

2015

A clear and present danger

How financial institutions and authorities have failed to address the human impacts of resettlement in Serbia's lignite mining fields

Lignite is among the dirtiest of fossil fuels; mining it may have profoundly negative impacts on soil, vegetation, water, air, and the livelihoods of people in neighbouring communities. But, nowhere is it more self-evident than in Serbia's Kolubara Mining Basin, one of the largest sources of lignite in Europe, where mining has continued for over fifty years.





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Executive Summary

Lignite is among the dirtiest of fossil fuels; mining it may have profoundly negative impacts on soil, vegetation, water, air, and the livelihoods of people in neighbouring communities. This has already been the experience of those dwelling close to lignite mines in Germany.

But, nowhere is it more self-evident than in Serbia's Kolubara Mining Basin, one of the largest sources of lignite in Europe, where mining has continued for over fifty years. Burning this lignite provides the majority of Serbia's electricity, through the state-owned company, EPS, but at an unacceptable cost in terms of the country's toll in greenhouse gas emissions.

The European Bank for Reconstruction and Development (EBRD), along with German state development bank, KfW publicly commit to the "de-carbonisation" of European Union economies and thus a marked reduction in their current over-dependence on fossil fuels.

Despite this, in 2011, both banks invested in a programme, ostensibly designed to "improve the environment" of the Kolubara basin, and a "better" use of lignite, so as to lower Serbia's overall CO2 emissions. Effectively, however, this programme did little more than improve mechanisation at the mining site, and actually increased the amount of lignite extracted.

As a consequence, several hundred families living within the mine "footprint", already suffering from ill-health and environment deterioration caused by mining, found themselves "between a rock and a hard place".

Faced with increasing danger, damage, and threats to livelihoods, the people united in making demands that they be resettled as integral communities. They invoked rules, laid down by the EBRD, to ensure that this process be carried out justly, completely, and that their chosen economic means of survival would, at the least, be equivalent to what it was before relocation. And that they receive adequate compensation for loss of land, resources, and jobs, and to rebuild their homes,

Nonetheless, this has not happened, as testified to by representatives of local and national Serbian civil society organisations in the villages of Vreoci, Barosevac, Tamnava West and Radljevo.

The Serbian government plan (the so-called "Blue Book"), set out in 2007 and aimed at relocating the community of Vreoci, has not only been postponed. While it is supposed to be fully-implemented by the end of 2015, on present indications this will not happen.

The EBRD has failed to enforce several of its basic principles on involuntary resettlement in this case. It has also neglected to carry out a mandatory Social Impact Assessment (in addition to an Environmental Impact Assessment) in order to comprehensively evaluate the livelihood conditions and entitlements of Kolubara inhabitants, prior to their removal from the area.

The Bank has not established an adequate system for monitoring the impacts of the resettlement programme beyond the point at which it officially terminates.

Nor has it observed principles, laid down by the United Nations, to determine that the impact on the human rights of persons relocated, or to be resettled, have been fulfilled.

In conclusion, the EBRD and KfW's decision to bulwark Serbia's lignite production was drastically flawed. This erroneous decision has been compounded by a number of important failures, evidenced in the course of implementing their loan agreements.

They should have walked away from the project at the point it was initially proposed.

They didn't. In all good conscience, they cannot do so now.

A Clear Present and Future Danger

If the European Union's climate change intentions were followed to the letter, then the days of mining lignite are surely numbered. Indeed, in the last two years, the European Investment Bank (EIB), European Bank for Reconstruction and Development (EBRD) and World Bank have virtually halted lending for greenfield coal power plants (except a new unit (C) at Kosovo lignite power plant).

Nonetheless, this hasn't inhibited some academics from continuing to sing lignite's praises, particularly the supposed economic benefits of mining and burning it. In January 2015, the Centre for Economic Development and Research (CEDR) at the University of North Texas, released data purporting to show that: "[T]he manufacture of activated carbon from lignite coal, and coal-fired electric power generation" creates just over \$7 billion in "economic activity" in the state each year... supporting 24,290 total jobs ...that pay \$1.8 billion in labour income and inject more than \$693 million in revenue to state and local governments"¹

The Executive Director of the Texas Mining and Reclamation Association, which commissioned the report, declared: "This evidence-supported study proves once again that lignite mining and related industries are essential to the production of the goods, services and infrastructure that stoke the engine of our economy and contribute to the comfort and convenience of our daily lives".

CEDR's Senior Research Associate added: "Beyond the numbers, lignite coal mining operations are important components of their surrounding communities...From employees volunteering at local schools and as first responders to the wide range of employment opportunities and careers provided in rural regions of the state, the holistic [sic] value of lignite coal mining in Texas is significant."²

Many of us will be incredulous to find discover extraction being described as if possessed a quasi-spiritual dimension. Numerous scientific and environmental studies have long painted an entirely different picture of it as the dirtiest of fossil fuels. Nowhere is this more self-evident than throughout the lignite fields of Serbia, the largest in Eastern Europe.

Serbia's lignite – decades of destruction and dubious benefit

Lignite mining has been considered vital to Serbian electricity generation for well over fifty years. The Kolubara Mining Basin, some 60 kilometres south of Belgrade, which officially delivered 26.9 million tons of lignite in 2012 alone and over 66 million cubic meters of overburden was dumped next to the mines the same year.³ The operation is said to have provided around 75% of the lignite used for Serbia's thermal power generation.

The state firm which operates the mines, Electric Power Industry of Serbia (EPS), acknowledged that by 2011: "mining activities affect about 55 square kilometres... This means that, during a further 50 years, mining activities would affect 90 square kilometres more".

The same year, EPS published a summary of its business policy objectives, among which was the performance of "Environmental protection improvements in accordance with the national and EU regulations"⁵.

At this time EPS was delivering raw lignite from two areas, the Kolubara Mining Basin embracing Fields B and D in the eastern part, and Tamnava West in the western segment [see Figure 1]. Two further mines,

¹ PR NEWSWIRE, 13 January 2015; see also: Coal Mining and Coal-Fired Power Plant Generation in Texas: Economic and Fiscal Impacts, Center for Economic Development and Research (CEDR), January 2014: www.tmra.com

² ibid

³ EPS technical report, 2012

⁴ EIA study of the project: "supplementary mining design" Tamnava West Field, 2011, EPS, page 130

⁵ Strategic and Development Projects of the Electric Power Industry of Serbia, EPS, Belgrade 2011

Cirikovac and Klenovnik, were situated in the Kostolac Mining Basin⁶ [These two mines are not the subject of this paper].

A programme of “Coal mines rehabilitation” was to be finalised in the “forthcoming period” according to the company⁷. This would supply “missing equipment and other facilities, aimed at reaching coal production of 12 million tonnes annually at Tamnava West Field”. In addition, “equipment for compensation of coal plant missing within Kolubara Mining Basin” would be sought for the same field. There would be a specific “coal mining technology improvement project” at Kolubara Mining Basin for “the purpose of efficiency increase and environmental impact reduction”, along with equipment supplied for “the replacement capacities” at a future pit, called Field C, adjacent to the future Field E which was designed eventually to replace it⁸.

This new field E, just north of the Barosevac settlement, along with Field C, would “unfold in complex conditions” on a deposit already dumped with large amounts of overburden dug up from Field C. By then, the dump had reached a height of more than 200 metres, estimated to contain over 222,000 cubic metres of waste material.

A new pit, called Radljevo – at the far north western tip of the basin, bordering Tamnava Mine West - was promised extraction that would “unfold in [an] extremely stratified operating environment, which has not been treated in our open cast mines [to date]”⁹.

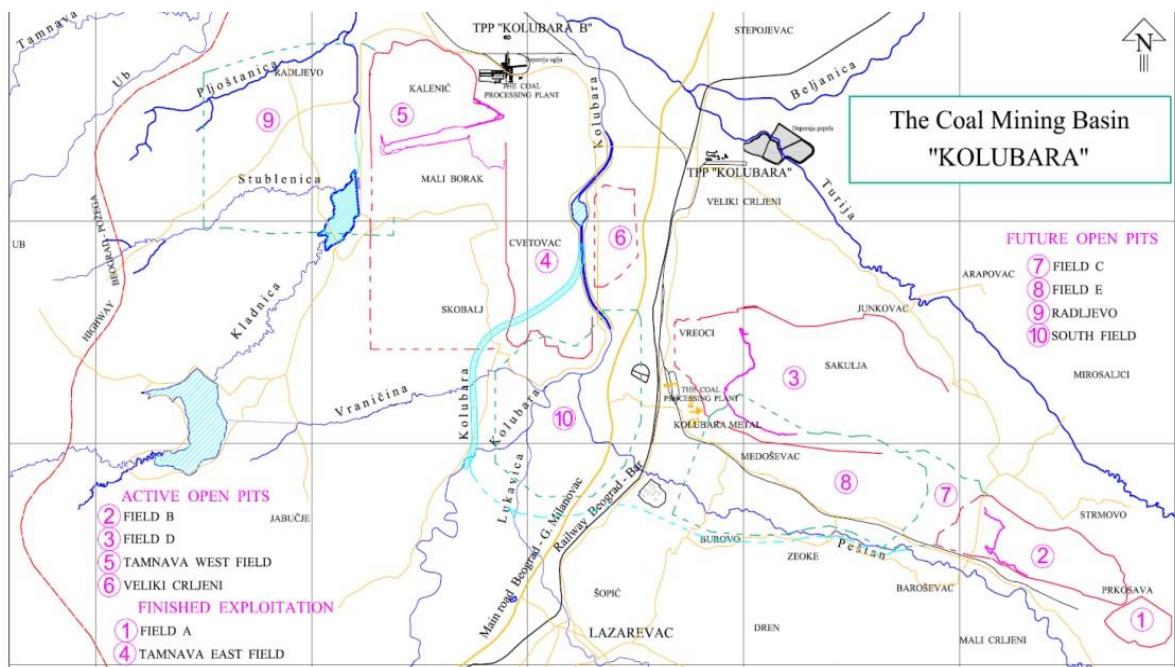


Figure 1 – Kolubara mining basin. Source: non-technical summary of the EIA report for field C, submitted by EPS to the EBRD, 2011

Whatever that phrase was intended to mean at the time, five years later a French journalist for *Liberation* reported that, while Radljevo's 600 inhabitants had for a decade been aware their homes would be sacrificed to this fresh mine, a date for relocation had still not be given them.¹⁰

EPS also affirmed that, under Serbian state law, between 2004 and 2015 “reclamation of overburden dumps” would need to be reactivated by new methods, including selective mining and disposal of top soil”; adding that mining reclamation would “need to be implemented systematically, together with introduction of new methods, including selective mining and disposal of top soil”¹¹.

