

STATE CAPTURE IN KOSOVO THE POLITICAL ECONOMY OF GRAVEL



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THE POLITICAL ECONOMY OF GRAVEL



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EXECUTIVE SUMMARY

Clear definitions of the notion of state *capture* are somewhat elusive. In the academic literature, the term capture, in the broadest of senses, refers to illegitimate (not necessarily illegal) practices or outcomes undermining the core democratic values to the benefit of a particularistic interest(s), usually vested and powerful. In practical terms, classifying a particular situation as capture is difficult, but there are a few common characteristics that indicate its presence. These include an entanglement between political, economic and social power which is systemic and structural and persists over an extended period of time. Furthermore, a situation is classified as capture if this “entanglement” is associated with a lack of effective democratic control mechanisms and causes significant social, economic and/or environmental harm.

This paper attempts to argue the existence of state capture in Kosovo by identifying its occurrence in the extraction of gravel. The post-war construction boom in Kosovo, followed by a huge increase in public investment in road infrastructure over the last decade, has had a tremendous impact on the construction sector value chain by driving up the demand for construction sand gravel. This has led to a dramatic increase in quarrying activity by construction companies in Kosovo’s riverbeds and hills that has caused serious environmental damage, with ripple effects on local economies and livelihoods.

As quarrying activity has continued and expanded, companies have acted with almost complete impunity and disregard for environmental regulations, and have been enabled to do this by their political ties. These ties are manifested through political influence in key appointments in regulatory bodies and the lack of empowerment of other oversight mechanisms.

While civil society and the media have shown to be effective in some cases by bringing abuses to light, the same cannot be said of the judicial system. While inspectors and the media have reported breaches, indictments are scarce or non-existent, and consequently a climate of impunity has developed. The lack of a judicial response enables the current situation to be classified as capture rather than mere corruption.



INTRODUCTION AND METHODOLOGY

In the current attempts to explain, or at least describe, governance practices that are, for the most part, falling short of fulfilling the needs of communities, or indeed of entire societies, and that are detrimental to further democratic developments, social scientists, donors and civil society organisations are increasingly referring to a relatively new concept

– **capture** – and its variations – **state capture**, **policy capture** and **regulatory capture**. As with most concepts denoting processes, a clear definition is somewhat elusive, yet there are a few common characteristics that help in identifying it.

A likely indication of capture includes the following criteria:

- ... based on often entangled political, economic and social **power and influence**
- ... **systemic** and **structural** in nature
- ... persists over an **extended time period**
- ... includes **the lack of effective democratic control mechanisms** – political opposition, civil society organisations and independent media
- ... induces significant social, economic and/or environmental **harm**, and **undermines core democratic values**

For the purposes of this research, “capture” is defined as a set of processes and/or a set of outcomes that include the control of public resources and their allocation to the benefit of particularistic interests. The goals of the research are to:

- ... **identify actors and power networks** involved in the capture of chosen sectors
- ... **describe practices and mechanisms** used to extract benefits for particularistic interests
- ... identify harmful **consequences** to public good and/or democracy
- ... propose **recommendations** to effectively remedy the situation

In the literature, the term “capture”, in the broadest of senses, refers to illegitimate (not necessarily illegal) practices or outcomes undermining the core democratic values to the benefit of a particularistic interest(s), usually vested and powerful. It is a form of deeply rooted, long-term, systemic deviation from the democratic norm, sometimes disguised by pseudo-democratic processes.

Researchers have coined different terms to differentiate between several types (or scales) of capture, including *state capture*, *policy capture* and *regulatory capture*, with somewhat overlapping definitions. Thus, the term “state capture” usually denotes large-scale capture of all central government institutions, including the parliamentary law-making processes, to enable the appropriation of public resources across all sectors for the benefit of a small, powerful group of people. “Policy capture” usually denotes “undue influence of vested interests on public decision-making”, i.e. it implies a somewhat narrower scale, one restricted to a particular policy area where interest groups systematically manipulate the entire policy cycle – from agenda-setting to policy evaluation – for their own benefit. However, if policy capture takes place in a number of policy areas, it may, depending on the scale, also denote state capture. Regulatory capture sometimes refers specifically to the capture of regulated sectors, such as energy or telecommunications, the agencies that regulate these sectors or regulatory processes themselves. In the latter sense, it is a sub-type of policy capture.

Furthermore, capture can be refined according to types of institution subject to capture (legislative, executive, judiciary) and the types of actors involved in capture (large private businesses, political leaders, high ranking officials, interest groups).

Evidently, (state) capture does not have a single definition, so for the purposes of researching and analysing it, it could be viewed as both a process and a set of outcomes resulting from situations where parts of the political and economic system, or the system as a whole, is “appropriated by powerful individuals, groups or networks in order to fulfil their particularistic interests”.

In terms of processes, state/policy capture denotes the “ability of actors to shape institutions, the rules of the game and norms of behaviour in their own interests”. In other words, by intent, the actors consistently and repeatedly direct policy decisions towards their own specific interests. In terms of outcomes, captors gain control of institutions and/or resources, distributing them through a series of exchange relations, using both formal (e.g. lobbying, campaign financing, formal discretionary powers) and informal (e.g. nepotism, clientelism, revolving door) mechanisms. The mechanisms tend to be contextualised in the political or sector-specific sense.

Depending on the specific sector, mechanisms employed may include the following:

FINANCE: preferential credit, channelled subsidies, selective bail-outs

COMPETITION: illicit protection of rents and markets against competition through various industry/infrastructure/trade policies

CONTRACTS: preferential access to public contracts, concessions, licences, sales of publicly owned real estate below market prices

REGULATION AND ENFORCEMENT: structuring regulatory oversight for ineffective enforcement; inducing lack of political will/resources to reform; police and investigative sector dependence

JUDICIAL RECOURSE: courts leaned on to not sanction related wrong-doing effectively

BROADER CHECKS AND BALANCES: various tactics employed to stymie and/or discredit the watchdog function of media and civil society

Furthermore, capture may be political (actor) or regulatory (administrative), often working in conjunction. Thus, capture can be facilitated or made more likely through a combination of the following:

- **policy design** benefiting primarily particularistic interests
- **non-transparent processes** of policy development
- **the absence of clearly defined policies**, thus opening up the space for discretionary non-transparent decision-making, in the process of implementing (or indeed, not implementing) policy
- **appointment of individuals** in decision-making positions over whom captors have control

What differentiates state capture from individual incidences of corruption, such as bribery, is its more systemic and structural nature, which enables the captors to maintain their positions of power and influence over an extended period of time. Power is thus the key concept in understanding capture: it may denote political, economic or social power, or very often, their entanglement.

