“What today is our pride (Valbona), tomorrow can be our shame. If we don’t protect it and if we destroy it, tomorrow will be too late.” - a community member from Valbona. (Photo: Valbona River)
Executive Summary

The Center for Human Rights of the American Bar Association (the Center) investigated reports that activists and community members who objected to the proliferation of hydropower plants (HPPs) in Valbona, Albania were facing consistent harassment from local state and company actors. The investigation was conducted over the course of three weeks in Valbona in January 2019 through key informant interviews with representatives of non-governmental organizations (NGO), academia and media as well as interviews and focus groups with community members. These interviews were supplemented by desk research and additional remote interviews in subsequent months.\(^1\)

A rapid increase in the construction of small HPPs in Valbona has raised concerns among members of the impacted communities. There are three HPPs under active construction in Valbona, with reports of 11 additional HPPs underway. Impacted community members have pursued various forms of resistance, from litigation to peaceful protests. Unfortunately, there have been consistent reports of harassment of individuals who object to the HPPs and that local government and the companies involved are complicit. The rapid proliferation of HPPs is not unique to Valbona, it is happening across Albania and the Western Balkans.

The primary purpose of the Center’s fact-finding mission was to investigate harassment and pressures faced by activists and community members who have resisted HPPs in Valbona. The secondary objective was to gain an understanding of the degree to which the communities have been included in the decision-making surrounding the HPPs by the government, and the company, as required by Albania’s international and domestic obligations.

This report describes instances of alleged harassment as reported by respondents. Many of the reports of the incidents of harassment were corroborated by multiple respondents. Interviewees consistently cited a perceived causal link between incidents of harassment and the anti-HPP activism of those targeted but had no independent documentation of the retaliatory nature of incidents. The lack of evidence may be explained, at least in part, by the low number of formal complaints of harassment made to the police. The low number of complaints is most likely because many local citizens interviewed perceived the local law enforcement to be a part of these instances of harassment and because of their failure to investigate even when formal complaints had been made. In some instances, as described below, complainants reported that they were subjected to retaliation by the police in response to their complaints.\(^2\)

Other alleged sources of pressure were state employers, who fired or threatened to fire those members of the community who actively protested the HPPs, according to interviewees. The threats

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\(^1\) Sally Hurt, consultant engaged by the ABA Center for Human Rights, conducted interviews directly as well as via a translator in the course of three weeks in Albania. The ABA Center for Human Rights thanks Sally Hurt for the research and analysis that went into this report.

\(^2\) During the interviews, some interviewees mentioned politicians and indicated they believed there are links between politicians and hydropower companies, as well as links between the hydropower company and the police service. For example, interviewees cited the fact that the relative of the head of Brecani Security, Gener 2’s contracted security company, was the previous Tirana Police Vice Director. The Head Office for Brecani Security is in the ABA building (the name of the building is not related to the American Bar Association), owned by Gener 2. It also houses the Head Office for Gener 2. The existence of these linkages between a previously high-ranking member of the police and Brecani security, as well as Gener 2, were mentioned by some interviewees who expressed the belief that that link may mean that the company had an influence over public officials. However, no independent evidence of such was discovered and the former police official in question has denied any such link.
were allegedly made not only to those who were personally outspoken against HPPs, but also their family members.

Other local government agencies, such as the licensing and social security authority, are reportedly complicit, where government services were denied to those who resisted HPP construction. In one instance, a business owner who has actively protested HPP construction process in the area, reported that several different local government agencies launched continuous inspections of his business.

Finally, interviewees reported “other sources” of pressure - being warned by people they know or anonymous callers that they should be careful. For many, this type of pressure was described as a type of intimidation or a way in which division was sewn within the close-knit community.

Gener 2, along with its subsidiary Dragobia Energy, is the company in charge of the two largest HPPs in Valbona that are under active construction. Activists and community members who are outspoken against the company reported that these companies have been actively pressuring them. For example, Gener 2 has filed a lawsuit against the local environmental NGO, TOKA, and its Director, Catherine Bohne, for defamation over their public reporting and organizing on the issues surrounding the HPPs. That lawsuit was dismissed by the trial court, and is currently on appeal. The company has also reportedly filed complaints at the Tropoje Court against individual community members for organizing protests without permission in September 2018.

During the final hearing for one of the lawsuits brought by the community, the company requested that a court levy individual fines against community members for “wasting the court’s time” when the lawsuit was dismissed. The security company hired by Gener 2, Brecani Security (Brecani), was responsible for physically assaulting one of the crew members of a TV station as they filmed Gener 2’s construction crews continuing to build an HPP despite a court order to stop work.