⁶ Ibid, p.41

⁷ ibid, p 6

⁸ ibid, p 7

⁹ ibid

¹⁰ Amandine Caihol, “Kolubara, mine serve sur du charbon ardent” in *Liberation*, 6 January 2014

¹¹ Strategic and Development Projects, op cit, page 7

The company admitted that, over the course of the last decade of the twentieth century, Kolubara “environmental protection was unfortunately placed in the background”, while “about 70% of all (sic) environmental problems [in Serbia] are related to the energy sector”.

But now there would be “full application of EU standards” since Serbia had “de jure become a part of the EU in the field of environmental protection”¹².

This translated into obtaining a new bucket wheel excavator, coal conveyor and spreader system for Field C, and a spreader for the Tamnava West field, both to be funded by EBRD and KfW. Similar equipment was promised for the Radljevo mine.

And all this - said EPS - was to ensure that lignite would “in future be a secure fuel supplier” to current and planned thermal power plants¹³.

On a field trip to Serbia's Kolubara lignite mining basin in late January this year, a team of CEE Bankwatch Network and its Serbian member group CEKOR, joined by the author of this paper, interviewed persons already experiencing the impacts of lignite mining, and who had been resettled, or were facing involuntary resettlement as a consequence of mine expansions.

Between 2000-2014 about 1000 families have been directly affected by mining and are in urgent need of a form of safe and secure resettlement. In the next 10 years it is expected that about 3000 families will need to be relocated from the Kolubara mining complex, if the state-owned company's plans for expansion become reality.

Among local people interviewed was the Secretary of Ecological Society Vreoci (see below), Željko Stojković and two of his colleagues, who, along with two representatives of the Serbian state company, EPS, and three members of local government, visited the German Rhineland, the country's most important lignite-producing area, in September 2006.

The exercise was intended to inform the Serbians how lignite mining and reclamation can (and should) be conducted in order to reduce or avert negative socio-environmental consequences, and to show-piece good resettlement practices.

Their trip was organised by RWE, a leading German energy provider which, despite now espousing a rapid exit from fossil fuel dependency, remains Germany's leading practitioner of lignite mining, operating several power plants that consume it.

The Serbian group also met KfW, the German state development bank which - along with the European Bank for Reconstruction and Development (EBRD) - had provided funds for technical improvements to EPS' mining methods in Serbia [see below].

Željko returned home, apparently satisfied with what he saw in Germany and impressed at the way RWE performs community resettlement. He'd been informed that RWE held referendums on relocation, offering a choice of sites on which people could resettle; 70% of 700 households had accepted what was offered, while the remainder opted to take cash in compensation. What he doesn't seem to have been shared with Serbian delegation is a darker, more hidden version of the German lignite narrative, one confounding the image RWE seeks to promote of a “green and pleasant” post-mine landscape, enjoyed by healthy and contented neighbours.

¹² Strategic and Development Projects of the Electric Power Industry of Serbia, Belgrade 2011 ibid

¹³ Ibid, page 30

The myth of “good practice”

Dirty & Dangerous is the title of a report published by two European and one Scandinavian environmental NGOs in November 2014, introducing readers to what they dubbed “the three lords of lignite” - Poland’s state-owned PGE, Sweden’s Vattenfall, and RWE.

The report described RWE’s Hambach lignite mine as “Europe’s biggest hole” (at a current annual output of 40 million tonnes, this mine is also the world’s seventh largest coal producer), adding: “If RWE’s huge bucket-wheel excavators keep going till 2040, over 5,000 people will be displaced and one of Germany’s oldest forests destroyed...Ages after such a mine is closed, the deep cuts in the landscape will still be visible, the water balance of the region still disturbed and unexpected subsidence stays a permanent threat”¹⁴.

Operationally speaking, the Rhineland lignite mining region roughly corresponds with Serbia’s Kolubara Mining Basin. Although the German deposits may reach down deeper, the practices used to extract them are broadly similar.

Pumps drain groundwater; huge excavators gouge out massive amounts of inter-burden and overburden (the vegetation, soil rocks and other material that must be removed to access the coal at various stages of extraction). De-watering and drying, cleaning, classifying and mixing of different grades of lignite takes place outside the pits and the product is trucked and trained to power plants, three of which (Kolubara A, Nikola Tesla and Morava) are located within the basin itself. A fourth plant, Kolubara B is not yet completed [see Figure 1]

Almost all these procedures are clearly visible to the naked eye - with the exception of some overburden dumping. But some of their most serious impacts are concealed.

In 2013, German Friends of the Earth (BUND) published a sharp critique of lignite mining as practised in the Rhineland by RWE. This found that ground water had been drawn at the rate of 582 million cubic metres over the previous year, some of which was used to replenish the water table, but no fewer than 277.3 million cubic metres was simply wasted.

BUND reports: “Drinking water supplies and groundwater balances will be affected for centuries...Surface waterways are severed from subterranean aquifers, natural springs are shifted, or mock springs appear.... In addition to groundwater depletion, detriments in water quality are of specific significance... allowing harmful substances like nitrates and pesticides to migrate unimpeded along subterranean paths created by barrier disruptions...Sulphides leached at low depths rise to the surface and are diffused”¹⁵.

These phenomena cause a drastic reduction in soil pH levels (an increase in soil acidity) - an effect which has been noted by other European authorities [e.g. see: “The influence of lignite mining on water quality”, by Barbara Jachimko, University of Zilona Goram Poland, in “Water Quality Monitoring and Assessment”, (ed) Voudoris, InTech, Paris, 2012]

Comments BUND: “Despite remedial measures such as dump management and the dispersal of buffering materials (power plant ash, gypsum) the fundamental problem remains unsolvable”¹⁶.

Opencast lignite mining (there is hardly any underground equivalent) creates pervasive dust clouds containing toxic suspended particles, such as the heavy metals mercury, lead, cadmium, arsenic. These clouds are also potentially radioactive:

“It is known that both the fuel and the mining rubble contain appreciable amounts of uranium and thorium. The radioactive decay products can enter into the human organism by way of airborne particiles and draining water”¹⁷.

¹⁴ Dirty & Dangerous, urgwald, the future in our hands, Greenpeace Norway, November 2014, page 31

¹⁵ “Lignite Mining in the Rhineland”, GARZWEILER II, BUND, Düsseldorf, 2013, page 6

¹⁶ BUND ibid

¹⁷ BUND, op cit, pps 8-9

Comparing Kolubara to the Rhineland

Such severe threats to people and the environment in the Rhineland are highly pertinent to a discussion of Serbia's Kolubara Mining Basin, specifically in relation to mining's impacts on local clean water availability, degradation of soil fertility, and the threats of ground subsidence.

There are other concerns too. Tucked away in the 2009 Environmental Impact Assessment (EIA) for EPS' Field C Open Pit Mine is an admission that: "The region of Kolubara coal basin is located in a seismically active zone, where earthquakes of significant seismic intensity may occur". The EIA calls for "special seismological research" to be undertaken, but none appears to have been conducted¹⁸.

The dangers of dust emissions from pits, road and rail traffic, downstream processing and power plants are very real. Complaints about these pollution sources are made by residents throughout the basin area. The CEE Bankwatch Network's team observed scores of rail wagons carrying lignite from the mines to plants, and no steps being taken to safeguard against air contamination.

A field trip by CEE Bankwatch Network in June 2011 had also reported: "Air is heavily polluted especially with emissions from processing plants in Vreoci and with dust from the open pit in Barosevac (Field C)"¹⁹.

A simple and effective remedy for such pollution is to cover all road trucks and rolling-stock transporting lignite with impermeable sheets, such as high density polyethylene (HDPE). Preventing damaging air-borne particles from blowing from the open pits and being carried many kilometres into residential areas is more challenging. Recognised state-of-the art tailings (mine waste) and overburden management mandates covering such piles, not just with clay and soil (as performed at Kolubara) but with geo-textile sheets (not used at the mining site).

Doing this would be quite costly, and it may be rendered ineffectual under the impact of storms or seismic disturbances - not to mention the vast flooding that occurred in May 2014 (see below). However, that is not a valid argument against using basic technology which, under normal circumstances, provides important protection against contraction of upper pulmonary tract diseases.

Enter EBRD...

The EBRD's "Strategy for Serbia", approved by its board of directors on 8 April 2014, highlighted the bank's "key role in promoting energy efficiency and renewable energy" for the country²⁰. It stressed the necessity for "commercialisation of the energy utilities and possible private sector participation" and of "developing operational activities in the area of sustainable energy and energy efficiency"²¹ [*ibid*].

However, just under three years earlier, in July 2011, the EBRD had approved a loan to EPS, ostensibly to advance improvements in coal mining efficiency in the western part of the lignite mining basin and "significantly improve uniformity of coal quality"²².

¹⁸ EIA Study for the project: "Coal exploitation in the open cast mine "Field C" for the capacity of 5 million tons annually, with the excavation of the east dump site "Istocna Kipa", EPS Belgrade 2009

¹⁹ <http://bankwatch.org/sites/default/files/Briefing-Kolubara-Nov2011.pdf>

²⁰ Document of the European Bank for Reconstruction and Development Strategy for Serbia, April 2014 page 2

²¹ *ibid*

²² <http://www.ebrd.com/pages/project/eia/41923.shtml>

The bank's EUR 181.58 million was officially-designated for the "EPS Kolubara Environmental Improvement project", and was co-financed to the tune of EUR 80 million by KfW, and EUR 26.58 million from EPS itself²³.

The Serbian company correctly recognised that the age of the bucket wheel excavators currently in use meant their efficiency was, as the EPS put it, "highly unfavourable (average age is higher than 25 years"). Most of these machines, especially in Field D (to the north of the planned Field E, adjacent to the settlement of Sakulia – **see figure 1**) had already been in operation for more than 150,000 hours, having dug up "some 200 million cubic metres" of lignite²⁴.

The funds, allocated to these improvements in mining technology at both Tamnava West and Field C, were aimed at improving lignite quality in the two pits, resulting in less pollution, specifically CO2 emissions, when the fuel was burned at the power plants.

Thus, the loans were targeted at – and limited to - providing "technical fixes". The significant environmental and social adverse impacts of expanding these pits, and opening new ones, seemed to play little part in the bank's initial deliberations.

Nonetheless, the bank's "Strategy for Serbia", citing the Serbian national programme for EU integration, specifically stated that its "environmental, health and safety (EHS) regulatory requirements for all EBRD financed projects" demanded compliance with its Environmental and Social Policy and Performance Requirements (PRs)²⁵.