Apart from its systemic and long-term nature, capture is much more significant in terms of scale and scope as well as impact on society. It undermines core democratic values and/or induces significant social, economic and/or environmental harm. It involves significant amounts of money and is an endemic issue in the sector/country. Furthermore, it usually involves actors from at least two sectors – the public and the private sector.

Rather than speaking of a “captured sector” in its entirety, it is far more likely that certain aspects/processes taking place in the sector will be captured. For instance, in the public health sector, it is unlikely that the process of patient care will be captured, not least because this process is performed by the largely disempowered doctors and nurses. On the contrary, the process of acquiring medical equipment or pharmaceuticals in the health sector is much more prone to capture, as here the resources and potential gains on both sides are much bigger. There are big economic interests at stake, and the process necessarily involves a relational transaction between policymakers and big (international) capital – both having significant amounts of power, albeit one political and the other economic. It is the fusion of these powers that may lead to capture.

Furthermore, although the negative effects of state capture have so far been mostly focused on the loss of public goods in terms of costs/public money being abused for particularistic material interests, there is also a large risk to liberal values as understood in contemporary liberal democracies. Namely, captors can and sometimes do appropriate parts of the system for their own gain in terms of advancing or imposing a specific worldview. Thus, again, for example, the

capture of the health sector may take place in the area of protection and promotion of sexual health and rights. Specifically, the decision-making positions may have been taken over by individuals with the power to amend existing legislation and policies to restrict or limit access to contraception or abortion, or the rights of transgender people to medical procedures. Similarly, a parallel process may be taking place in the education sector, whereby the decision-making positions are given to individuals who advance a retrograde approach to education, focusing on traditional and/or religious values and nationalism, rather than on the universally accepted human rights-based approach, multiculturalism and scientifically proven truths (e.g. evolution vs. creationism, climate change, etc.).

Methodological note

The report was produced based first and foremost on an extensive review of secondary sources. The case studies have been covered systematically by the media throughout their development, from uncovering the problem to eventual prosecution. The platforms with the highest coverage of the cases were Kallxo.com, Klan Kosova, Koha Ditore and local portals. The second main source in the desk review was reports by civil society organisations and international organisations. These allowed for a more intricate understanding of the institutional failures and the legal framework. Sector legislation (e.g. the Law on Environmental Protection) was also consulted to clarify regulatory specifics, while annual reports by institutions were also consulted for administrative statistics. All of these were supplemented by three interviews – two with journalists and researchers (Arton Demhasaj from Çohu and Kreshnik Gashi from Balkan Investigative Reporting Network (BIRN) Kosovo) and one with a local consultant who has worked on infrastructure projects and preferred to remain anonymous.

RELEVANCE OF SECTOR

Kosovo is a country rich in minerals, particularly coal, zinc and nickel. Nevertheless, due to legal and political challenges, the extraction of these lucrative natural riches has not reached its potential. The extractive industry in Kosovo therefore has only a moderate impact on the economy. Yet quarrying has proven to be a problematic area in other aspects and the sector has had a tremendous impact in terms of causing environmental externalities. **This has particularly been the case with quarrying activity for gravel**, where there has been a flurry of activity in response to a construction boom, particularly large infrastructure projects such as highways, to the detriment of Kosovo's riverbeds and rural ecosystems.

The key reasons for studying this sector from a capture perspective are related to the fact that the same political interests that have led to a massive spike in road investment also control the regulation of gravel extraction. The latter is heavily influenced by state regulation – from the licensing stage, to the collection of mineral rents, to the monitoring of environmental pollution – and is in the hands of a limited number of people and institutions. As such, control over these institutions is key in determining whether processes and outcomes benefit citizens or particularistic interests. As the research shows, the processes have been favouring the latter by far.

Another key reason for studying this sector from a capture perspective is the fact that – as the theoretical definitions outlined – a situation capture induces significant social, economic and/or environmental harm. The case studies prove the heavy consequences imposed upon rural settlements. As a recent report by the Millennium Challenge Corporation notes: “all the rivers in Kosovo are classified as excessively polluted and have high levels of both bacteriological matter and heavy metals.”¹ These and other forms of environmental degradation in rural areas have a great impact first and foremost on agriculture, which represents a large share of the economy (10.5 per cent of GDP in 2016)² and a large share of (largely informal) employment.³

The key reasons for studying this sector from a capture perspective are related to the fact that the same political interests that have led to a massive spike in road investment also control the regulation of gravel extraction.

1 Millennium Challenge Corporation, “Kosovo: Growth Constraints Analysis”. <https://assets.mcc.gov/content/uploads/Constraints-Analysis-Kosovo-2.pdf>

2 Kosovo Agency for Statistics, “GDP 2008-2016”. <http://ask.rks-gov.net/media/3628/bpv-2008-2016.pdf>

3 Kosovo Agency for Statistics, “Agricultural Census 2014”. <http://ask.rks-gov.net/media/1375/final-results.pdf>

CASE STUDIES

The political economy of gravel: from road investment to environmental degradation

Two months prior to Kosovo's declaration of independence in February 2008, a new government had been formed. It was led by Hashim Thaçi and the Democratic Party of Kosovo (PDK), a party that had arisen from the political and military leadership of the Kosovo Liberation Army. It continues to be part of the government to date, albeit now with a new leadership, slightly weakened and as a junior partner. While the declaration of independence and the institutional build-up were the priorities of the new government, **a new era began in terms of economic policy and investment priorities.**

The PDK-led government **started a massive programme of investment in public infrastructure, especially roads, which continues to this date.** In 2008, Kosovo had a run-down road network which was mostly built or rebuilt mostly in the 1960s. Out of this road network, 33 per cent of roads needed urgent repair, regional roads were below international standards and highways were non-existent.⁴ A World Bank report from 2008 noted that Kosovo's existing network lagged behind almost all regional comparators in terms of road density.⁵

Thaçi's government therefore had the policy priority of constructing new roads (local), upgrading old regional roads and constructing highways. In the first years of the PDK's governance, **the increase in public investment in transport infrastructure was massive: it rose from 0.4 per cent of GDP in 2007 to 6 per cent in 2012.**⁶ The same pace of investment continued during the second PDK mandate (2011–2014). A review by the International Monetary Fund (IMF) noted that between 2011 and 2015, 50 per cent of public investments in economic infrastructure was directed towards the transport network.⁷ In addition, from 2008 to 2014, the central government, jointly with municipalities, financed the upgrading of 1,100km of local and regional roads at a cost of €200 million.⁸ Even during the PDK's third mandate, as a coalition partner to the Democratic League of Kosovo (2015–2017), road infrastructure investments represented a high share of the budget (see Table 1).

