the court ruled in favor of Ribnik and Zelenkovac and requested that the decision on the EIA be cancelled and the study be improved.
- As of today, there has been no new or updated study released, and the project is still on hold.

This is just one example of flawed implementation of EU EIA directive by the responsible authorities in Bosnia and Herzegovina. Lastly and of additional concern is that representatives from relevant authorities in Republika Srpska are not taking part in the Regional Environmental Network for Accession, an EU process designed for building the capacities of public authorities in environmental matters including EIA and SEA procedures.

Case study 3

Croatia

The partnership principle and waste management in Croatia

Croatia developed its national waste management strategy in 2005 in order to address issues of waste disposal. However the strategy was adopted without any public consultation and available for comments only after being added to a parliamentary voting procedure. On 4 October 2005, the environmental organization Zelena akcija sent a letter to the Croatian parliament asking parliamentarians not to support the strategy because recycling measures and public consultations were lacking in the strategy. In spite of this the national waste management strategy was approved and an eight-year national waste management implementation plan was prepared and adopted in 2007.

The national plan is **questionable in its understanding of public participation** as it says *“that several public discussions have been organized”*. Zelena akcija suspected that this was false and submitted an information request to the Ministry of environmental protection and physical planning (MEPPPC) about the details of public. On 6 September 2007 the state secretary Nikola Ružinski answered that there is no legal requirement for this plan to be publicly shown at all and that presentations were made only for county prefects.

Zelena akcija discovered that the national waste management Plan was never subject to public participation but rather partnership consultation, where

the partners were carefully chosen. Zelena Akcija concluded that the adoption of the plan and its presentation were unsatisfactory because MEPPPC never presented the plan to environmental NGOs, the public and as well legally-binding public participation procedures, as requested by the Aarhus convention, were never organised. The process of adopting the waste management plan and national waste management strategy was closed and hidden, while at the same time the Ministry of environment on several occasions hailed its efforts and successes in ratifying the Aarhus convention. This problem appears systemic among other processes concerning environmental planning.

Additionally the environmental protection operational programme (EPOP) for the period 2007–2009 was published in September 2007 as part of the Instrument for Preaccession. EPOP was developed in parallel to the national waste management implementation plan, the main planning document for the upcoming establishment of new waste management centres at the county and regional levels and the primary measure under EPOP priority axis one. In that report, MEPPPC informed the European Commission that consultations with county representatives had taken place on 11 April 2007 in Zagreb, where a public presentation of the draft national waste management implementation plan was given by MEPPPC minister and state secretary. This again highlights the uninformed interpretation of the MEPPPC with respect to “public presentation” and the Aarhus convention as a whole. **The statement in this report confirms that public participation is only used to fulfill requirements for possible European project finance.**

In the 2007–2013 Cohesion Policy documentation, the principle of partnership has been elaborated such that any organisation representing civil society, environmental partners, non-governmental organisations and organisations responsible for promoting equality between men and women can participate in negotiations concerning the use of Structural Funds. Such organisations should not only participate during the management but are to be involved at every programming stage (including establishment, follow-up and evaluation). However there is no mention of organising *public participation procedures* where the general public can review the documents and participate in public debates. This gap in the regulation has allowed the selective

approach in identifying partners in the consultation process for IPA Environmental Operational Programme (EOP) 2007–2009.

With respect to waste management projects, all projects backed by the national strategy or national plan are moreover not entirely legitimate since public participation procedures were avoided. The EU failed to recognise this and legitimated the projects through IPA EOP, even though the public participation procedure was narrowed.

Case study 4

Macedonia

Involvement of civil society organisations in the programming 2007–2013

In the summer of 2007, the Ministry of transport and communications of Macedonia adopted the operational programme for regional development (OPRD) for the period 2007–2013. This programme has the strategic goal to achieve sustainable development through the improvement of infrastructure in the transport and environment sectors.

According to the national law on environment, the OPRD requires a strategic environmental assessment (SEA). In spite of a lack of detailed regulations enabling an SEA in Macedonia (as several legal acts were not yet developed at that time), the Ministry of transport and communications, in accordance with the Aarhus Convention¹, was obliged to involve citizens and civil society organisations in the decision-making process around the OPRD.

However, in practice the process was carried out in the following manner:

- The OPRD document was published on the website of the Ministry of transport and communications in August during the holiday season;

¹ Macedonia is a signatory of the Aarhus Convention since 1999.

- No additional documents or explanations were available to help citizens and civil society understand the process and importance of the OPRD document;
- The document was available only in English;
- On 5 August 2007, the Ministry of transport and communications published a call for comments to the document, but the commenting period lasted less than 30 days and ended on 31 August 2007;
- There was no public hearing held, only a closed presentation of the programme by the Ministry of environment and physical planning in August 2007;
- Only one comment was submitted during the period;
- The Center for environmental research and information Eko-svest from Macedonia sent a letter to the Ministry of transport and communications asking to prolong the commenting period and disclose the document in Macedonian. The request was not fulfilled and consultations were closed.