Furthermore, the Bank "will continue to monitor and focus on the practical implementation" of such requirements, to ensure that they are met". While it acknowledged that "Implementation of EU Directives may pose some challenges, especially for the energy and infrastructure projects", it undertook to "pay specific attention to ensuring that due process is followed in undertaking Environmental and Social Impact Assessments of all infrastructure projects falling under the requirements of the relevant EU environmental *acquis*"²⁶.

But it did not fulfil this promise. The bank ignored the reality that the Kolubara Mining Basin – the so-called "area of influence" - is effectively one field, integrally managed by a single enterprise – MB Kolubara, and controlled by the bank's client, EPS. Since the project was designated to effect "Kolubara Environmental Improvement"; then simply advancing coal mining efficiency would make only a minor contribution to achieving that objective – and a highly dubious one at that.

As already pointed out, the declared mission of the two funding agencies was to reduce greenhouse gas emissions at the point of burning the lignite. In reality what they were doing on the ground was promoting a major expansion of lignite extraction itself.

Ironically, the result would be a potential *increase* in power plant CO2 emissions – as pointed out repeatedly by CEE Bankwatch Network²⁷ – and before the 2011 loan was approved.

In its "Strategy for Serbia" approved in April 2014, the EBRD freely admitted that "the [Serbian] energy sector is a major polluter, due to the high use of fossil fuels", the diminution of which is required by the European Union's 2010 Industrial Emissions Directive (IED 2010/75/EU)²⁸.

²³ ibid

²⁴ ibid

²⁵ ibid, page 21

²⁶ ibid

²⁷ See for example the project profile at: <http://bankwatch.org/our-work/projects/kolubara-lignite-mine-serbia> and The EBRD, KfW, coal and corruption: European money in the Kolubara "Environmental Improvement project Serbia", CEE Bankwatch Network, March 2013

²⁸ Document of the European Bank for Reconstruction and Development, Strategy for Serbia, as approved by the Board of Directors at its meeting on 8 April 2013, page 22

...and German companies on the ground

KfW & ThyssenKrupp

Like the EBRD, Germany's premier development bank, KfW, held the view that its contribution to funding the Kolubara Environmental Improvement Project would "reduce emissions and increase energy efficiency through coal quality management in the Kolubara open pit mine...allow[ing] a reduction in the variability in the calorific value of the coal used there and eliminat[ing] the need to co-fire large quantities of environmentally harmful heavy oil, which used to be common practice."

KfW added that: "In the first project supported in the Serbian energy sector under German Financial Cooperation, KfW [has] financed state-of-the-art open pit mining equipment for the Tamnava West lignite field. This was an immediate emergency aid measure following the war which aimed to secure electricity supplies in Serbia. It helped to stabilise power generation..."²⁹.

In practice, KfW's commitment materialised through a German firm called ThyssenKrupp, and to a lesser extent through Poland's Kopec SA, both contracted to EPS.

The German engineering giant boasted in July 2013 that the contract marked "a further milestone in the long-standing business relations between ThyssenKrupp and Serbia", recalling that in 2010 it had already "supplied a comparable bucket wheel excavator system for the Kolubara/Tamnava-West mine and a spreader with tripper car for the Kostolac/Drmno mine³⁰".

Eighteen months later, in December 2014, ThyssenKrupp argued in an article published by *World Coal* magazine, that it had turned around "the traditional intended major purpose [of bucket wheel dredging, spreading and conveying] for lignite and overburden removal", which by then was threatened with "becoming outdated."

From now on, said the company: "The bucket wheel excavator and the connected conveyor lines... can handle some 40,000 tonnes per hour in one line alone...There is virtually no physical limit for this technology". (To illustrate the point, the article was accompanied by a photograph depicting "Construction of a ThyssenKrupp bucket wheel excavator for EPS in Serbia")³¹.

According to ThyssenKrupp, these innovations would not just deliver a considerable increase in lignite output, but also diminish the workforce "by a factor of five".

Certainly the new technology does reduce safety hazards, but no mention is made, by ThyssenKrupp, EBRD, or KfW, of the large number of workers who would lose their jobs as a result. Let alone that vastly-expanded extraction was bound to intensify degradation of land, water, and air, not to mention residents dependent on them.

KfW and ThyssenKrupp are deservedly proud of the contributions they are making to promoting renewable energy alternatives for Serbia. We might ask, then, how they can justify financing and providing the very technology which is driving the country in precisely the opposite direction?

Indeed, a lot of Germans ask the same question of their state development bank, to which KfW has reacted inadequately at best. Backed by insurance provided by Germany's Euler Hermes export credit agency, it recently invested in a new 660MW lignite-burning plant for Greece, due to be opened by 2020, and

²⁹ KfW's position on financing coal in Serbia: <https://www.kfw.de/KfW-Group/Newsroom/Press-Material/Themen-kompakt/Serbien/>, July 2013

³⁰ ThyssenKrupp, statement, 16 July 2013

³¹ "Back in Vogue", Thomas Jabs, ThyssenKrupp Industrial Solutions, Germany, in *World Coal*, December 2014, vol 21, no 12, pps 35-38, Farnham, Great Britain

expected to cost EUR 1.9 billion in total. Based on the initial funding plan, KfW would contribute 44 per cent of the project finance, amounting to around EUR 610 million³².

Present dangers

“Planned relocation of the population is characterisical [sic] for this region with the aim of developing the coal exploitation area”. This was the bland statement made by EPS in its EIA for Field C, at the same time adding: *“In one word the ecosystem within a relatively large area is disturbed”*³³.

Contained within the monitoring section of this EIA is an acknowledgement that “...in the cases where the legislation and institutional framework does not exist in Serbia, international regulations and recommendations shall be observed”. It cites those of the European Union, The World Bank, EPA and WHO³⁴.

The assessment goes on: “[T]he monitoring system and the environmental quality management system are undeveloped, concerning the intensity of the impact caused by the mining and other activities. [This] study envisages adequate monitoring which must be consistent and principledly [sic] insisted upon in accordance with the legislation and the...integrated quality system of Kolubara”³⁵.

Overburdened by spoil

In applying these principles, the assessment says that: “Due to the position of the open cast mine and the progression of activities [there], the inhabitants of the village Barosevac shall be directly endangered”³⁶.

This warning was made more than five years ago, and has been ignored since. In 2013, overburden from Field B, dumped near Barosevac, toppled into the village of Junkovac, destroying some thirty houses. According to the Serbian environmental group, CEKOR, compensation was only paid to stranded householders at derisory rates which did not reflect the higher costs of new building materials, workers’ wages, and infrastructure³⁷.

CEKOR also accused EPS of continuing to cast overburden at Junkovac’s perimeter during the following year³⁸.

In January 2015, the CEE Bankwatch Network team found local people, still clinging on for survival directly in the path of overburden which, from our observations had well-exceeded its legally-permitted height dimensions and elevation. At least 100 families in the village of Junkovac are living less than 200 meters from the dump site which has formed a hill on the edge of village. This is much closer than the 500m legally binding distance from mining operation, set out by Serbian legislation³⁹

The team observed that this, and other inter-burden and over-burden dumps throughout the area, contravened generally-accepted best practice for tailings and waste disposal, which imposes strong limits on the elevation of such slopes. According to a recent study, the angle of slope of overburden dumps should be less than the angle of repose of the materials and not exceed 37.5 degree from the horizontal. A dump

³² “A Critical Matter: German investments in the mining sector”, Roger Moody, Heinrich Boell Foundation, Berlin, 2 March 2015, page 28

³³ EIA for Field C, Belgrade 2009, pages 171 and 173

³⁴ ibid, page 156

³⁵ ibid, page 177

³⁶ ibid

³⁷ “The village of Junkovac near the Kolubara mine neglected and destroy, EBRD annual meeting issue paper, CEE Bankwatch Network, May 2014

³⁸ ibid

³⁹ Law on mining, 88/2011, art. 58:

<http://www.terragold.co.rs/Download/Zakoni%20i%20pravilnici/Zakon%20o%20rudarstvu%20i%20geoloskim%20istrazivanjima%2088-11.pdf>

height exceeding 30 metres should be benched in such a manner that no bench exceeds 30 metres in height; and the general slope shall in no case exceed 1 metre vertical/1.5 metres horizontal.

The toe of a dump should also not be permitted to approach any railway lines/public road, building or any other permanent structure not belonging to the owner of the mine⁴⁰.



Overburden and remains of a house destroyed by the landslide in Junkovac in 2013. Photo taken in January 2015, CEE Bankwatch Network

Accessing clean air and soil

The 2009 EIA said that: “The existing measurings [sic] show that the surrounding villages are in the zone of direct jeopardy, especially the air”. However, it concluded that the mine Field C “can be observed only as a possible and not proved pollution source”.

While there are some plants and factories in the wider Kolubara neighbourhood which doubtless contribute to pollution – such as the coal processing plant adjacent to the thermal power plant, Kolubara A – coal mine dust and fuel emissions from trucks, and machines within the mines themselves fill the surrounding atmosphere.

⁴⁰ “Overburden dump slope stability: A case study at a coal mine”, Thesis submitted in partial fulfilment of the requirements for the Degree of Bachelor in Technology in Mining Engineer, Dept of Mining Engineering, National Institute of Technology, Rourkela, India, 2013.

In fact another part of this section of the EIA appears to directly contradict the earlier one, observing that: "The results of air quality monitoring show that there is a periodical pollution with gases, suspended particles and grime in the working environment".

But on one matter the EIA is unequivocal: "[A] complete degradation of soil shall occur due to the technological process of excavation. In the broader sense, it is evident that this state shall not change as long as the open cast mine is active".

We will put this assertion to the test when later examining EPS' reclamation plans.

To ESIA or not to ESIA – a very important question

The well-known global professional services firm, London-based Arup, was commissioned by the EBRD to "review existing documentation and the existing project activities" in the Kolubara basin, in order "to compare their scope and content with the environmental and social requirements of EBRD Environmental and Social Policy and Performance requirements (2008)".

Arup was mandated to identify measures "to achiev[e] compliance with EBRD Environmental and Social Policy, through an Environment and Social Action Plan (ESAP)", to be implemented as part of the loan agreement.

Importantly, Arup was also appointed by EBRD to conduct an Environmental and Social Impact Assessment (ESIA), and for some two years, a statement to this effect was posted on Arup's website, under the title "Kolubara due diligence".