4 World Bank, "Kosovo Quarterly Economic Briefing", January–March 2007. http://siteresources.worldbank.org/INTKOSOVO/147270-1121700806276/21390872/Kosovo_Quarterly_Economic_Briefing_Jan_Mar07.pdf

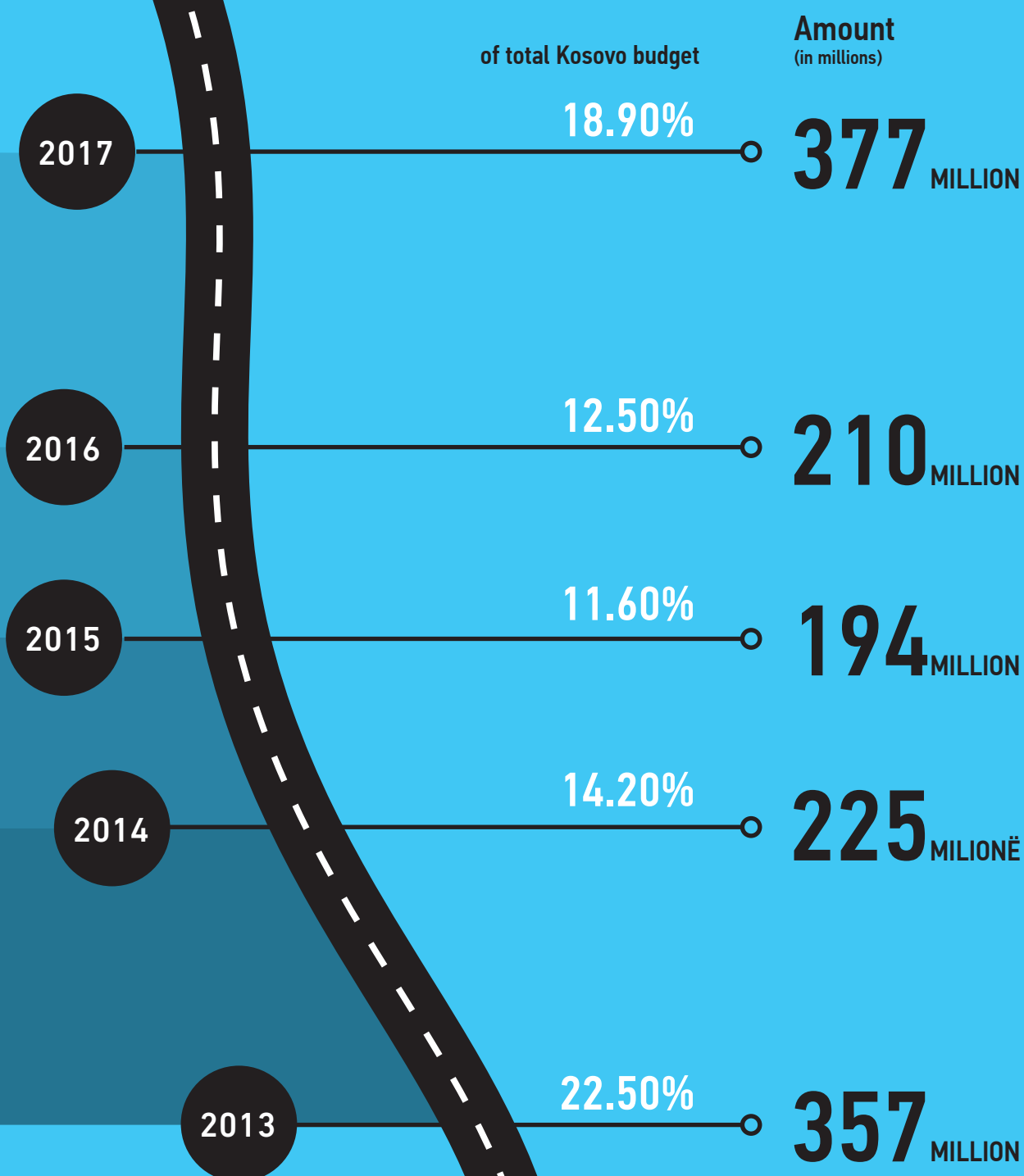
5 Ibid.

6 World Bank, "Kosovo Public Finance Review: Fiscal Policies for a Young Nation", June 2014. <http://documents.worldbank.org/curated/en/654811468270617376/pdf/ACS93510WP-0P130IC00Final0Kosovo0PFR.pdf>

7 IMF, "Technical Assistance Report: Public Investment Management Assessment". www.imf.org/external/pubs/ft/scr/2016/cr16100.pdf

8 Kosovo Government, "Policy Note on Infrastructure: National Development Strategy", 2016.

TABELA 1: INVESTMENTS IN ROAD INFRASTRUCTURE⁹



⁹ GAP Institute, "Budget platform: expenditures", www.institutigap.org/spendings/

The biggest chunk of resources for road construction went on two new motorways linking Kosovo to Albania (Route 6) and Macedonia (Route 7). **Together these two projects have cost taxpayers around €1.5 billion,¹⁰ which represents to the annual budget of Kosovo for 2012.** While Route 7 has been built and is fully functional, Route 6 “was contracted in 2014 (right after Route 7 was finished) and is expected to be completed in 2018. In both cases, the contract was awarded to the US-Turkish consortium Bechtel-Enka. The contracts have been criticised by civil society organisations and international financial organisations for their lack of transparency, the contract model and the resulting extremely high cost, estimated at €15 million per kilometre.¹¹

The size of the investments in these two projects **has crowded out investment in other important areas**, including road maintenance. By 2016, Kosovo’s road maintenance budget was less than half that of neighbouring Serbia or Bosnia Herzegovina on a per capital basis.¹² Most importantly, the investment in roads has limited the pool available for social sectors. An IMF review of public investment in Kosovo notes that while Kosovo’s capital expenditure on economic infrastructure was, as a share, larger than emerging and developed economies, capital spending in the social sectors, such as health, education, and housing, is only about half the level in emerging and developed economies.¹³ While there were obvious justifications for investments in roads, **their scale is not based on feasibility.**¹⁴

As the IMF’s review notes, “political pressures to spend in non-urgent areas are strong, and these pressures arise from powerful lobby groups.”¹⁵ While the decision to invest in the two motorways might have been motivated by geopolitical factors, such as lobbying by companies supported by the US ambassador,¹⁶ they have not been the only road investments. They are part of a massive refocus on road-building, which **has had tremendous implications in the value chain of the domestic construction sector value chain, increasing demand for construction materials and supplies.** One particular activity which grew in parallel with the sizeable increase in road investments was gravel quarrying – usually conducted by road construction companies themselves – which became a source of high profits from road construction activity. This activity has grown **while causing**

tremendous externalities for Kosovo’s riverbeds, rural ecosystems and citizens’ livelihoods in the areas where the gravel is exploited.