In conclusion, this example highlights how Macedonian authorities failed to conduct a proper process for public consultations and involvement in decision-making. This is worrisome in light of the fact that the OPRD document was needed for the future use of EU funds, and the EU has on numerous occasions stated that public participation is a key aspect of the decision-making process.

Case study 5

Serbia

Hydropower on the Lim river, Serbia and public involvement

Two hydro power projects are planned in the next four years for the Lim river in southwest Serbia by the Canadian Reservoir Capital Corporation through its Serbian subsidiary Renewable Energy Ventures d.o.o. ("REV"). The projects Brodarevo 1 (26 MW) and Brodarevo 2 (32.4 MW) are problematic because water reservoirs of 103 hectares and 56 hectares would damage two areas planned as natural protected areas and as well would require the relocation of two sections of the M21 highway.

Over the past three years, local communities in Brodarevo and Prijepolje and environmental NGOs collected 5000 signatures against the projects on the basis of environmental and social concerns and in favor of a referendum on this issue. However these concerns have not been addressed even though legal procedures require it. The projects are also affecting the territory of another state – in the area of Sjenica in Montenegro, local communities have not been informed about the project, even though the Espoo Convention obliges consultations with affected parties in neighboring states.

The EIA procedure

The environmental impact assessment (EIA) for the projects has not yet been finalised yet. At the start of the EIA procedure in August 2010, REV submitted its request for a decision on the scope and content of the EIA to the Serbian Ministry of Environment, Mining and Spatial Planning. NGOs found

about the project from a notification in local newspapers that called public attention to the documentation. When the Ministry concluded the scoping phase in September 2010, the NGO „Prijatelji Brodareva“ and several others reacted with a complaint on procedural and material issues. Primarily the complain outlined that the advertisement was not written in Serbian and Bosnian, the two official languages in Prijepolje Municipality, and that the public presentation was organised in Belgrade, so that was difficult for all interested public to participate, including local stakeholders.

The complaint was sent to the Serbian government in order to overturn the decision, and in their appeal the NGO requested renewal of the procedure. The Administrative Commission of the Serbian Government accepted the appeal and returned the EIA procedure to the first stage due to the violation of the EIA procedure set in the national law.

During the second round, the investor and the Ministry again failed to adequately inform the public about their application. In the new proceedings the competent authority did not inform the public in both Serbian and Bosnian.

When NGOs learned in May 2011 that the Ministry issued another decision on the scope and content of the EIA, they submitted a new complaint on serious flaws of the procedure. At the time of decision, the Ministry for Environment, Mining and Spatial Planning which apparently issued the decision did not exist as an administrative body. During the new proceedings, the Ministry did not inform the public through at least one local newspaper and failed to invite interested agencies and organisations for their inputs, all of which are explicit violations of provisions in the EIA regulation.

After the complaint, it was not clear to complainants whether the Ministry of Environment, Mining and Spatial Planning restarted the EIA procedure, since they never received a decision on their complaint. In December 2011, a local newspaper stated that the new scoping documentation was then available for public review.

In February 2012, the attorney of the NGOs received a completely new decision on the scope and content of the EIA from the Ministry. Dissatisfied with the response, the public appealed the decision to the Serbian government

in a general administrative procedure in March 2012, stating: „During the public review and on several occasions, a number of interested people addressed the Municipality of Prijepolje, with views on the documentation and requested clarification to referral maps, but the official in charge from Prijepolje was on vacation.“

During the public viewing in the municipalities of Nova Varos, Prijepolje and Sjenica, a state of emergency was declared due to heavy snowfall. During this time it was impossible for representatives of interested parties to travel across Serbia to these municipalities and inspect the documentation.

The process is ongoing with no clear end.

SEA Procedure

In January 2012 during preparations of the plan for the special purpose area for the Brodarevo 1 and 2 projects, ten representatives of the interested public and their legal representative travelled to Belgrade where the Republic Agency for Spatial Planning held a public meeting and presented the plan and its strategic environmental assessment. However as no one had informed the NGOs about the requirement to pre-register, they were not allowed to enter the building. In addition during the public review procedure, the responsible authority in Prijepolje was sent on vacation and NGOs tried unsuccessfully four times to familiarise themselves with the plan and SEA.

During the procedure there was no public consultation in the Municipality of Sjenica, Montenegro, where part of the territory will be directly affected directly by the project. Public access to the SEA was scheduled during the Christmas and New Year holidays, effectively shortening the comment period. The plan says that arable land and an active, Bosniak cemetery in the village of Gracanica will be flooded, which is in violation with the law on cemeteries.

In developing two other planning documents, the Municipal Spatial Plan for Prijepolje and Regional Spatial Plan for the area of Zlatiborski and Moravički administration districts, public authorities also violated rules on public participation.

A coalition of NGOs has been faced with attacks in the media on the local level and by the state Serbian media. There are also issues related to human and minority rights of Bosniaks in this region, who see the construction of dams as an attempt at involuntary resettlement and are ready for drastic forms of resistance to defend their interests.

NGOs so far have submitted nearly 20 legal claims, appeals, petitions to various authorities and a criminal complaint, and have organised public protests and collected 5000 signatures against the project.

The main demand is respect for the rule of law and the implementation of national laws and international conventions that enable public participation in decision making.



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