But it is **no longer** there now. When Arup was asked by this author in March 2015, to provide a copy of that ESIA, the firm confessed it didn't exist – or at least wasn't in their hands. This appeared to be confirmed by EPS on March 10, 2015 when its Public Relations department stated in an email to this author that:

"Based on the internal categorization of EBRD, this Project [Kolubara] belongs to the Category A, therefore, accordingly, the following should be prepared: Environmental and Social Impact Assessment (ESIA), Stakeholder engagement plan (SEP) and Non-technical summary (NTS) and all in accordance with the rules stipulated by EBRD.

"...Based on these inspections ESAP [Environmental and Social Action Plan]...includes 22 (twenty two) activities that are necessary to be conducted for environment [sic] in order to fulfill EBRD requirements that arise from the Environmental and Social Policy EBRD (2008).

"The first ESAP activity is the Preparation of Initial Report for OCM Field C, with environmental plan and proposed measures for mitigation of influence, which *implies* [sic] ESIA i.e. Environmental and Social Impact Assessment which presents (22) activities foreseen by the action plan prepared by ARUP engaged by EBRD"⁴¹.

EPS then flatly contradicts what it had just said: "Therefore, ARUP had clearly defined request which did not imply preparation of the missing document [sic] nor ESIA [author's italics], but to determine current state and prepare Environmental and Social Action, and that is the reason why you could not find the documents on ARUP website"⁴².

Arup's gap analysis of the Kolubara Environmental and Social Action Plan (what it terms the "Kolubara Environmental Upgrade (sic) Project") purportedly included "mitigation measures to prevent, reduce or minimise environmental and social impacts of the Project, and measures to improve the current

⁴¹ PE division, EPS untitled, 10 March 2015, Belgrade

⁴² Ibid

environmental and social management systems and operational performance towards compliance with EBRD's ES Performance Requirements throughout the lifetime of the project".

Arup's ESAP is just nine pages long, and only one of these is devoted to development and implementation of a Resettlement Action Plan (RAP) for Tamnava West and Field C. Notwithstanding this, the ESAP claims to establish "clear lines of communication and responsibility for completing the resettlement", and to provide a "mechanism for EPS to demonstrate the actions they are taking to ensure resettlement is undertaken in accordance with EBRD's PR5" [Performance Requirement No.5]⁴³.

There followed a list of minimal provisions to which affected persons were entitled, and an assurance by Arup that it would not only guarantee these, but that the Plan would be completed "within 6 months of the signing of the loan agreement"⁴⁴.

Arup asserted that there would be: "A Resettlement Action Plan (RAP), detailing how the requirements of EBRD's PR5 [Performance Requirement 5] will be met", including an Entitlements Matrix setting out "the broad types of compensation that people can expect", which it said had been completed for Field C "as of March 2012"⁴⁵.

Under its Kolubara stakeholder engagement plan, EPS summarised the extent of discussions it had held with a multiple of affected parties. It outlined this engagement activity on 28 February 2011, scheduled over the following six months⁴⁶.

But this did not address any matters of "stakeholder" concern arising from the so-called "Entitlements Matrix", which the EBRD seems not to have published – if, indeed, one was carried out.

On what basis, then, could Arup conclude that the EBRD's Performance Requirement REI 5 (PR5) had been fully carried out?

Digging a little further, we discover that Arup's ESAP findings were published on 25 February 2011 - at almost the same time EPS published its Environmental Improvement Project at Kolubara Mining Basin Stakeholder Engagement Plan. However, Arup then says that this plan was (and the statement is capitalised in bold typeface) "**REVISED BY EBRD AND RB KOLUBARA: 5 MARCH 2012 [sic]**"⁴⁷

This seems to be a glaring anomaly, raising the possibility that the ESAP had been "doctored" - or at any rate altered - over the intervening year, without any oversight or due diligence being performed by Arup on this revised version. In any event, it now seems certain that no full, independent ESIA was ever carried out for the environmental improvement project.

EPS itself had been unambiguous, pointing out that "Environment Impact Assessments (EIAs) undertaken on behalf of EPS and RB Kolubara do not directly address the *social aspects* [author's italics] of the proposed investment associated with the proposed EBRD loan"⁴⁸.

Nor is there any question that the EBRD requires an ESIA for a project as large and impactful as Kolubara, as well as a Resettlement Action Plan. The Bank states clearly in its Performance Requirement 1.9 (2008 Environmental and Social Policy) that projects categorised as 'A' require an environmental and/or social impact assessment, while "Performance Requirement No.5: Land Acquisition, Involuntary Resettlement and Economic Displacement" that: "Where involuntary resettlement is unavoidable, the client will engage a suitably qualified specialist [in this case it was Arup] to carry out a census and a socio-economic baseline

⁴³ http://www.arup.com/Projects/Kolubara_due_diligence.aspx

⁴⁴ ibid

⁴⁵ ibid

⁴⁶ Environmental Improvement Project at Kolubara Mine Basin, Stakeholder Engagement Plan, EPS, February 2011, pages 25-29

⁴⁷ http://www.arup.com/Projects/Kolubara_due_diligence.aspx, op cit

⁴⁸ Environmental Improvement Project at Kolubara Mine Basin, Stakeholder Engagement Plan, ibid

assessment within a defined affected area, and assist in the preparation of the Resettlement Action Plan [RAP], or Livelihood Restoration Framework.”⁴⁹.

What are the implications of this omission? Which of those specific 22 points, referred to by EPS (supra), should be of particular concern, when it is clear that they do not meet Performance Requirements for the Kolubara RAP? There are two in particular.

Point 11 commits the company to: “Prepare a Health and Safety Assessment (H&S) for possible hazards and risks to the community from this project”, as mandated by the EBRD’s PR 4.

The deadline for implementing this was fixed for the end of June 2012, and the target was a “3 or 4 page Documented Risk Assessment (along the lines of international best practice) of possible hazards and risks to the community from this project and this equipment”⁵⁰.

No such risk assessment seems to have been published (and, if it were, one of only a few pages would be grossly inadequate).

Point 22 commits the company to implement the RAP, *inter alia* “for the completion of the remaining resettlement, including land acquisition and economic displacement, for the development of Tamnava West and Field C (to include...the remaining 45 households)...” under the EBRD’s PR 5.

According to Arup, EPS was supposed to “set out clear lines of communication and responsibilities for completing the resettlement and provide a mechanism for EPS (and RP Kolubara as appropriate) to demonstrate the actions they are taking to ensure resettlement is undertaken in accordance with ERB’s PR5.

“The RAP will detail as a minimum the entitlements of affected persons, and document all transactions to acquire land rights, the compensation measures (as necessary to restore the livelihoods and standards of affected people or to provide fair compensation and the relocation assistance to be provided.”

All this was to “be prepared and implemented within six months of the signing of the loan agreement”. In referring to this timetable, Arup added the comment (in closed brackets) that: “[As of March 2012, Field C land acquisition and resettlement is complete. An agreement is in place between RB Kolubara, Local Community Barosevac and the Municipality of Lazarevac for the relocation of Barosevac cemetery, and resettlement for Tamnava West is complete for activities through to 2018]”

All this evidence points to the fact that EBRD, ARUP and EPS consider that the relocation of Barosevac has been finalised, even though the village of Barosevac and particularly about 50 households are still found less than 50 meters from Fields B and C. This is a breach of the Serbian Law on mining, according to which there is an obligation to provide 500m distance of all households from all the mining operations, set out in article 58. It seems that Arup simply took EPS at its word without checking that Field C and Tamnava West resettlement had been completed to the satisfaction of residents (“stakeholders”). Meanwhile, the relocation of the Barosevac cemetery had already taken place in Summer 2012 (see below).

We also do not know if the EBRD “supervise[ed] the resettlement program through annual site visits to review the indicators and assess the quality of the assistance provided”, as set out in the 2011 Tamnava West Supplementary Design⁵¹. Certainly one visit was made in 2014, primarily triggered by the May 2014 floods.

In December 2008, the official Kolubara Mining Basin Lignite Mining Area Spatial Plan set out the demarcation of land, public facilities and households that would be the subject of “relocation and/or resettlement”⁵².

⁴⁹ EBRD Economic and Social Policy, May 2008, page 37, para 14]

⁵⁰ EBRD Kolubara Environmental Upgrade [sic] Project, ESAP, Arup, op cit, page 8

⁵¹ Op. cit.

⁵² Serbian Official Gazette RS No 122/08

The Spatial Plan specifically acknowledged that environmental impact assessments, undertaken on behalf of EPS and RB Kolubara, “do not directly address the social aspects of the proposed investment associated with the proposed EBRD loan”⁵³.

The plan also envisaged a “cut-off date for determining compensation for the loss of assets through either 'voluntary negotiation' or 'expropriation' - in other words as a result of “involuntary resettlement”⁵⁴.

For its part, EPS stated that expansion of coal mining, in fulfilment of the loan's conditions, would take place in “areas where agreement has already been reached on the purchase of lands and properties, relocation of public facilities and the resettlement of houses”, based on such a cut-off date.

The company said that no further resettlement would be required for the Tamnava West Field before 2018, nor for Field C “before the end of mining operations, i.e. during the period of the proposed EBRD loan”. The EIA study of Field C “for the capacity of 5 million tons annually” was published by EPS in 2009. In no sense could it be considered a full ESIA for a project of this importance, as already pointed out. Nonetheless, it did make assertions which are directly relevant to assessing impacts on the community of the envisaged expansion of Tamnava West, and the new mine at Field C, whether or not residents would later be scheduled for relocation.

EPS' goals of environmental protection asserted the need for “preservation and rational usage of water; remediating the polluted parts of the environment in the degraded area, and carrying out every activity to cause the least possible change in risk for the environment and peoples' health”⁵⁵.

The EIA went on to say that: “Twelve water supply systems have been built within the area of the municipality Lazarevac...used for supplying the population and economy [sic] with drinking water...”. Nonetheless, these systems only supply the city of Lazarevac itself, while the EIA warned that: “[M]any of these systems shall be jeopardized [presumably by mining] in the future”.

Vreoci

Vreoci is a town surrounded by lignite mining fields: Field D to the East, Tamnava West field to the West and future South field to the South-East and in several important respects, among the worst affected by lignite mining.

Vreoci's water supply system is specifically mentioned in the EIA as being “jeopardized by the opening of the open cast mine in this area”⁵⁶ while: “The complexity of the water supply problem [sic] in the given area is clear, considering the schedule of the planned relocation of the population”, and that expansion of the mining will “affect the regime and quality of the surface and ground waters in the area”⁵⁷.

The Kolubara Plan also stated that: “The biggest conflict in the coal exploitation zones exists because of the necessity of the open cast mines progression on one hand, and the development of the settlement existence, on the other”.