Each of these reported incidents of harassment and pressure is serious on its own, but cumulatively they represent a society where citizens are under constant pressure for wanting to be informed about their environment, a right guaranteed by the Albanian Constitution. Citizens who have spoken out against the HPPs, which is to be expected given the impact that the construction has had on people’s livelihoods, environment and safety, and the fact that the communities were not consulted or even informed prior to construction of the HPPs, have been punished for doing so, according to people with whom we spoke.

The United Nations (UN) Special Rapporteur on Human Rights Defenders, Michel Forst, has referred to environmental defenders as one of the most at-risk groups of defenders. He highlighted that in many contexts this fact is linked, among other factors, to non-transparent government processes, business interests and corruption. The Special Rapporteur’s report on Situation of Land and

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4 TOKA is a local environmental non-governmental organization that has played an important role in organizing communities in Valbona for environmental causes. Information on the work of TOKA is available here http://toka-albania.org/current-projects/ongoing/.
5 Catherine Bohne was called upon by the Tropoje police in relation to these complaints and asked to make a formal statement. This usually means that a complaint had been filed with the relevant court (in this situation, the Tropoje Court), once that is done, one is called upon to make a statement with the police and thereafter with the applicable prosecutor. At the time of writing, only the police statement had taken place.
8 Id.
Environmental Rights Defenders (A/71/281) stressed the “responsibility for or complicity of companies and business actors in various human rights violations against defenders and communities working to protect fundamental rights and freedoms.”

Notably, in March 2019, Albania co-sponsored a resolution in the UN Human Rights Council on Environmental Human Rights Defenders, which was passed by consensus. The resolution recognizes protection of environmental human rights defenders as a component of State efforts towards achieving the Paris Agreement on Climate Change. The resolution calls on government to put in place effective protection mechanisms for environmental human rights defenders, to investigate and prosecute those who put environmental defenders’ safety at risk, and to enable participation and promote transparency and accountability. The resolution underscores the responsibility of business to respect human rights, including those of environmental defenders, and to effectively communicate how businesses address their adverse human rights impacts, including through operations-level grievance mechanisms for individuals and communities who may be adversely impacted.  

The Center for Human Rights of the American Bar Association commends Albania’s support for the resolution and calls on the government of Albania to lead by example and take concrete steps in implementing the resolution. The Center calls on the Albanian Government to investigate the reported incidents against activists and community members in Valbona and to hold accountable those responsible. The Center reminds Albania of its commitment to provide access to information and to engage in community dialogues on environmental planning matters under the Aarhus Convention. Additionally, the Center calls on the Albanian Government to abide by its international environmental, agricultural, and social commitments to ensure its citizens have access to safe drinking water so that they may attain their internationally recognized right to the highest attainable standards of public health. Finally, the Center calls on Gener 2 and other companies active in developing HPPs to comply with all the applicable laws and respect the human rights of those impacted as outlined in the United Nations Guiding Principles on Business and Human Rights.  

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Introduction

Hydropower in Valbona

The situation of Valbona river is representative of the overall “hydropowerization” in Albania, and the Western Balkans more generally. The exact number of concession contracts and hydropower plants is unclear; the Albanian government’s own numbers show a range of contracts for 440 to 540 HPPs, out of which between 96 and 147\(^1\) are already built and operating.\(^2\) The exact number of HPPs on Valbona River is similarly unclear. TOKA has uncovered the existence of contracts for 14 HPPs in Valbona Valley, eight of which are in the protected area. The International Union for Conservation of Nature has classified Valbona Valley National Park as a Level II protected area since 1996 and the Park is in the Emerald Network,\(^3\) which is a network of Areas of Special Conservation Interest\(^4\) under the Bern Convention.

Three companies received concessions for construction of the 14 HPPs at issue in Valbona:
- Dragobia Energy ShPK is wholly owned by Gener 2, a company that belongs to Bashkim Ulaj. Gener 2 is one of the largest companies in Albania with multi-million dollar projects in construction and telecoms. According to the company’s website, the Dragobia Energy project consists of 2 HPPs on Valbona river within the territory of the Valbona National Park.\(^5\) At the same time, Gener 2’s solicitation indicates that the project consists of 4 HPPs, but the company is only actively pursuing 2 of them at present, and the feasibility of the remaining 2 is under review.\(^6\) It has been reported that the concessionary contract was signed with Gener 2 in July 2009, but the Environmental Permit is dated 2013.\(^7\)

- Tplani ShPK is responsible for construction of the smallest HPP, which has been under construction since 2013.\(^8\) The Project Manager, Flamur Bucpapaj, has stated that the Albanian government put out a tender for this HPP in 2007, which consisted of the reconstruction of a pre-existing HPP that had been on the site since 1969. He has indicated...
that the construction permit was awarded in 2012.

