

Written Contribution to Session V: Communicating Environmental Challenges and Risks and Promoting
Public Participation in Decision Making

Challenges to Public Participation in Energy Projects
Lessons From Bosnia and Herzegovina

Background

Faced with the results of polluting and destructive actions, many international treaties and local laws and regulations on environmental protection have been introduced in the second half of the 20th century. These at first did not mention human rights in relation to environmental protection, but since the 1970s, links between human rights and the environment have progressively been recognized. More and more people started to see that a clean and healthy environment is essential to the realization of fundamental human rights, such as the right to life, personal integrity, family life, health and development. Thus, each human being depends on protecting the environment as the basic resource for all life.

Energy is one of most important sectors in any economy today. Even though excessive burning of fossil fuels and other unsustainable human practices brought our planet into age of more and more evident climate change, little is done on global level to prevent catastrophic consequences. Rising of global temperatures more than 2 degrees C over preindustrial levels, that is almost certain (having in mind latest evidences of extreme temperatures, floods and droughts, melting polar ice, etc) is fostering present and upcoming global crises, such as water, food, epidemics, etc. For already too long, high level decision-makers are failing to agree on ambitious, just and binding global agreement, successor of Kyoto protocol, that would leave fair chance to bring greenhouse gases under 350 ppm, which the scientific community identified as the highest safe level of GHG.

European Environmental Agency study *Late lessons from early warnings: science, precaution and innovation*, published in January 2013 is estimating that costs of ignoring warning signals are financially immense, and in some cases leading to deaths, illness and environmental destruction. In energy sector, this is mostly relevant for climate change, floods, destruction of ecosystems and nuclear disasters. Moreover, at recently finished World Economic Forum in Davos, Switzerland, World Bank and members of EU Parliament loudly called for shift in global approach to climate issues. Changing policies, cutting subsidies for fossil fuels and diverting funds in sustainable energy projects are actions that are expected.

Energy Community for Southeast Europe

If we are looking in Western Balkan region, situation is worrying. Environmental standards are still quite weak and transposition of EU environmental acquis varies from country to country. Implementation of environmental legislation remains an acute problem. Having in mind that most of countries see energy as 'golden hen' that would provide sufficient amounts of energy for planned economic growth and be a major contributor to elevation of countries from economic crisis, countries plan to build hundreds of new power plants, mostly coal-fired and hydro power plants.

In regard to Energy Community for SEE (ECSEE), it is very important initiative, because regional approach is necessary not only as part of the european integration approach, but also in terms of

achieving sustainable development in the energy sector. On other hand, we are extremely concerned about the adopted Regional Energy Strategy (RES) for the Energy Community, which envisages energy investments in the order of 44.6 billion EUR in the next 8 years. Number of NGOs from the region, mostly those working on environmental issues, were highly critical about consultation process on RES draft, and two main complaints are:

- a) The ECT Ministerial Council, in relation to the Regional Energy Strategy, did not fulfill its obligations in relation to the Aarhus Convention.
- b) Any Contracting Party who has signed an SAA with the European Union is obliged to transpose and apply SEA provisions into domestic law

Regarding content of the RES there were numerous comments, while most important are following:

- The 2050 Road Map is not referred to at all and all three scenarios in the RES entail CO2 Growth
- The Energy Efficiency targets are very low, especially given the room for improvement as recently assessed by the World Bank, and the prevailing EU 20/20/20 targets
- The criteria outlined for selecting priority projects automatically disadvantage renewable energy and energy efficiency by concentrating on cross-border projects, and enable the selection of projects which conflict with decarbonisation goals
- As it will be extremely challenging for the region to meet its own energy needs as outlined by the strategy, the Energy Community should not support projects primarily aimed at the export of electricity to the EU.

In October 2012, tens of NGOs were asking their country representatives to ECSEE and to Mr. Vladimir Kavacic, President of the Ministerial Council of the Energy Community, for postponing of the approval for RES until the considerable flaws associated with both the process and the content are resolved. Unfortunately, RES was adopted and it represents blatant neglect of participatory principles. This is worrying epilogue, as EU standards are often strongest leverage for NGOs in advocating higher environmental and participatory principles to the governments in the region.

Bosnia and Herzegovina - Case Studies in Energy Projects

On national and local level public participation in environmental matters is enabled by transposition of Aarhus and Espoo convention, but also Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) EU directives.