Barosevac

The 2009 EIA identified the most serious impact of such conflicts being “on the settlement of Barosevac”, close to Field C and Field D. It urged there be “Measures for relieving the negative socio-economic impacts [and] provide adequate living and working conditions for the displaced population, as well as the control of the living conditions for those who have stayed in the surroundings”⁵⁸.

⁵³ ibid

⁵⁴ Environmental Improvement Project at Kolubara Mine Basin, date unknown, page 1

⁵⁵ ibid, page 2

⁵⁶ ibid page 25

⁵⁷ ibid page 26

⁵⁸ EIA Kolubara, Belgrade 2009, page 175

Mention was made of the relocation of Barosevac graveyard, to which the EIA urged “special attention should be paid... both due to the customary, traditional and religious sentiments and to the social and person reason [sic] of the people living in the area”⁵⁹.

This warning was not heeded, when the graveyard was actually uprooted.

Tamnava West

Although it is some distance from Field C, those living near the Tamnava West Field faced similar problems, and EPS confronted similar challenges, to those presented at Barosevac.

The mine was initially targeted for opening in 1984; removal of overburden started in 1994 and the mining itself commenced the following year. A Supplementary Mining Design was covered by an EIA in 2008, using data applying for the years 2008-2012 and updating an earlier design of 2004⁶⁰.

This later study admitted there had hitherto been “lack of harmonization of procurement of the necessary equipment for further expansion [of Field C]” and referred to what it called, rather enigmatically “the land acquisition issue”.

It said that Serbia's Environment Protection Law “includes an integral environment protection system which provides humans rights achievement on life and development within healthy environment and balanced relations between economy and environment. Such laudable intentions would mark “one step closer to resolving national regulations and EU regulations regarding environment protection”⁶¹.

Furthermore: “[I]n addition the settlement of accompanying problems (e.g. land acquisition, timely resettlement of the population, as well as construction of the entire accompanying infrastructure and areas for the special purpose facilities), define the basic excavation [of the mine] for the period of five years, and in conceptual terms to the end of Open Cast Mine Tamnava-West Field operational life”⁶².

The study is repetitive, quite uninformative in places, and is poorly-translated from Serbian into English. Moreover, as with the EIA for Field C, in no sense does it amount to a thorough social impact assessment.

Nonetheless, it did make several relevant points about the local community's predicament which are worth quoting. It started off by sketching an outline of what it had been like to live in the Kolubara basin over many previous decades:

“Most of the existing population of Kolubara Basin originat[es] from settlers which, during past two centuries, have formed agricultural communities. Populated areas are organized in the manner of village settlements and scattered villages containing small groups of houses surrounded by big parcels of arable land”⁶³.

“During fifties and sixties in Kolubara Basin, serious migrations occurred as the consequence of desire for moving to the bigger cities. This type of population movement occurred simultaneously with activities at open cast mines...which offered employment possibilities for the younger population”⁶⁴.

“Typical property at Kolubara area has 6-7 hectares, and most households have one or two parcels in its possession. Some households also have meadows and forests, especially in the area of River Kladnica”

There had been “[c]onstant population growth in the wider area...Rapid improvement of living conditions...Change in population economic structure, and increased employment rate outside agriculture,

⁵⁹ Ibid, page 174

⁶⁰ Environment Impact Assessment Study of the project “Supplementary mining design “Tamnava West Field”, EPS, 2008, page 7

⁶¹ Op. cit, page 6

⁶² ibid

⁶³ ibid page 25

⁶⁴ ibid page 26

and reduction of active farmers... Village population migrations towards Lazarevac [town] and other centers, in which employment out of the agricultural area is being created”⁶⁵.

The study asserted that, of those working in mining and coal processing; approximately 57% reside in the municipality of Lazarevac. While agriculture “presents [an] important industrial (sic) branch of this area [with] more than 70% of land... covered with arable land”, that sector employed only 30% of the population: “Agriculture is in transition period, through some serious changes, due to arable land [being] constantly reduced, due to extension of mining activities, road construction...”⁶⁶

The report also noted that: “[T]his creates additional activity for many residents, because they are cultivating land for their own needs. Farmers usually own land with orchards and vineyards”⁶⁷. The CEE Bankwatch Network team was welcomed in January 2015 by one head of a resettled family in a comfortable new home in the outskirts of Lazarevac, but one of his main regrets was having been forced to give up his former plum orchard.

As for the legacy of past lignite extraction: “Open cast mining dynamics have progressively destroyed, during last 50 years, quality agricultural land which is above lignite deposits, simultaneously changing morphological, hydrological, and other characteristics of the area”⁶⁸...

The consequences of this were summarised as:

- Destruction and occupation of fertile agricultural land,
- Flood risks increase
- In relation to the power plants: water pollution and [pollution of] soil by:
 - Waters from ash disposal sites, oil derivatives, detergents
 - Inadequate disposal of industrial and communal solid waste
 - Air pollution caused by dust from ash disposal sites and flue gasses from boiler rooms and vehicles
 - Increased noise and vibration level

Key observations relating to the challenges of resettlement were:

- “Proposed mining activities on the open cast mine Tamnava West field have already affected local inhabitants, because expropriation has already been performed in village Kalenic and inhabitants have been [re]located.
- “From demographic aspect, mining activities [in the] Kolubara mining basin have [had] harmful impacts on local inhabitants”
- There had also been an: “Insufficient communication level with inhabitants affected by the program”; a “shortage of funds which conditioned land acquisition”; and “inadequate processes functioning and delay of allocation process. This directly [impacts] on costs for necessary infrastructure and standard of living”.
- The EIA highlighted that a “significant social aspect is knowledge about [re]location, which causes anxiety and concern among people, especially among people over 40 years old. They fear leaving their homes, which have been built for generations. Besides that, there is a fear about the level of [compatibility] between old and new social and physical environment. Many people engaged in agriculture will face... the problem of finding arable land due to total fund reduction”⁶⁹.

⁶⁵ ibid

⁶⁶ Ibid, page 27

⁶⁷ ibid

⁶⁸ ibid page 40

⁶⁹ ibid, page 109

Important preventative measures proposed were:

- “Providing adequate funds available as needed to pay compensation and complete the work in New Kalenic [the resettlement to the east of Kalenic itself – see figure 1, [and] to ensure that all the affected households are able to use their compensation payments effectively, allowing them to improve their standard of living.
- “Foundation of [a] unit for social communication within the head department of MB Kolubara for the purpose of supporting the implementation of relocating program. This unit will be responsible for providing of information on time table, possibilities and relocat[ion] procedure. Experts from this unit will assist ...families to make decisions how to use their fee, identify alternative parcels, education possibilities and employment.
- “The social communication unit will use and develop the existing database on affected families to provide regular internal monitoring of the resettlement program”⁷⁰.

Additionally, quarterly reports on implementation of the plan “will be sent to EPS and EBRD [and] it is envisaged that EBRD will supervise the resettlement program through annual site visits to review the indicators and assess the quality of the assistance provided”.

“The employment rate will be increased and 400 additional staff will be employed in the mine. EPS should make all the necessary efforts to employ members of the families of the villages, in order to involve them actively in the mining activities and therefore engage them in the expansion process.

“Special attention must be given to people who will be forced to early retirement i.e. farmers who will lose their land, since it is particularly difficult for them to find alternative employment. Other social groups that need special treatment are young people, long-term unemployed, unskilled workers and people with limited education, women, and migrant population”.

In short, these were all measures calculated to satisfy the two banks that their performance standards would be met.

⁷⁰ ibid, page 139

Consultation or Consent? The case of Serbia's "Blue Book"

The UN principles assert a guarantee of: "The right of affected persons, groups and communities to full and prior informed consent [FPIC] regarding relocation". Importantly, this statement is not qualified by limiting that right only to Indigenous Peoples as defined by the UN Charter on the Rights of Indigenous Peoples.

The World Bank and EBRD⁷¹, both refer to "consultation" as a precondition for deciding on the large number of issues that inevitably arise in meeting the specific requirements of PR No. 5.

So, too, does the Serbian government's so-called Blue Book, which seeks to set out Programme Guidelines for resettlement of the residents of Vreoci.

Somewhat confusingly, this document, when addressing the task of "consulting the citizens on proposed terms and conditions of relocation" starts off stating that the Project Partners: "commit to provide an *informed consent* (author's *italics*) of the real estate owners, i.e. households in Vreoci"⁷².

"Conditions to achieve this are: the access to the programme for decision on proposed terms and conditions of relocation in compliance with the programme for the development of the Plan Vreoci; access to urban development plans for resettlement locations and the new location of the local cemetery containing position and surface area of the plot designated for the construction of the household facility or the new graves"⁷³.

However, just a dozen lines later the Blue Book mentions only a "consultation process", to be conducted simply "by means of a uniform questionnaire in order to consult the residents of Vreoci in a uniform manner on proposed terms and conditions in compliance with the programme guidelines, as well as to ensure a simple and effective survey processing".

The Blue Book is a somewhat bewildering construct... It was actually published ("gazetted") by the Serbian government in November 2007 and supposedly adopted by the management board of EPS at the time. But the purpose which was then spelt out has not been changed: the Field D mine, bordering Vreoci, would need to be expanded, and postponing or

cancelling this would have "immense consequences for [Serbia's] coal supply". Additionally, two new open pit mines, South Field and Field E, - respectively to the south west and south east of Vreoci would have to be opened. This, in turn, "implied" (sic) relocation of the "entire village of Vreoci, with approximately 3300 residents in 1180 households, as well as relocation of the local cemetery with about 4000 graves" [ibid page 4]. Curiously, despite this failure to be certain about the numbers of people affected (dead as well as alive), the document is specific as to the number and size of building plots, required on their relocation⁷⁴.

The Blue Book is equivocal about how the process would be implemented, referring to planned guidelines "to solve the property legal relations" and to gaining the affected citizens' trust, that the Project Partners will act in their best interest⁷⁵. These persons would be able to claim "an appropriate level of compensation" for their expropriated real estate". This was to ensure them "adequate living and working conditions by offering locations with utility infrastructure, [and] improv[ing] environmental conditions (sic) by means of planning and taking appropriate measures to protect the environment in residential areas"⁷⁶.

The company is enjoined to "offer the possibility" of collective relocation, rather than guarantee it; and the standards of public services and facilities at the relocation site "shall be determined by the existing standards" in Vreoci rather than (as recommended by the UN), better than before.

Regardless of any land acquisition that has taken place in preceding years the Blue Book fixes a maximum surface areas of 10 acres for "building plots" in area chosen for relocation.. Moreover, what the Blue Book terms "small business facilities", pre-existing in Vreoci, are to be designated "for the economic activities and services in the area of the city of Lazarevac". No definition is provided of such "facilities"; nor how they are to be sustained, especially if their owners have previously depended on access to fields, irrigation and markets in the local area of Vreoci.