A thorough review by the Çohu organisation has mapped **the rapid growth of gravel-quarrying activity during the road construction boom and highlighted the severe environmental implications.**¹⁷ The report notes that between 2008 and 2014, only 20 companies were licensed by the state for gravel and construction sand exploitation. A comparison of the declared amounts of gravel extracted from this small number of licensed companies with gravel import statistics suggested a large gap in the domestic market, which meant that supply was dominated by illegal (unlicensed) companies.¹⁸ The Independent Commission on Mines and Minerals (ICMM) was able to identify 178 such operators through its inspections between 2009 and 2014 (and many other have not been identified).¹⁹

The consequences of their work have been captured by the Kosovo Environmental Protection Agency, which has **identified dozens of riverbeds, particularly in the Dukagjini region, as having been severely damaged by quarrying.** While the construction sector had used gravel from riverbeds ever since 1999 to feed the post-war construction boom, the destruction intensified with the road construction bonanza post-2008. For example, Kosovo’s largest river, Drini i Bardhë, had a reported 861 hectares of degradation in 2009, but the degraded surface reached had 1,011 hectares in 2012.²⁰ There have been many media reports in Kosovo of protests by local residents against the activity of companies (see Case Study 1).

10 Riinvest Institute, “Route 6: Prishtina-Skopje Highway”, 2015. <http://kfos.org/wp-content/uploads/2015/06/8.-AUTO-ROUTE-6-HIGHWAY-PRISHTINA-SKOPE.pdf>

11 Ibid.

12 IMF, “Technical Assistance Report: Public Investment Management Assessment”, www.imf.org/external/pubs/ft/scr/2016/cr16100.pdf

13 Ibid.

14 Riinvest Institute, “Route 6: Prishtina-Skopje Highway”, 2015. <http://kfos.org/wp-content/uploads/2015/06/8.-AUTO-ROUTE-6-HIGHWAY-PRISHTINA-SKOPE.pdf>

15 IMF, “Technical Assistance Report: Public Investment Management Assessment”, www.imf.org/external/pubs/ft/scr/2016/cr16100.pdf

16 Foreign Policy, “Streamrolled: a special investigation into the diplomacy of doing business abroad”, 2015 <http://foreignpolicy.com/2015/01/30/steamrolled-investigation-bechtel-highway-business-kosovo/>

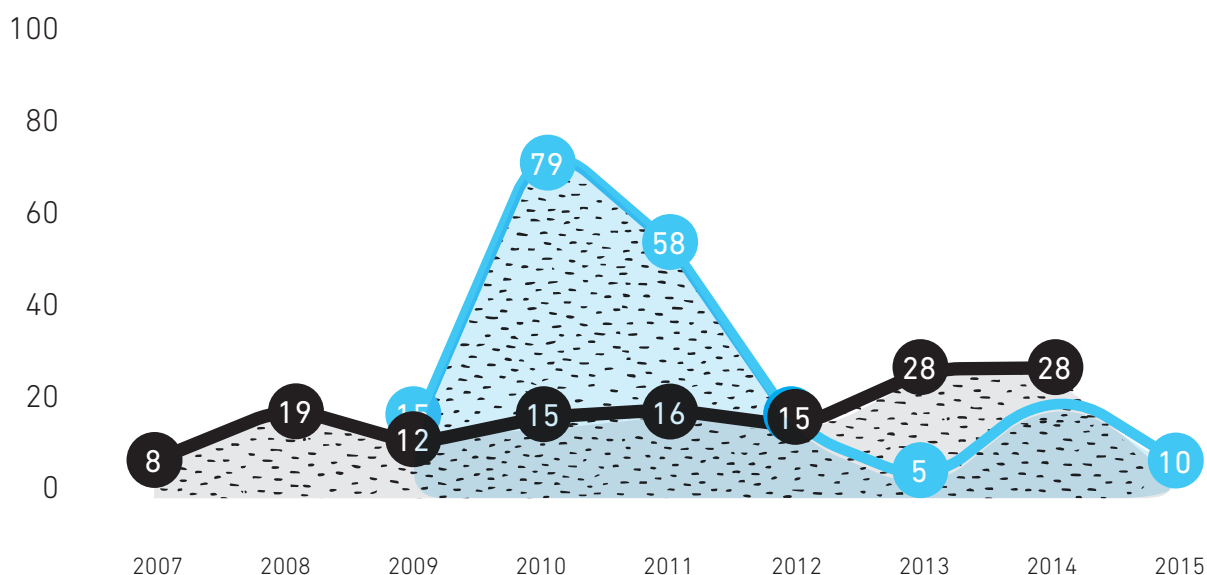
17 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

18 Ibid.

19 Ibid.

20 Ministry of Environment and Spatial Planning, “State of the Environment 2015”. www.ammk-rks.net/repository/docs/Final_shqipja.pdf

ILLEGAL OPERATIONS IN RIVERBEDS AND LICENCES FOR ROCK QUARRYING IN HILLS (2007 - 2015)



In 2012, the situation became so alarming that, through an initiative by an Environment Minister from a smaller coalition partner, the Government of Kosovo decided to ban all commercial activity in Kosovo's riverbeds.²¹ The decision faced strong opposition from gravel-quarrying companies, many of which **continued to work regardless of the ban, which has now expired (see Case Study 1).**²² The government was accused of attempting to shift exploration activity from riverbeds towards gravel production through stone-breaking in the hills, and therefore of engaging in another form of favouritism for companies operating in this sector.²³

There was some truth to this accusation in terms of the effects achieved. During 2012–2015, **the number of licensed stone-breaking companies doubled and many of them also continue to operate illegally** (see figure below). In 2015 there were a total of 184 licensed stone-breaking companies.²⁴ Protests have been registered against some of these companies because of the harm caused to the surrounding environment and for not fulfilling licensing and environmental obligations (see Case Study 2).