- Valbona Project Company has concessions for 9 HPPs, 3 of which are in the protected national park area. The concessionary contracts were signed by Enno Bodzo and the Deputy Minister of Economy, Trade and Energy, in August 2013.

The concessionary agreements signed with Valbona Project Company have drawn criticism as they were signed at the end of the Berisha administration, after the Democratic Party had lost the national election, but before the Socialist Party-led coalition was sworn in.

There are reports that Gener 2 is behind the Valbona Project Company. Gener 2 denies any relationship to Valbona Project Company, however, and we were not able to confirm a link. However, Valbona Project Company is 99% owned by a company named 4A-AL, which in turn is owned by Mr. Agon Feri. Various resume websites including Devex, and LinkedIn indicate that a Mr. Agon Feri was Project Manager for Gener 2 from June 2011 to March 2017, which correlates with the time when the concession agreements for the HPPs were signed. In addition, the company administrator for Valbona Project Company is Mr. Andri Kasneci, and it shares a phone number with 4A-AL, whose company administrator is listed as Mr. Kreshnik Kasneci. Mr. Andri Kasneci was Procurement Director for Gener 2.

4A-AL is located in the same building as Gener 2's Head Offices: the ABA Business Centre. There are numerous other similarities between the Gener 2 and Valbona Project company, including the same fixed telephone numbers, and overlapping staff members.

Interviewees showed most discontent with Gener 2, at least in part because the two biggest active HPP construction projects on Valbona River are run by this company. The Center’s fact-finder reached out to the company for its perspective; however, the company refused to answer the questions, referencing ongoing litigation.

21 Keta, supra note 20
22 Id.
23 This information has been collected through public resources and supplemented through an interview with a representative of TOKA, whose inputs in turn were on the basis of the responses to TOKA’s requests for information from the government agencies.
30 Not affiliated with the American Bar Association.
31 Keta, supra note 29.
Local Communities

The local community members interviewed are residents of the villages in Valbona Valley National Park, namely Dragobi Village and Valbona Village. The Valbona Valley is approximately 22 km northeast of the small town of Bajram Curri in the Tropoje district of northern Albania, which borders Kosovo and Montenegro. The local communities consist of families made up of two or three generations, with many families relying on stockbreeding, farming, social assistance and foreign remittances, as well as tourism, for subsistence. The communities are close-knit, with many familial ties and linkages between families or broader clans, which impact decision-making. Most families have private land (sometimes not officially recognized, even though they have lived on it for generations) as well as access to Alpine pasture areas known as “bjeshk.” The predominant way of life for members of the local communities is one with strong links to customary and traditional ways of living and interacting with others. In addition to this, many local community members are heavily influenced by communal and consultative ways of decision-making, particularly in regard to access to shared resources, such as water.

Reliance of Local Communities on Valbona River and Valbona National Park

The results of the interviews indicate that local people and the local economy heavily depend on Valbona River and Valbona National Park. The mountainous region in Northern Albania, including Valbona Valley National Park, has been a popular tourist destination both domestically and internationally, with Lonely Planet listing it as one of the top tourist attractions in Albania.32 The Albanian National Tourism Agency describes the Albanian Alps in the National Parks of Thethi, Valbona and Kelmend region as “the flagship region for mountain tourism” in Albania33 and Invest in Albania states that “Valbona National Park is one of the most visited touristic places during the summer seasons in Albania […] where accommodation is still left in the hands of the locals.”34 Residents rely on tourism for income, either directly through operating restaurants, guesthouses and homestays, and offering guiding services, or indirectly through sale of agricultural produce to restaurants as well as sale of produce directly to tourists. At least six of those interviewed derive direct income from tourism related activities, with the rest acknowledging that tourism has indirect impact on their income.

Every interviewee from Valbona reported that they used the river for fishing (either catching fish or cultivating fish), and/or for watering food gardens and for livestock.

Although a majority of respondents reported that they rely on the municipality for their home water consumption, they rely on the river for additional water for agricultural purposes as indicated above.

Reported Impact from the Ongoing Construction of 3 HPPs

Personal safety and disturbances. Many respondents reported that the construction process included explosions in order to lay the pipeline for diversion of water. According to seven interviewees, these explosions, particularly with the lack of advance warning, posed safety concerns to local communities due to subsequent rockfalls. Construction trucks and machinery, particularly given that the road passes close to many houses, pose yet another safety concern. They pose a particular danger to children, many of whom walk along the road to get to and from school. The safety of children on the road was raised in two separate interviews.