Thus, there are many important, unanswered, questions raised in this document, which serve only to compound the doubts the Vreoci community has had for several years, over the intentions of the Serbian government and whether it is truly committed to implementing a swift and "just transition" from an unacceptable situation to one where economic and social sustainability is guaranteed.

⁷¹ Decision on Consent to the Decision on Acceptance of the Programme Guidelines for the Relocation of the Settlement Vreoci, Belgrade 22 November 2007, reissued in 2014

⁷² ibid

⁷³ Ibid, page 13

⁷⁴ Ibid, page 9

⁷⁵ Ibid, page 5

⁷⁶ Ibid, page 6

The reality of “Reclamation”

The 2008 Supplementary EIA for Tamnava West was unequivocal. As a consequence of mining, it said: “Vegetation will be devastated, while the upper layer, mixed with the overburden will have lost its composition, mineral components and seed sticks (sic)”⁷⁷.

The EIA demanded that hummus should be “removed before mining and deposited at the temporary disposal site inside the mining field, and then later used in the process of reclamation”⁷⁸.

It also said that fauna and flora at the mine had not been subject to sufficient investigation, and it is “necessary to perform a detailed list of animal and plant species”, and define a detailed Reclamation Plan, “using results for a study on landscape management”⁷⁹.

In its January 2015 field trip, the CEE Bankwatch Network team found that only cursory efforts had been made to preserve vegetation and humus, and what may have been retained earlier appeared to be largely washed away by the floods of May 2014.

For its part, the EIA 2009 on Field C envisaged reclamation being what it rather called: “[T]he following forms of using the soil in future... in agriculture and forestry, sport and recreation, possible construction of traffic routes and other facilities”.

It considered that the “depressions” left behind after mining could be used for “water management protection from high waters and the preservation of the reserves for agriculture, energy- industrial [and] other purposes (fish ponds, water bird farms, sport, recreation, tourism [and] for scientific researches of ecosystems”.

These quite fanciful propositions bear little correspondence to the reality of even the best of post-mining practices (including those of RWE in Germany). In particular, no steps appear to have been taken by EPS to prevent acid-mine drainage, while vital topsoil is being dumped along with, or close to, inter- and over-burden heaps without any apparent attempt to de-water them.

The 2009 EIA for Field C admitted that, within the area of Field B: “Only an area of around 50 hectares on the east part of the mine has been reclaimed so far [and] has been afforested by black locust trees”⁸⁰. Albeit this statement was made five years ago, but Field B is the oldest of the Kolubara mines, and therefore should have benefited from the most prolonged rehabilitation. On the contrary, it has been sorely neglected over many years and, from visual inspection earlier this year, it is clear the concept has since become little more than wishful thinking.

In any case, there is little prospect of reviving agriculture for a huge area that's been robbed of its essential biota, and it is dangerously irresponsible of EPS to suggest otherwise. At the very least, current reclamation is requiring massive inputs of chemical fertiliser to effect any growth.

How much land is in reality available and sufficiently fertile, for productive post-mining agriculture, and of what quality? The complaint submitted by Eco Vreoci to the EBRD PCM says that 87% of land around the basin is “very suitable for agriculture, 87% of it is agricultural land” - and it cites the 2008 Spatial Plan of exploitation of the Kolubara lignite basin⁸¹.

⁷⁷ Tamnava Supplementary EIA 2008, page 68

⁷⁸ Tamnava supplementary EIA, page 125

⁷⁹ ibid

⁸⁰ op cit page 20

⁸¹ Official Herald of the Republic of Serbia No. 122/08

The EPS 2009 EIA states that: "In the valley of the river Kolubara the soil is mostly used for agriculture whereat (sic) more than 70% of the territory of Kolubara basin is covered with crops⁸². Nonetheless, the EIA was distinctly pessimistic about the future.

"The soil is devastated and destroyed by coal exploitation....In contrast to the experts engaged in coal exploitation who believe that it is only a temporary change of the purpose of the soil use, i.e. that after exploitation the occupied soil can easily be stored to its former purpose, the experts dealing with soil, forestry and agricultural practices believe that this is only partially true and they state that there are not even theoretical conditions for returning the soil to its previous purpose⁸³..."

In an attempt to present an optimistic portrayal of post-mine agricultural prospects for the area, in mid-2014, EPS published its "Mining Basin Kolubara" Report on the state of the environment in Kolubara, covering the year's first six months of the year⁸⁴. The report made an overview of what it called "reclaimed areas with forest plantations", amounting to just over 113 hectares; along with 70 hectares of reclaimed areas hosting what it called "applied afforestation" for fields A, B, D and Tamnava West.

But, on closer reading, we find that the so-called "reclaimed areas" consist of only "technically reclaimed land within Management RBK Kolubara [which] is not included in the sum total of reclaimed areas [and] is ready for afforestation". Moreover, the area at Tamnava West and the three other fields is actually "planned for clean cutting to *allow the progress of mining operations* (author's italics)"⁸⁵.

Data was also provided on the cultivation of "mercantile" wheat and corn, sunflowers and alfalfa, said to have attracted an income of 406,800 dinars (less than 3,500 Euros) between January and June 30 2014. No information was given as to who received this very minor amount of money, and which of them resided in the basin; and, if so, whether any of them had earlier been re-located and were their growing own crops on re-settled land.

The equivalent environmental report by MB Kolubara for the previous year was slightly more detailed. Adding together figures given for "reclaimed areas planted with agricultural crops as of 30 June 2013" it came up with just over 50 hectares having been sown with soya and alfalfa at Tamnava East field; and some 3 hectares planted with sunflowers, apples, wheat and corn in Barosevac, Junkovac, and Zeoki⁸⁶. The report also says that: "In the first years of the biological reclamation, the highest priority is given to grass and legumes growing, because they contribute to the increase of the organic matter and nitrogen in soil. Later, instead of these species, cultivated crops with monitoring crop rotation and fruit are grown⁸⁷. However no production figures or targets for this are presented.

It is therefore difficult to make much at all of such information. What we can reasonably assume is that the task of returning mined-out land and soil to their pre-mining status and quality at Kolubara has, at best, been a desultory and haphazard exercise. More important is that the prospect of resuming long-term agriculturally-based livelihoods on so-called "reclaimed" land is largely chimerical.

In fact, full post-mining rehabilitation should have comprised a vital component of the "Kolubara Environmental Improvement" project, earning full support from EBRD and KfW, with the establishment of a diligent and extended monitoring of its impacts and deficiencies.

That no such steps were taken may come to be regarded as one of the most egregious of the Banks' failures in Serbia.

⁸² EIA Belgrade 2009, page 62

⁸³ ibid page 63

⁸⁴ "Mining Basin "Kolubara" report on the state of the environment in "Kolubara" from period 01.01 – 30.06 2014

⁸⁵ ibid, page 43

⁸⁶ Mining Basin "Kolubara" report on the state of the environment in "Kolubara" from period January – June 2013, page 20

⁸⁷ ibid, page 22

Pretenses of engagement on resettlement

The Serbian government's above-mentioned Spatial Plan and local government regulations are, according to the 2011 EIA: "[T]he principal planning documents for the development and [to] define the policy and modalities of relocation of households and settlements"⁸⁸.

Formal procedures were, it says, in place to "consult stakeholders" during the development of these plans, and there would be public hearings and referenda (sic), or adjudication by independent courts, should "voluntary agreements" not be reached. Such engagement was "evolving" to align, *inter alia*, "with European Union standards and practices in this area"⁸⁹.

In accordance with EBRD's Environmental and Social Policy 2008, public consultation and stakeholder engagement is "seen as an on-going process," to be initiated at the earliest stage of the EIA process, and to be conducted throughout the entire life-cycle of the EBRD-financed project:

"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 coal mining equipment at the Kolubara Mining Basin"⁹⁰.

This statement is accompanied by a list of dozens of NGOs, local groups, local government and central government bodies, with which the company claimed to have "engaged" in response to the Lignite Mining Area Spatial Plan of 2008⁹¹. Despite a diligent outline of nineteen proposed engagement actions, in fact eleven of them had not even commenced at this point.

To meet the EBRD's PR 10, which relates to stakeholder engagement, EPS appears to have made a number of efforts. However, the Vreoci Ecological Society in August 2012 complained that the two committees charged with monitoring the Vreoci resettlement (one of these intended to oversee the graveyard relocation at Barosevac), had never held a session at the designated offices in Vreoci itself. Hence, say the complainants, the committees' legitimacy had been forfeited because of "the manipulative behaviour of MB Kolubara in problem solving in the Vreoci resettlement"⁹².

The stakeholder engagement plan also fixed the "Cut Off" date for determining resettlement compensation, either through voluntary negotiation or expropriation, and concluded that: "No further resettlement will be required for the Tamnava West Field before 2018 and for Field C before the end of mining operations ie during the period of the proposed EBRD loan (sic")⁹³.

The EIA claimed that compensation for all properties affected by the Tamnava West mine had already been settled. For Field C, ten plots of land "still need to be compensated, although agreement [has] been reached with the local government and for the relocation of public facilities"⁹⁴.

It also said that, where necessary: "Serbian laws, regulations and planning processes and management practices, would be reformed to bring them into line with relevant EU law"⁹⁵.

It is noteworthy that, when defining its approach to relocation and resettlement, MB Kolubara and counterpart planning authorities claim to have adopted principles, "based on existing legislation and

⁸⁸ Environmental Improvement Project at Kolubara Mine Basin, Stakeholder Engagement Plan, EPS, February 2011, page 6

⁸⁹ ibid

⁹⁰ Environmental Improvement Project at Kolubara Mine Basin, Stakeholder Engagement Plan, EPS, February 2011, page 10

⁹¹ ibid, pages 18-26

⁹² Submission via Electronic Mail to Project Complaint Mechanism, EBRD, by Vreoci Ecological Society and the Council of "Mesna Zajednica Vreoci", 17 August 2012

⁹³ Environmental Improvement Project at Kolubara Mine Basin, Stakeholder Engagement Plan, EPS, op cit, page 10]

⁹⁴ EI Project, ibid, page 8

⁹⁵ ibid page 7

company policy”, including “the *right to better environmental conditions than the present one*”. This seemed to mark something of an advance on what the EBRD itself insists upon.

Nonetheless, EPS aligns itself with the EBRD and the World Bank, when it says that “the right to life in the settlement” would be guaranteed by “utility and social infrastructure at least at the level of existing settlements”⁹⁶, rather than that this would be measurably improved.