Gravel-quarrying operators continue to have strong incentives to operate illegally or semi-legally (licensed but breaking rules) in a context of poor enforcement of market rules by public institutions. Licensed operators are at an unfair advantage, having to sell their products while incorporating into the price a tax per metric cube sold, license fees and the costs of other regulatory limitations (such as, for example, a provision in the Law on Waters which sets a minimum distance of 150 metres from riverbeds for exploitation).²⁵ These costs create disadvantages compared to illegal operators. The report by Çohu notes that, for example, a licensed operator could sell a cubic metre of a type of construction sand at a price of €15, whereas an unlicensed operator would sell it for €10 or less.²⁶

21 Ministry of Environment and Spatial Planning, "Government approves gravel ban", 2011. <http://mmph-rks.org/sq/Lajmet/Qeveria-e-Republikes-se-Kosoves-sot-miratoi-Vendimin-e-MMPH-se-per-ndalimin-e-menjehershem-te-eksploatimit-te-teres-dhe-zhavorrit-nga-lumenjte-e-Kosoves-213>

22 Multiple sources: reports and interviews.

23 Multiple sources: reports and interviews.

24 "Mbi 200 gurthyes demolojnë Kosovën", Zeri, 25 June 2015. <http://zeri.info/ekonomia/38764/mbi-200-gurthyes-demolojne-kosoven/>

25 Kosovo Parliament, "Law on Waters", 2013. www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20waters%20of%20Kosovo.pdf

26 Preportr, "Lumenjtë e vdekur", December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

Although the legislative and institutional framework for environmental protection in Kosovo is rather advanced, **gravel-quarrying operators have acted with almost complete impunity, enjoying a high degree of political protection and rarely facing any sentencing from the judiciary.**²⁷ While this is partially a result of corruption, interviews suggest that the scale of institutional failure in preventing environmental degradation, involving so many institutions, indicates a degree of capture by a mixture of political and business interests.²⁸ The report by Çohu²⁹ and interviews with researchers³⁰ reveal that the quarrying companies themselves are largely owned by people with strong family or personal ties to political parties from the “war faction”, i.e. former commanders of the Kosovo Liberation Army, including the PDK, which started the road-building programme initiative as its key economic policy.

The report by Çohu has looked at campaign financing records and found that many companies engaged in illicit gravel production practices have donated to political parties at local or national level.³¹ It also found that many of them have received public tenders despite being identified as operating illegal gravel mining sites.³² In fact, media reports have continuously suggested that family members of power political figures are owners of companies engaged in gravel quarrying. In 2013, it even emerged that a brother of Kosovo's former Prime Minister was linked to a company which was registered to produce gravel in the Kosovo Business Registration Agency and had won important clients, including the US-Turkish consortium building highways, but did not license its activity with the ICMM.³³

Unlicensed exploitation is the result of political support for operators, but is manifested through specific failures in the chain of actors involved in oversight. These failures range from a lack of capacity in some institutions (which is also an indicator of low political interest), to corruption and intentional negligence. The first actor in the chain is the ICMM, which is an independent agency responsible for regulating and inspecting all mining activity based on the Law on Mines and Minerals, including the issuing of extraction licences.³⁴ The second key actor is the Environmental Inspectorate operating within the Ministry of Environment and Spatial Planning (MESP), as MESP is responsible for issuing environmental licences for extractors.

Watchdog civil society organisations and media have consistently criticised the inability of the ICMM and the Environment Inspectorate to regulate the sector effectively.³⁵ The Auditor General has repeated in almost every annual report for the ICMM, including in the 2016 annual report, that **stopping the “continuation of illegal operations”³⁶ was an unimplemented recommendation from previous years.** Both the ICMM and the Environment Inspectorate claim that they have low capacity (i.e. number of inspectors) to do the work.³⁷ The ICMM has 21 inspectors who cover all of Kosovo. A comprehensive World Bank assessment of the environment sector agrees with the assessment in the case of the Environment Inspectorate, suggesting that the Inspectorate “does not have enough inspectors for the number of environmental problems faced”.³⁸ It has only four water inspectors and one for the environment.³⁹

27 Author's own conclusion based on multiple sources: desk review and interviews.

28 Interview with Arton Demhasaj (Cohu) and Kreshnik Gashi (BIRN)

29 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

30 Ibid.

31 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

32 Ibid.

33 “Mbi 200 gurthyesh demolojnë Kosovën”, Zeri, 25 June 2015, <http://zeri.info/ekonomia/38764/mbi-200-gurthyesh-demolojne-kosoven/>

34 Kosovo Parliament, “Law on Mines and Minerals”, www.kosovo-mining.org/wp-content/uploads/2017/09/Ligji-per-Minierat-dhe-Mineralet-englisht.pdf

35 United Nations Development Programme Kosovo, “Corruption Risk Assessment – Kosovo Extractive Industries Sector”, 2016. www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/corruption-risk-assessment---kosovo-extractive-industries-sector.html

36 Office of the Auditor General of Kosovo, “Audit Report ICMM 2016”, www.zka-rks.org/wp-content/uploads/2016/06/RaportiAuditimit_KPMM_2016_Eng.pdf

37 “Mungojnë inspektorët e ambientit”, Telegrafi, April 2014. <https://telegrafi.com/mungojne-inspektoret-e-ambientit/>

38 World Bank, “Kosovo: Country Environmental Analysis”, January 2013. <http://documents.worldbank.org/curated/en/282361468047686579/pdf/750290ESW0P1310LIC00Kosov-o0CEA0Rprt.pdf>

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However, the report by Çohu and interviews suggest **that corruption and political influence over inspectors seems to be another key factor.**⁴⁰ A former Chief Inspector of the ICMM was found guilty of corruption in 2013, after admitting to having received a bribe from a gravel-extracting company.⁴¹ The wife of the acting director who replaced him also worked for a gravel-extracting company.⁴² With regard to political influence, recent investigation uncovered that between 2010 and 2016 there were 406 high-level public servants in Kosovo who have political affiliations.⁴³ Three of them have been identified at the MESP, **including the Head of the Environment Inspectorate, who ran as a candidate for MP for the governing PDK in 2014.**⁴⁴

Even when inspectors attempt to take action against illegal operators, they face the challenge of being insufficiently empowered against the companies. Their work was made difficult as extraction companies were often led by local strongmen. The former Minister of the Environment who initiated the ban on riverbed mining publicly admitted that the state has demonstrated inaction towards these companies because they are often dangerous and have even threatened to use weapons against inspectors.⁴⁵

When the ICMM inspectorate has identified and reported illegal operators, **there has been little follow-up, especially by the judiciary.** In 2016, for example, the ICMM inspectorate reported that it had identified 40 illegal operators, issued 50 administrative fines and submitted 41 criminal complaints to the prosecution.⁴⁶ It imposed fines on illegal operators to the value of €385,603 by filing criminal charges against them in the relevant Basic Prosecution.⁴⁷ However, the Auditor General found that ICMM managed to collect less than 10 per cent of the amount and says that “failure to collect funds from fines imposed may encourage illegal operators to operate”.⁴⁸ The ICMM notes that “a special problem is the slow development of legal procedures in courts, which allow cases to pass their statutes of limitations, as well as the issuing of inadequate sentences compared to the crime committed, such as conditional sentences, which do not achieve the desired effects.”⁴⁹



Degraded riverbed in Lumbardhi i Pejës, Gllaviçicë (2015)