Water quality. Interviewees complained that the quality of the river water had deteriorated as a result of the construction of tunnels and excavation of materials such as rocks, dirt and gravel dug up while installing the pipeline and construction of the hydropower plant, some of which then pollutes the river. Interviewees also reported that the construction process had produced waste, some of which ends up in the water stream, affecting its drinkability as well as the fish. There was an overall outrage among the respondents that the river was treated in this manner even though it is a part of the national park, which has a protected status.

Impact on access to water and food security. Most of the interviewees indicated that their household has experienced a decrease in access to water through the canal systems in recent years, and this has impacted their ability to farm crops and raise livestock. Approximately 75% of the interviewees attributed the blocking of the canals to the construction of the hydropower projects in the area, while the remaining respondents confirmed a decrease in water availability or lack of water but were not sure whether it was due to hydropower construction specifically. Thirty participants indicated that the community members used to fish in the river for food, and that there has been a decline in the fish population, causing these people to have to spend much more time to catch fish. Only one out of all interviewed respondents responded that their household still has access to an operational canal for agricultural purposes, but they said they have heard that there are plans to build a hydropower project that would block it.

Tourism. Half of the interviewees indicated that the number of hydropower plants and the construction process has had a negative impact on tourism, with the number of visitors on a steady decline. Close to 60% of the interviewees reported that slow tourism has directly impacted their household income through fewer restaurant and guiding jobs in summer, through decreased demand for accommodation in the National Park, and also a decrease in the demand for agricultural products such as milk, meat, farmed goods, fish, and collected berries sold to restaurants and tourists. A common sentiment amongst most of the interviewees was that these negative impacts on tourism and the local economy will continue to worsen in the future if the remaining planned hydropower plants are constructed, and because of the impact of the current construction.

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35 Slow-down in tourism is not confirmed by official national data. The National Institute of Statistics of Albania reported the highest number of foreign tourists in 2018 (since 2011), however these numbers are not broken down by specific destinations in Albania. [http://www.instat.gov.al/en/themes/industry-trade-and-services/tourism/#tab2](http://www.instat.gov.al/en/themes/industry-trade-and-services/tourism/#tab2) (last visited April 24, 2019). Moreover, the source does not track the number of domestic tourists.
Albania’s Obligations Under International and Domestic Law

Access to information. Albania has made numerous international and domestic commitments to provide access to information and ensure public participation in environmental decision making. The right to information is enshrined in the Albanian Constitution (Article 23 and 56). Albania has codified its obligation under the Aarhus Convention in Law No. 8672, dated October 26, 2000: “On the Aarhus Convention Ratification on public right to information, to participate in decision-making and to have access to justice in environmental matters.” Other relevant domestic laws include:

- Law no. 81/2017, dated May 4, 2017 “On protected areas”
- Decision of Council of Ministers (“DCM”) no. 994, dated July 2, 2008 “On public participation in environmental decision making”
- DCM no. 16, dated January 4, 2012 “On right of the public to access environmental information”
- DCM no. 247, dated April 30, 2014 “On the determination of the rules and requirements of the procedures for information and involvement of the public in environmental decision making”
- Law no. 10431, dated June 9, 2011 “On protection of the environment” as amended
- Law no. 10448, dated July 14, 2011 “On environmental permits” as amended
- Law no. 119/2014, dated September 18, 2014 “On the right to information”
- Law no. 152/2013, dated October 17, 2013 “On civil servant” as amended (which specifies “the obligation for transparency and confidentiality”).

Freedom of Assembly and Expression. Freedom of assembly and expression are guaranteed by the Albanian Constitution:

- Article 23: “Freedom of expression is guaranteed.”
- Article 46: “Everyone has the right to be organized for any legitimate purpose.”
- Article 47: “Freedom of peaceful and unarmed assembly, as well as participation in them is guaranteed. Peaceful gatherings in the squares and in the public places are done according to the procedures provided by law.”