Where residents should be resettled, the timing of relocation, the actual living conditions they should be guaranteed, and amounts of compensation paid for various “losses”, is embedded in concerns held by many faced with intolerable conditions under any mining “footprint”.

It is also at the heart of the complaint, made by citizens of Vreoci (mentioned above) to the EBRD Project Complaint Mechanism (PCM), alleging that the Bank signally failed to honour its Performance Requirements.

The complainants declare that the EBRD failed to ensure that its client, EPS, was compliant with relevant national and international policies regarding resettlement (PR 5), or to recognise that EPS has “contradicted” PR 1 on Environmental and Social Appraisal and Management; PR 3 on Pollution Prevention and Abatement; PR 4 on Community Health, Safety and Security; and, PR 10 on Information Disclosure and Stakeholder Engagement⁹⁷.

The CEE Bankwatch Network investigatory trip, made in January 2015, confirmed that PR1, PR3 and PR4 were manifestly not being adhered to.

The EBRD's Performance Requirement No.5, cited above, on Land Acquisition, Involuntary Resettlement and Economic Displacement, draws on the raft of principles, safeguards and guidelines espoused by other development banks, in particular those of the World Bank-IFC, and broadly observed by other agencies. For example, the Equator Banks say they follow the IFC performance standards on involuntary resettlement⁹⁸.

The EBRD states that involuntarily resettled persons have “the right to adequate housing and the continuous improvement of living conditions”. The policy goes on to say that “mitigat[ing] adverse social impacts” from land acquisition, is based on “providing compensation for loss of assets at replacement cost” and “improving or, at a minimum, restoring the livelihoods and standards of living of displaced persons to pre-project levels...so as to facilitate sustainable improvements to their socio-economic status”.

However, many residents in the Kolubara mining basin were suffering from adverse living conditions and severe environmental impacts (such as ground erosion, air and water pollution) long before the EBRD and KfW backed the mine improvement project in 2011.

Trying to differentiate these historical realities from present livelihood conditions, to assess residents' socio-economic status as they were prior to this financing, does pose a number of problems.

Nonetheless, the EBRD has made no fewer than five loans to Serbia since 2001, relating to lignite mining and overall power production. Importantly, the second loan (in 2003) was aimed at the “modernisation” of equipment to “increase lignite production” at the Tamnava West field⁹⁹. The Bank therefore had a decade in which to assess the consequences of expanding mining in the Kolubara basin – long before it subscribed to the joint loan agreement of 2011.

⁹⁶ Expropriation procedures and basic relation information about Tamnava-West Field and Field C, Zoran Markovic, Vreoci, 28 December 2010

⁹⁷ Complaint by “Vreoci” Ecological Society and the Council of “Mesna Zajednica Vreoci” to the EBRD's Project Complaint Mechanism 17 August 2012

⁹⁸ http://www.equator-principles.com/resources/equator_principles_III.pdf

⁹⁹ <http://www.ebrd.com/work-with-us/projects/psd/eps-power-ii.html>

In any event, neither EBRD nor KfW had any excuse for failing to perform a full Environmental and Social Impact Assessment (ESIA) of the Kolubara basin, which included critical baseline studies, the absence of which calls into doubt many aspects of the Resettlement Action Plan (RAP) which was later drawn up.

While the EBRD recognises the “necessity of the client's Environmental and Social Action Plan (ESAP) and/or Management System”¹⁰⁰, this cannot be allowed to substitute for an ESIA. Nor can “providing compensation for loss of assets at replacement cost” be properly calculated if a thorough assessment has not been previously been made of the value of those assets, and what it would actually cost in current prices to replace them (see *supra*).

The World Bank in its own OP.4.12 Operational Manual on Enforced Resettlement says that, while cash payment for lost assets “may be appropriate” this is where “livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable, and active markets for land, housing, and labour exist”; where “displaced persons use such markets , and there is sufficient supply of land and housing; or where livelihoods are not land-based. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets”¹⁰¹.

This seems fairly reasonable. However, “Improving or restoring livelihoods and standards of living to pre-project levels” can only be fairly measured if the assessment starts early in consideration of the project, and unless it is given adequate time to be successfully concluded (See *discussion on Michael Cernea's points below*).

In this context, the EBRD states that: “Where involuntary resettlement is unavoidable, the client will engage a suitably qualified specialist to carry out a census and a socio-economic baseline assessment within the defined affected area, and assist in the preparation of the Resettlement Action Plan (RAP), or Livelihoods Restoration Framework¹⁰². (In the Kolubara case, the “suitably qualified specialist” was Arup, as already pointed out).

The RAP, says EBRD, should “be designed to mitigate the negative impacts of displacement, identify potential development benefits...” and “establish procedures to monitor and evaluate the implementation of resettlement plans and take corrective action as necessary”.

Just what ought this to mean in practice?

The EBRD tells us that: “At a minimum, the RAP should: state the resettlement objective, describe project impacts, identify all people to be displaced and provide an inventory of affected assets; demonstrate that displacement is unavoidable and has been minimised; describe the legal framework for land acquired and compensation, describe the process of consultation with affected people regarding acceptable resettlement alternatives, and the level of their participation in the decision process”.

In addition, it should “describe the entitlements for all categories of displaced people. Resettlement will be considered complete when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objective stated in the RAP as well as the objective of this Performance Requirement¹⁰³.

In this regard: “[I]t may be appropriate for the client to commission an external completion audit of the RAP to determine that the provisions have been met, after all inputs in the RAP – including any developmental initiatives – have been completed, *but well before the client's financial commitments to the EBRD have been met*” [author's italics]¹⁰⁴.

We have found no evidence that such a “completion audit” of the RAP was commissioned by the EBRD.

¹⁰⁰ *ibid* page 36

¹⁰¹ World Bank, Operational Manual, OP 4.12 Involuntary Resettlement, December 2001, revised in April 2013

¹⁰² *op cit*, page 37, para 14

¹⁰³ *ibid* page 37

¹⁰⁴ *ibid*, page 38

Burning questions for the World Bank

Over the past year, the World Bank has been subjected to fierce criticism from a large number of global development and environmental NGOs for threatening to weaken its safeguards – specifically those designed earlier to protect people who are involuntarily resettled. In April 2013, four experts¹⁰⁵ had already published a comprehensive and strident analysis of the Bank's failures. They submitted to the World Bank Safeguards Review a detailed paper on "Reforming the World Bank Policy on Involuntary Resettlement involuntary resettlement"¹⁰⁶.

Crucially they pointed out that: "Despite the important expansion of the scope of the policy beyond displacement caused by land acquisition, the scope remains problematic and overly narrow because it does not explicitly cover displacement that occurs in the project area prior to, or in anticipation of, Bank involvement in a project; [and] does not cover displacement that occurs because of a project's adverse impacts on the environment or natural resources that people depend upon"¹⁰⁷.

We should point out that the EBRD also says: "Where involuntary resettlement has occurred prior to the Bank's involvement, due diligence will be carried out to identify any gaps and the corrective actions that may be required to ensure compliance with this Performance Requirement [No.5]"¹⁰⁸.

But it is far from certain what this has meant (if anything) in the context of the Kolubara project. The World Bank's "Sourcebook on Involuntary Resettlement" is far less equivocal, stating that "If resettlement for the project begins before initial discussions with the Bank and the acquisition of the area is directly linked to the Bank project, then the substantive aspects of OP 4.12 apply retroactively"¹⁰⁹.

The four authors of "Reforming the World Bank" declared that: "During project appraisal, the Bank should be required to determine whether displacement has already occurred to make way for the project. When this circumstance arises, the Bank should assess whether the objectives of the involuntary resettlement policy have been met for those displaced prior to approving funding for the project. To the extent that policy objectives have not been met, the implementation of a *comprehensive remedial action plan should be required as a precondition to allowing disbursement of funds for the project*" [author's italics].

They assert that: "In the absence of these measures, the Bank will be viewed as complicit in the human rights violations and harms suffered by those displaced regardless of the temporal lapse.

"During project implementation, such as construction or excavation, people may need to move their dwellings, refrain from accessing land or natural resources, or seek alternative livelihoods on a temporary basis.

"The impacts on people's lives as a result of temporary displacement are significant and warrant compensation, rehabilitation support and other measures scaled to the duration of the displacement impacts.

The Submission goes on to point out that: "The current scope of the policy excludes people who, due to severe social and environmental project impacts that threaten health, safety, livelihoods and food and water supplies, have no choice but to relocate.

The Sourcebook states that if environmental externalities create conditions that pose a serious risk to health or safety, good practice is to include formal land acquisition in project specifications.

¹⁰⁵ Miloon Kothari, former Special Rapporteur on the Right to Adequate Housing and Land Rights Network, Joanna Levitt of the International Accountability Project, David Peel of Inclusive Development International, and Jelson Garcia of the Bank Information Center

¹⁰⁶ "Reforming the World Bank Policy on involuntary Resettlement, Submission to the World Bank Safeguards Review, April 2013

¹⁰⁷ ibid, page 6

¹⁰⁸ op cit page 36

¹⁰⁹ Reforming the World Bank, op cit, page 7

It further states that: “[P]eople forced to relocate by environmental hazards directly related to the project-induced changes in land use are covered by the environmental management plan.”

While this plan “may have provisions similar to those in OP 4.12”, nonetheless: “Such cases should fall within the scope of the revised resettlement policy. Displacement caused by these ‘externalities’ hold the same magnitude of risks to affected people, including of impoverishment, landlessness, and homelessness, as involuntary resettlement caused by land acquisition. People who need to be resettled, or who are economically displaced, due to project externalities have the same rights under international law, and should be entitled the same safeguard measures, as those displaced for reasons currently covered by the policy”¹¹⁰.

The authors also maintain that: “Since the success of resettlement in terms of impacts on people’s lives and livelihoods is irrelevant to the technical success of the investment project, there is often minimal incentive to give the resettlement component the attention and resources it deserves. The ‘main’ investment project will always have completely different attributes, goals and schedules to the resettlement component”¹¹¹.

They add: “[T]his fact should compel the performance of a comprehensive human rights assessment. Anything short of this is failing to capture the real and full implications of resettlement on people’s lives”.

Furthermore, such an assessment must involve the “collection of disaggregated baseline data on household organization, assets, living standards, productive activities and skills, incomes and access to basic services”¹¹².

The assessment “should be conducted through participatory processes to the fullest extent possible, with all data verified at the household and community level”, while: “The absence of such comprehensive *ex ante* human rights impact assessment to inform Resettlement Plans and Process Frameworks will almost certainly preclude genuinely successful and sustainable outcomes”¹¹³.