Case study 1 – Degradation of riverbeds from illegal gravel quarrying

Gllaviçicë is a village in the municipality of Peja in the western part of Kosovo. It stretches alongside the Lumbardhi i Pejës river, which is a 62-kilometre branch of Kosovo's largest river, Drini i Badhë. The river is the central nervous system of the local ecosystem and is key especially to local agricultural activity. As with all rivers, Lumbardhi i Pejës lies on top of and is surrounded by rocks, and as such has been targeted and heavily impacted by gravel quarrying. A review of the environmental damage caused to riverbeds and their surroundings would start with the destruction of agricultural equipment such as water pumping stations, **destruction of flora and fauna, land erosion and increased risk of flooding.**⁵⁰

40 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

41 “Kryeinspektori pranon fajesine per marrje te mites”, Kallxo.com, 02 December 2013. <http://kallxo.com/gjnk/kryeinspektori-pranon-fajesine-per-marrje-te-mites/>

42 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

43 Organizata “Cohu”, “Open Data: Political Patronage”. <http://opendata.cohu.org/sq>

44 Preportr, “Lumenjtë e vdekur”, December 2015. <http://preportr.cohu.org/sq/hulumtime/Lumenjte-e-vdekur-63>

45 Ibid.

46 Independent Commission on Mines and Minerals, “Annual Report 2016”, www.kosovo-mining.org/wp-content/uploads/2017/09/Raporti-vjetor_KPMM_2016-shq.pdf

47 Ibid.

48 Office of the Auditor General of Kosovo, “Audit Report ICMM 2016”, www.zka-rks.org/wp-content/uploads/2016/06/RaportiAuditimit_KPMM_2016_Eng.pdf

49 Ibid.

50 Kosovo Open Society Foundation, “Environment mosaic: four issues challenging the government”, 2015. <http://documents.rec.org/publications/Mozaik-Mjedisi-ALB.pdf>

Illegal activity in this riverbed started in the post-war period, but the situation became more alarming and gained national attention from the mainstream media in the spring of 2011, when **local residents started to complain about the environmental impact of the quarrying.**⁵¹ These and other complaints by local residents across Kosovo about the degradation of riverbeds led to an eventual decision by the government in 2012 to ban all commercial quarrying activity in Kosovo's riverbeds for a period of three years. The ban, however, did not work in many parts of Kosovo, including in Gllaviçicë, which provides an illustrative example of institutional failure and the power of illegal operators.

A team of TV journalists by the "Drejtësia në Kosovë" programme from BIRN monitored the quarrying activity in the Gllaviçicë riverbed for an entire year between 2013 and 2014. It recorded continuous and unhampered quarrying activity, usually after the working hours of inspectors or on days off, and illustrated the lack of reaction from the ICMM.⁵² On one particular day in April 2014, the TV crew went on-site to check gravel-quarrying activity and, while pretending to be residents, reported the case to the ICMM Chief Inspector through a phone call. The Chief Inspector responded that he could not send inspectors out on a public holiday. The journalist called the Chief Inspector on another day (not a public holiday) after working hours and was told that he could not do nothing again. In Prishtina, BIRN once again confronted the Chief Inspector (now as journalists), but he claimed that he was doing everything in his authority and had reported breaches. The team visited the village again three weeks later and the gravel quarrying was still going on.⁵³

The BIRN team followed the trucks that excavated the rocks and recorded them dumping into a nearby separation machinery which splits rocks according to size. **The machinery and the operator were found to be unlicensed.** After informing the Chief Inspector again (now in their role as TV journalists), inspectors this time arrived to investigate and gather evidence in order to issue administrative fines, but only after many trucks had left (possibly they were tipped off). BIRN interviewed a local company that was the only one licensed in the area and which did not excavate from the riverbeds. The owner complained that illegal operators had been unstoppable and had damaged his legal business. He said he continuously reported illegal activity, but to no avail, as illegal companies were tipped off when inspectors were

about to arrive.

In April 2015, four years after the initial reports about illegal activity and with no action taken against companies, **local residents from Gllaviçicë and two neighbouring village staged a protest by blocking roads.**⁵⁴ "We are here to protest because we can't irrigate our lands. The river has become five to seven metres deep," a local resident was reported to have complained to TV reporters.⁵⁵ Another local farmer said that because irrigation channels had been blocked and the agricultural land contaminated, he could not sustain his agricultural business numbering 50 cows. The head of the municipality was reported have supported the villagers' protest but pointed the fingers at the Ministry of the Environment. The protest produced no results. In October 2015, the owner of the only legal operator, who became a whistle-blower for BIRN a year earlier, was prevented from accessing his gravel separation site by illegal competitors.⁵⁶ The BIRN journalists were invited by the prosecution to provide their video evidence related to the case, but the prosecution has yet to file any charges.⁵⁷ Illegal quarrying is reported to be continuing.⁵⁸

The case of Gllaviçicë is **an illustration of the power of illegal operators who act with complete impunity due to the inaction of the chain of rule of law authorities**, and despite a clear government order to ban activity in riverbeds from January 2012. In the village of Gllaviçicë, local residents spoke about the political ties that companies enjoyed, although on paper political figures did not appear as owners.⁵⁹

51 "Eksplotimi i zhavorrit në Gllaviçicë", Kallxo.com, 11 April 2011. <http://kallxo.com/dnk/eksplotim-i-zhavorrit-ne-gllavice/>

52 BIRN Kosovo, "Drejtësia në Kosovë: Eksplotimi i zhavorrit në Rajonin e Dukagjinit", May 2014. www.youtube.com/watch?v=wotbpWt2N2A

53 Ibid.

54 "Protestë me bllokim rruge kundër gurthyesve", Kallxo.com, 04 July 2015. <http://kallxo.com/proteste-me-bllokim-rruge-kunder-gurthyesve/>

55 Ibid.

56 "Vetëgjyqësi për bllokimin e rrugës në Gllaviçicë të Pejës", Kallxo.com, 17 October 2015. <http://kallxo.com/vetegjyqesi-per-bllokimin-e-rruges-ne-gllavice-te-pejes/>

57 Interview with Kreshnik Gashi, BIRN Kosovo.

58 Ibid.

59 Ibid.

The lack of clear political will is illustrated by the ineffectiveness of the institutional effort to prevent degradation. The government's decision was followed by many preparations for its enforcement. This included awareness-raising campaigns highlighting the financial and criminal fines, and a threat by the Minister that machinery would be confiscated. An memorandum of understanding was signed with the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Agriculture and all municipalities affected by the problem.⁶⁰ But when the Ministry of Environment initiated the action and national-scale monitoring in January 2012, **it was reportedly not joined in action by municipal or ICMM inspectors.**⁶¹