Bosnia and Herzegovina ratified the UNECE Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (AC) in September 2008, and authorities submitted the First national report on implementation of the Aarhus Convention, with extensive support of OSCE. The report emphasized the fact that the major problems in implementation of the Convention are caused by lack of availability of environmental information as well as inadequate public participation in early stages of the decision making process.

In European Commission Progress Report for 2012 stands:

A Framework Law on the Environment remains to be adopted and efforts are required to implement the Environmental Impact Assessment (EIA) Directive in a harmonised manner at State and Entity levels. Implementation of the Espoo Convention on EIA in a Transboundary Context has not started. Public participation in environmental decision-making and public access to environmental information remain weak.

Transposition of the SEA directive is at an early stage, while EIA directive is fully transposed, but poorly implemented. BiH did not start implementing the Espoo Convention on Environmental Impact Assessment

in a Trans-boundary Context. We believe that out of all countries in the region (with exception of Kosovo) Bosnia and Herzegovina is in most dire situation regarding environmental standards and public participation in energy related activities. There are few examples of poor implementation of public participation in environmental aspects of energy projects, that can be illustrative.

(1) Hydro-power project Upper Drina River

In July 2012 Government of Republika Srpska* started public consultation on EIAs for two out of four planned HPPs in hydro-power project Upper Drina River, but did not inform relevant ministries in BiH and Montenegro, because Drina River is transboundary watercourse and accumulation planned for HPP Buk Bijela would reach border with Montenegro and potentially could have impact on Tara River, which is UNESCO MAB reserve. After first reactions from NGOs and Government of Montenegro, high officials of Republika Srpska (President and Prime Minister) released statements that Republika Srpska does not need approval of Montenegro or institutions of BiH. Government of Montenegro promptly sent official letter to Ministry of Foreign Trade and Economic Relations (responsible for energy and environmental issues on BiH level), calling for implementation of Espoo convention and as result as we speak we have public consultation in Montenegro about EIA for HPP Buk Bijela, after Government of Republika Srpska provided all requested information and documents. What is interesting, during all this communication in media between governments, ministries and NGOs, responsible ministry in Government of Republika Srpska did not release single information about this case.

(2) Hydro-power project Upper Horizons

About in same time as case on Drina River, we had very similar situation in hydro-power project Upper Horizons in southeast BiH. Project from 70ies of last century came into reality with major activity of channeling river Zalotka and diverting waters of periodically flooded fields through tunnels into Trebisnjica river. The problem is that water from those fields was naturally drained in two rivers, Trebisnjica and Neretva. Potential negative impact could be most severe in lower part of Neretva River, with smaller water flow and impact on potential UNESCO site of Buna River spring, Ramsar site Hutovo Blato and agriculture region of Neretva River delta. On other side, there is potential impact of higher chances of floods in lower Trebisnjica River. Ministry for Environment and Tourism (MET) and NGOs from Federation of BiH submitted comments on EIA for HPP Dabar (one of four HPPs planned on Trebisnjica that would benefit from increased water flow), but Ministry for Environment of Republic of Srpska did not take into account those comments. As a result we have NGOs that started campaign against project Upper Horizons and MET initiated court process against responsible ministry from Republic of Srpska.

(3) Project of small hydro-power plant Medna on Sana River

When we come to local level, situation is even worse. Example could be project of small HPP (4.9 MW) 500 meters downstream of the springs of Sana River. Spatial plan of Republic of Srpska define upper part of Sana River as future nature park, and wider area of springs with special level of protection. Moreover, local assembly of Ribnik community adopted position against SHHP as it's in conflict with their local development plan. EIA procedure started in 2007, but it is not finished yet for both local community Ribnik and NGOs appealed against approval of EIA, for already fourth time.

Way Forward and Role for OSCE

Environmental democracy is an essential tool for lasting success as it contributes to sustainable development. Institutions that are denying rights set forth in national legislation, conventions, EU directives and best practices are undermining sustainable development in respective regions. In addition, the right of citizens to proper application of substantive and procedural environmental law will lead to

* Bosnia and Herzegovina is composed of two administrative entities: Federation of BiH and Republika Srpska, as well as an administrative District, District Brcko.

serious improvements of the rule of law and avoid potential conflicts over natural resources' use. The Aarhus Centers established with OSCE support in SEE (Bosnia and Herzegovina, Serbia, Montenegro and Albania) can assist in strengthening dialogue between the government, the investors and the public and safeguarding every individual's right to living in a healthy environment.

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