It is clear that the performance of a comprehensive human rights assessment, in these terms has not happened – or in several respects not even been considered – when it came to removing, or preparing to shift, those living in the Kolubara mining basin.

United Nations: linking human rights to resettlement

Compared with the weaker resettlement standards of both the World Bank and EBRD – not to mention their failure to implement them, the United Nations UN Human Rights Special Rapporteur on adequate housing stands in marked contrast. In June 2007 he issued principles and guidelines to “address the human rights implications of development-linked evictions and related displacement in urban/rural areas”. This was a “further development of the comprehensive human rights guidelines on development-based displacement”, issued ten years earlier¹¹⁴. Displacement due to mining was specifically cited as one of the conditions to which the principles and guidelines should apply¹¹⁵.

The UN Human Rights Special Rapporteur asserted that basic human rights principles included the right to resettlement on “alternative land of better or equal quality”, while housing must satisfy “criteria for adequacy” of accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education”¹¹⁶.

¹¹⁰ ibid, page 8

¹¹¹ ibid, page 20

¹¹² ibid page 22

¹¹³ ibid page 23

¹¹⁴ Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex I of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18]UN document page 3

¹¹⁵ ibid, page 4

¹¹⁶ ibid, page 6

The EBRD's Mining Operations Policy, when addressing Involuntary Resettlement presents a much more diluted view of these rights, stating that, "the significant socio-economic disruptions caused by displacement offer opportunities to improve the lives of those displaced if mitigation measures are developed and compensation is carried out in a timely manner and with the informed participation of those affected"¹¹⁷.

States are specifically enjoined by the UN Human Rights Rapporteur to ensure that evictions are (*inter alia*) "undertaken solely for the purpose of promoting the general welfare". States should take "specific preventive measures to avoid and/or eliminate underlying causes of forced evictions" and "should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land"¹¹⁸.

In determining the "compatibility of resettlement" with the principles of the UNHCR (UN High Commission for Refugees) states should also ensure that: "No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the guidelines and internationally recognized human rights principles is in place"¹¹⁹.

Furthermore, relocation "must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants"¹²⁰.

As for compensation: "Cash compensation should *under no circumstances* [author's italics] replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value or better"¹²¹.

In terms of monitoring and evaluating the impacts of resettlement, states are also instructed to "determine the number, type and long-term consequences of evictions", and to "entrust an independent national body, such as a national human rights institution, to monitor and investigate state compliance with these guidelines and international human rights law"¹²².

This is a strong list of guidelines, albeit their force somewhat limited by the fact of their binding non-binding in international law. In any case, it is sobering to note that in several important respects, they have not been observed by the EBRD, nor applied by the Serbian government, in the case of Kolubara. In this context, we can refer to the example of Selimir Milutinović, who was relocated from the Radljevo mining area in 2004 to an old house, left behind by another person, and whose roof suffered from multiple cracks¹²³.

No "specific preventive measures to avoid and/or eliminate underlying causes of forced evictions" have taken place. On the contrary, the mine expansion has actually created the necessity to relocate hundreds of households and people.

No comprehensive resettlement policy, "consistent with internationally recognized human rights principles" is yet in place, judging by the complaints which have been submitted to the EBRD's Project Complaint Mechanism (PCM).

While the resettlement so far may not have been on specifically polluted land, there is no question that it has taken place – and is proposed to take place - in "immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants".

¹¹⁷ Mining Operations Policy, EBRD, 17 October 2012, page 48

¹¹⁸ ibid, page 6

¹¹⁹ ibid, page 8

¹²⁰ ibid, page 12

¹²¹ ibid, page 13

¹²² ibid, page 15

¹²³ "The reality of resettlement in Kolubara: Out of the frying pan into the fire" CEE Bankwatch Network, 4 June 2013

Cernea on the impoverishment risks of resettlement

Twelve years ago, the eminent anthropologist and authority on resettlement, Michael M Cernea, posed what he termed “the question not asked: when does displacement end?” He pointed out that: “Because such displacements are deliberate and planned in advance, their ‘end’ would logically have to be defined also in advance, and under the same [resettlement] plan”¹²⁴.

While conceding that the formulation of Resettlement Action Plans (RAPs) contained “many provisions indispensable for protecting those displaced”, Cernea said that: “Paradoxically, these plans define only the start of displacement but not its time-based end”.

However, he also stated that it was crucial to also define when the process actually starts: “The ‘displacement’ often begins long before the actual physical removal of people”. Cernea cited strip-mining specifically as among those projects where: “Such displacement creates a new category – a new legal category - of development-displacement people, [as] the result of implementing the expropriation decision in the first place”.

This, he said, “leads to legal public notification of area boundaries and entails a ‘cut-off’ date and legal prohibition of new constructions and of new investments in the condemned areas, to avoid increases in compensation costs”. As already noted, a cut-off date was included in the *Environmental Improvement Project at Kolubara Mine Basin* plan (see *supra*).

But, this is not the way to go, because it “in turn induces depression – causing drops to land prices, halt in housing and enterprise construction, freezing on public investments or public services expansion etc.

“The ‘to-be-displaced’ inhabitants begin to suffer adverse economic consequences long before being physically displaced. This period of pre-project ‘condemnation’ may last many years, until the project actually starts and “the ugly manifestation of relative impoverishment” begins to occur.

Judging by the experiences of those residents who are so far displaced, and those still awaiting resettlement in the coal basin (such as the inhabitants of Vreoci and Radljevo), similar “relative impoverishment” has been occurring in Kolubara.

The objective of restoring livelihoods to a level superior to that prior to displacement has not been met, nor even the lesser requirement to “at least restore” livelihoods.

Cernea goes on to describe the official termination of a project as “its third phase, when resettlement-reconstruction is completed”, warning that: “[C]onfusing the end of displacement with the end of the physical transfer [of people] phase is a grievous mistake...Unfortunately, many government officials, planners and project managers are still making this confusion”, and as a result many people may “remain not be rehabilitated for years”.

Cernea has formulated the “Impoverishment Risks and Reconstruction (IRR)” model to avoid “landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity, education loss, loss of access to common property resources and social “disarticulation” [Cernea, *ibid*]. He maintains that cash compensation for expropriated assets is far from adequate, and “has long been proven to be an insufficient remedy against impoverishment”.

The 2013 expert Submission to the World Bank (*cited above*) concurred, saying that: “The amounts displaced people actually receive are almost never truly restitution for what they lose through expropriation and displacement. Low compensation has the reverse effect of massively externalising project costs and placing them on the shoulders of the displaced...compensation alone is not enough to achieve just outcomes”¹²⁵.

Consequently, according to Cernea, every project’s RAP should have: “time-bound accountability”, and require “the carrying out of a project completion report to determine whether and how many of those displaced have recovered and improved their livelihoods.”

We know of no such a completion report having been done, or commissioned, by EBRD or KfW.

¹²⁴ Compensation and benefit sharing: Why resettlement policies and practices must be reformed”, Michael M Cernea in Water, Science and Engineering, March 2008, vol 1, no 1

¹²⁵ Reforming the World Bank, op cit, page 74

Conclusions

During early days, a large proportion of the long-standing, rurally-dependent inhabitants of the Kolubara basin doubtless viewed the prospect of hosting a large open-cast mine on their doorsteps with alarm and trepidation.

As the excavations and wastes began creeping towards their gardens and doorsteps, hundreds of residents came onto the streets to protest or petitioned the authorities to intervene. Ultimately a consensus developed that the only way to fight such mounting external pressure and attrition was to escape from it altogether; and try to forge new livelihoods.

Unfortunately, this has not happened to anything like the measure or standard which should have been guaranteed. Relocation of family homes, gardens, allotments, businesses, burial plots, along with pastured animals, and familiar pathways, may on the surface appear to have been conducted judicially, but it has certainly not been with justice.

Worst of all, many of those already relocated have not escaped the underlying hazardous conditions they were supposedly being protected from.

On dispersing their funds in 2011, the EBRD and KfW doubtless considered that a fairly straightforward, time-bound, task was ahead of them. At the end of it, they could walk away from Kolubara, neatly tying up any loose ends, and declaring the eponymous “environmental improvement” project completed.

Had they performed proper due diligence, a full social impact assessment, enhanced by a human rights equivalent, before dispersing the funds, they should have understood that this project was far more challenging and complex than it initially appeared to be, and then walked away from it.

Recommendations

- The EBRD must publicly acknowledge a major responsibility for the environmental damage and threats to livelihoods created in the Kolubara mine basin since 2011.
- Having failed to ensure performance of a comprehensive environmental and social impact study, prior to the ongoing resettlement programme, it is now mandatory on the EBRD to ensure that the monitoring of all aspects of this programme is undertaken, at regular intervals, for as long as those affected submit complaints that the Bank's Performance Requirements are not being met
- The EBRD should acknowledge that what it defines as the “area of influence” of the Kolubara Environment Improvement Project logically encompasses the mining basin in its entirety; thus it cannot eschew responsibility for the negative impacts on people and the environment caused, at least in part by its investment in that project
- The German Bank KfW ought to perform its own due diligence study of how the mining equipment it funded has been used or will be used from this point on. It is the Bank's duty to specifically examine how such mechanisation has already caused, and threatens to cause in future, direct and indirect environmental damage throughout the Kolubara Basin, and to allocate any further funds necessary to remedy the damage created
- The Serbian government must urgently examine the numerous failings of state-owned EPS to implement precautionary measures to safeguard the integrity of the Kolubara Basin; to protect its residents from danger; and to guarantee that they will enjoy improved livelihoods when resettled. - much of which was forewarned in its own commissioned environmental impact statements
- The Serbian government must revise its “Blue Book” on provisions for resettlement of the inhabitants of Vreoci, extending the deadline for implementation of this programme beyond the end of this year (2015), until such date as the human rights principles, set out by the UN Human Rights Rapporteur on adequate housing, have been fully implemented.
- Both the EBRD and KfW, recognising that any further support for lignite extraction and burning would be a direct contravention of the EU's “de-carbonisation” policy, should publicly refuse to make any financial or other commitment to promoting it
- Given the contention by both the EBRD and KfW that their backing for the Kolubara Environmental Improvement project was aimed at significantly reducing greenhouse gas emissions from power plants in the Kolubara Basin, they should commission an independent assessment whether this has been the case.
- The UK-based professional services firm, Arup, is urged to reveal full details of its dealings with the EBRD and EPS that led to its publishing an inadequate and flawed Environmental and Social Action Plan for the “Kolubara Environmental Upgrade Project” (sic).

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