While in the first days there was a flurry of activity to show government resolve, the campaign occurred in January when gravel quarrying was in any case less intensive (the peak is in spring). One week of controls ended with the confiscation of two trucks filled with sand.⁶² The government decision was contested by the association of gravel companies in the Supreme Court, which initially suspended the order, but then decided in favour of the government.⁶³ The ban remained in place, but operators continued to work because enforcement was weak, usually placing their machinery in nearby rivers and engaging in quarrying after 16:00, when the inspectorate working hours would end.⁶⁴

Inspectors, when they took action, faced threats and were assaulted by company owners. In March 2013, in Gllaviçicë, an inspector and a police escort who had confiscated an excavation machine were assaulted by the owner of the company, who continued to threaten the inspector and even the Chief Inspector afterwards.⁶⁵ Other cases of assaults against inspectors have been reported in other parts of Kosovo.⁶⁶ A local inspector from Suhareka is quoted by the Regional Environmental Centre as saying: "we lack the courage to express our dissatisfaction and concerns with the degradation!"⁶⁷ Further bottlenecks occurred in the institutional hierarchy even when inspectors did react. Although the ICMM is allowed to confiscate machinery, it was initially not admitted by the Agency for the Administration of Sequestered Property, which claimed that it needed a court decision to accept it. After receiving legal clarifications, the Administration signed an agreement with the ICMM, but it did not have sufficient capacity or space to store the machinery.⁶⁸



Rock quarrying site in Kosovo

Case study 2 – Illegal practices in gravel quarrying from hills

The government's decision to ban quarrying activity in rivers, while not entirely successful, did **reorient gravel production slightly away from rivers and into the quarrying of hard rocks from hills.** In order to get permits for this kind of activity, companies must get an environmental permit first before getting a licence from the ICMM, and municipal permits if the work is being done on municipal land. A media report from this summer suggested that the ICMM and the Ministry of Environment had contradictory numbers for legal operators (140 for ICMM, 188 for Ministry of Environment).⁶⁹ In 2017 the ICMM claimed that there were 49 illegal operators which it has reported to the prosecution, whereas the Minister of the Environment claimed there were only two.⁷⁰

A former Ministry of Environment staffer reported that illegal operations and poor monitoring and tax collection for legal operators **has had tremendous fiscal impact, to the tune of €150–200 million in the period 2008–2015.**⁷¹ Additional externalities include damage to local ecosystems and infrastructure, air pollution, noise, etc. The environmental permit obliges operators to restore the surrounding environment after the extracting activity, which according to an expert never happens.⁷²

60 Kosovo Open Society Foundation, "Environment mosaic: four issues challenging the government", 2015. <http://documents.rec.org/publications/Mozaik-Mjedisi-ALB.pdf>

61 Ibid.

62 Ibid.

63 Ibid.

64 "Eksplotimi është ndalur 70 përqind", Kallxo.com, 23 June 2013. <http://kallxo.com/gjnk/eksplotimi-eshte-ndalur-70-per-qind/>

65 Ibid.

66 Kosovo Open Society Foundation, "Environment mosaic: four issues challenging the government", 2015. <http://documents.rec.org/publications/Mozaik-Mjedisi-ALB.pdf>

67 Ibid.

68 Independent Commission on Mines and Minerals, "Annual Report 2016". www.kosovo-mining.org/wp-content/uploads/2017/09/Raporti-vjetor_KPMM_2016-shq.pdf

69 "Shteti i pafuqishëm përballë gurrthyesve", Telegrafi, 31 October 2017. <https://telegrafi.com/shteti-pafuqishem-perballe-gurrethyesve/>

70 Ibid.

71 Ibid.

72 Expert Zeqir Veselaj quit in Preportr study.



Air pollution from rock quarrying in Baice, Drenas Municipality

Many villages in Kosovo have suffered the environmental consequences of quarrying sites. Take the example of the village of Gadime in the municipality of Lipjan in central Kosovo. In 2014, the **residents of the village staged a protest against four gravel producers that had been operational in the village since 2008.**⁷³ The residents blocked the access of the companies to the quarrying pits, complaining of the continuous noise, air pollution and the destruction of their houses. The local municipality had given the companies a permit to work on a piece of public land and insisted that the companies were working legally. But residents repeated their protests several times in 2015 as well, including by sending a petition to the municipality.⁷⁴ “Trucks weighing 40 tonnes pass through our village continuously. The companies use 3000 kg dynamite to destroy the mountains,” a resident said, adding that life in the village had become unbearable.⁷⁵ Just recently in October 2017, four houses were damaged (cracked) from the explosions. The owners of the houses, who themselves worked for the gravel companies, were reluctant to speak out for fear of losing their jobs.⁷⁶ Local residents say that the Environmental Inspectorate has never visited their village.⁷⁷

In May 2017, Klan Kosova reported a similar protest staged in a group of four villages in the municipality of Podujevë, in the north-eastern part of Kosovo.⁷⁸ **The residents of the four villages complained about the high level of noise and environmental degradation from a gravel-producing company.** “We are concerned about the noise, which is becoming unbearable, and the damage to our agricultural produce, especially berries”, one resident said. “If they continue working they will destroy our water sources,” another one said, showing one of the polluted sources (out the 25 in total) that many residents use for drinking water. “The company has to leave or our protests will be more violent,” another one said. The company is reported by Klan Kosova as having all necessary environmental and extraction licences. Koha Ditore reported that it was given a green light by environmental inspectors.⁷⁹ The residents filed a petition to the municipality which once again pointed the finger at the Ministry of the Environment. The latter is merely reported as saying that it would investigate potential environmental consequences from the activity.

⁷³ “Gurthyesit pengojnë banorët e Gadimes”, Koha.net, 29 March 2014. <http://archive.koha.net/?id=9&l=4607>

⁷⁴ “Mbi 200 gurthyes demolojnë Kosovën”, Zeri, 25 June 2015. <http://zeri.info/ekonomia/38764/mbi-200-gurthyes-demolojne-kosoven/>

⁷⁵ Ibid.

⁷⁶ “Shtëpitë në Gadime janë çarë nga katër gurthyes që punojnë aty”, Koha.net, 08 October 2017. www.koha.net/kosove/49452/shtepite-ne-gadime-jane-care-nga-kater-gurthyes-qe-funksionojne-aty/

⁷⁷ Ibid.

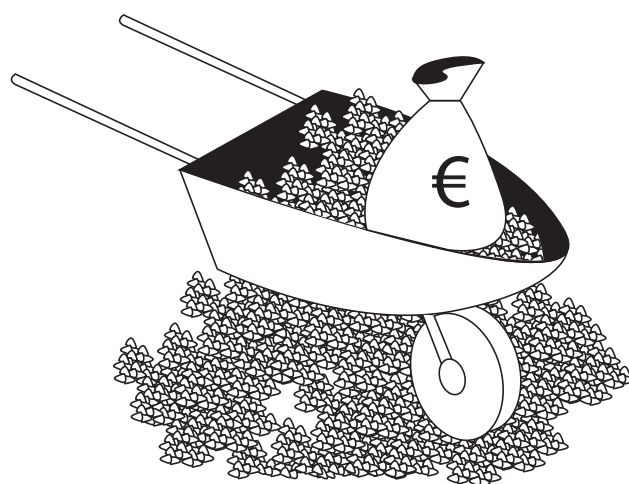
⁷⁸ “Protestë në Podujevë, kundërshtohet veprimtaria e një gurthyesi”, Klan Kosova, 31 May 2017. <http://klankosova.tv/proteste-ne-podujeve-kundershtohet-veprimtaria-e-nje-gurthyesi-video/>

⁷⁹ “Dy fshatra të Podujevës kundër punimeve të një gurthyesi”, Koha.net, 25 May 2017. www.koha.net/kosove/20982/dy-fshatra-te-podujeves-kunder-punimeve-te-nje-gurthyesi/

In October 2017, similar concerns were raised by the residents of the villages of Baice and Snakoc, in the Drenas municipality in central Kosovo.⁸⁰ A local news portal reported that a quarrying company was operating very close to residential areas, and that air pollution was tremendous (see picture below). A local politician complained that the company used detonations in its work, which he claimed was illegal.⁸¹ Another former candidate for mayor in the municipality of Drenas claimed that there were several quarrying companies which operated illegally or semi-legally **because they have political backing, and added that he is unsure about whether they pay any taxes.**⁸²

The political connections of many quarrying companies are often hidden but have been identified in several cases. In the village of Astrazub, in the central municipality of Malishevë, there are several companies operating, but the largest one is “Geo Mineral”. In 2013, an investigative report found that while the company was registered under other names and had changed owners several times, in several bills issued to it, the contact person listed was the brother of Kosovo’s then Prime Minister.⁸³ Founded in 2007, the company initially listed its activity as project development in engineering, and had listed as a contact person someone who would in 2013 become a member of the ICMM Board. In 2008, the year when the PDK came to power, the company changed its main activity from project development to rock quarrying.⁸⁴

The political connections of many quarrying companies are often hidden but have been identified in several cases.



80 “Gurthyesit në Baicë dhe Sankoc shkaktojnë pakënaqësi te banorët”, DrenicaSot, 05 October 2016. www.drenicasot.com/2016/10/05/gurthyesit-ne-baice-dhe-sankoc-te-drenasit-shkaktojne-pakenaqesi-te-medha-te-banoreve-te-ketyre-fshatrave-foto/

81 Ibid.

82 “Xhemajlaj flet për gurthyesit dhe pronat e uzurpuara në Drenas”, Gazeta Express, 13 December 2016. <http://m.gazetaexpress.com/lajme/xhemajlaj-flet-per-gurthyesit-dhe-pronat-e-uzurpuara-ne-drenas-video-292241/?archive=1>

83 “Kompania e lidhur me familjarët e kryeministrit fiton nga biznesi mineral”, 04 April 2013. <http://kallxo.com/gjnk/kompania-e-lidhur-me-familjaret-e-kryeministrit-fiton-nga-biznesi-minerar/>

84 Ibid.

GENERAL RECOMMENDATIONS

Reduce political influence and empower regulatory and oversight institutions responsible for gravel extraction.

Political influence must be reduced within the leadership and civil service of regulatory institutions such as the ICMM, and monitoring institutions such as the Environmental Inspectorate. Parliament could play a more active role by vetting candidates for the ICMM Board more thoroughly and by overseeing the work of the ICMM. High-level civil service recruitments at ICMM and MESP could be done in a more rigid process through the existing joint project with the British Embassy.⁸⁵ Career civil servants at both institutions should be empowered through capacity-building and the creation of spaces for whistleblowing. To this end, these institutions would also benefit from the development of integrity plans.

Increase transparency related to campaign financing. The specific links between companies involved in illegal quarrying and political parties must be made clearer through increased transparency over campaign financing. To this end, Kosovo must make sure that campaign financing legislation that is in place is actually enforced, and that legislation is reformed to clarify the responsibilities of oversight mechanisms, including the competences of the Electoral Commission and the Anti-Corruption Agency.

Support efforts by judiciary to follow-up on the work of inspectors. Many cases that are forwarded by inspectors to the prosecution either take a lot of time for processing or end up with insufficient fines. The case backlog is large in Kosovo in general so this issue must be addressed as part of a holistic reform to improve the efficiency of the judiciary. However, increased cooperation with the Kosovo Prosecution Council and the Kosovo Judicial Council could help, as would capacity-building programmes for prosecutors and judges to address environmental cases.

Increase deterrence of illicit behaviour. Companies involved with illegal quarrying practices continue to engage in such activities even after they are fined, because the financial rewards remain much greater. Additional efforts and penalties are needed to deter companies from engaging in illicit practices. Not allowing companies that violate environmental standards to take part in public tenders could be one such deterrent.

Empower civil society and strengthen environmental data.

Civil society groups, including residents of rural areas impacted by quarrying, have shown themselves to be forces of resilience and have raised their voices. Efforts need to be made to amplify their voice. To this end, special emphasis should be given to increasing the availability of environmental data, especially those related to the consequences of environmental degradation on human livelihoods. Increased awareness of consequences is critical in ensuring higher civic engagement against systemic abuse.

Use EU integration commitments to pressure political elites towards reforms.

The environmental degradation that has occurred as a result of quarrying activity goes against the commitments that Kosovo has made as part of the Stabilisation and Association Agreement with the EU. More specifically, it goes against Article 115, which obliges the parties to “develop and strengthen their cooperation in the environmental field with the vital task of halting further degradation and start improving the environmental situation with the aim of sustainable development in Kosovo”.⁸⁶ Furthermore, political influence in regulatory and oversight bodies is not in the spirit of the commitment to merit-based human resource management and career development in the public service (Article 120). The ineffectiveness of the judiciary in handling cases entails challenges in meeting the commitments to Article 83 of the Stabilisation and Association Agreement (“Reinforcement of institutions and the rule of law”) whereby Kosovo and the EU pledged to “attach particular importance to the consolidation of the rule of law”.⁸⁷

⁸⁵ “Përzgjidhet kompania që do të ndihmojë në rekrutimin për poste publike”, Zëro, 23 October 2016. <http://zeri.info/ekonomia/113569/perzgjidhet-kompania-qe-do-te-ndihmoje-rekrutimin-e-posteve-publike/>

⁸⁶ Stabilization and Association Agreement between Kosovo and the EU.

⁸⁷ Ibid.



Schweizerische Eidgenossenschaft
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