The primary law that regulates the freedom of assembly is Law no. 8773, dated April 23, 2001, entitled “On assemblies,” which ensures the freedom of peaceful assembly to everyone without any exclusion.36

36 There is a noteworthy inconsistency within the Albanian legislation on this matter: While the Law on Assemblies states that the organizers should merely notify the State Police in writing about an assembly, the Penal Code states that the organization of assemblies without permission from the competent body is a penal misdemeanor. See Klotilda Kosta, Anora Topi & Kostandina Keruti, Monitoring Right to Free Assembly: Albania Country Report 2016-2017, EUROPEAN CENTER FOR NOT-FOR-PROFIT LAW AND PARTNERS ALBANIA FOR CHANGE AND DEVELOPMENT (Dec. 2017) available at http://ecnl.org/wp-content/uploads/2017/12/ECNL-FoPA-Albania-2017.pdf
International environmental obligations. In addition to its international and domestic obligations regarding access to information and freedom of assembly, Albania is party to multiple international treaties and conventions with specifically enumerated environmental and/or public health obligations. The instruments to which Albania is a party include:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- European Convention on Human Rights
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
- Statute of the International Renewable Energy Agency (IRENA)
- Treaty Establishing the Energy Community
- European Social Charter
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
Lack of Consultation and Access to Information

All of the respondents reported that they had not been a part of any consultations with regard to any of the HPPs prior to or even after construction on the projects had begun. There was also a consensus that the communities as a whole lacked access to information and were not consulted. Only five interviewees noted that they were aware that some members of the community may have been a part of some related meetings, but the interviewees themselves were never invited to any such meeting, nor did they know about them in advance. Many expressed the sentiment that they feel aggrieved that “people signed in the name of our community when our community was not consulted.”\(^{37}\) In this regard, Valbona Project Company’s documents contain 12 signatures,\(^ {38}\) and Gener 2/Dragogbia Energy lists 20 individuals who allegedly attended the consultations.\(^ {39}\) However, some of the individuals listed on those documents were deceased prior to the year in which the consultation documents were alleged to have been signed.\(^ {40}\)

When discussing consultation with interviewees, some mentioned that the signatures of deceased persons had appeared on the consultation documents, and they suggested that this indicated that any consultation that had taken place was fraudulent. Two of the interview focus groups included persons who stated that their deceased direct relatives’ signatures had been falsified in the consultation documents. In two interviews participants specifically stated that the first time they learned of the construction of the hydropower plants in Valbona was when the construction equipment began arriving.

In addition to the lack of information, there was also indication of misinformation. One interviewee indicated that when the construction company began making measurements at the workplace, the construction workers had told local inhabitants that they were going to pave the road there. The lack of consultation was confirmed by representatives of an NGO with national reach as a systemic problem across projects. In a study on water-related conflicts in Albania, the NGO MilieuKontakt found that even when consultations were held, they were not advertised to interested and affected parties in the local community; and in cases where prior notice of the meeting was provided, the notice lacked crucial details such as location of the meeting.\(^ {41}\)

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\(^{40}\) This was reported in interviews with family members of deceased individuals, and has also been widely reported in Albanian media. See for example the alleged signature of Mr. Ram Alijaj, which appears on the Dragogbia Energy consultation documents dated April 3, 2013. However, Mr. Alijaj died on April 5, 2010, as indicated on his death certificate, available at https://www.reporter.al/wp-content/uploads/Ram-Ismalaj-001.jpg

\(^{41}\) For more information see MilieuKontakt Albania, Lex Ferenda & Eco Albania, Assessment Study 2017: Identification of water related conflicts linked to hydro power projects in Albania, HELP-CSO, (Feb. 2017), available at https://issuu.com/milieukontakt/docs/water_conflict_study_2017_.
Representatives of TOKA also described that requesting information with regard to the HPPs (consistent with the law on right to information),\textsuperscript{42} such as names of companies, timelines, or specific project locations, is an ongoing battle, where the information provided by the government is incorrect and incomplete. A typical response from the government comes in a form of a formal letter that does not include most of the requested information. TOKA representatives also noted that in the three years of filing requests for information they have seen an improvement in the government’s response rate containing the information requested. At the same time, TOKA representatives maintain that the information that should be publicly available according to the right to information law remains inaccessible.\textsuperscript{43}

\textsuperscript{42} Law no. 119/2014, “On the right to information”, dated October 18, 2014.
\textsuperscript{43} This includes information of non-commercial nature related to public contracts such as concessions/PPPs, information related to concessionaires, timelines of projects, information related to application procedures for obtaining permits/licenses/authorizations, etc.
Community Activism

The majority of interviewees and participants reported having told the company directly that they do not agree with the construction of hydropower plants. This was done through direct communication with the company's employees, protest actions, litigation, communication on social media, as well as attending meetings and concerts.

Protests. Protests were mentioned by all the interviewees as a form of resistance used in order to show disagreement with the building of hydropower plants in Valbona. However, in the focus groups specifically it was evident that often only some family members would attend a protest, sometimes on behalf of the whole household. More men indicated protest attendance than female interviewees.

Between May and November of 2017, there were a number of court proceedings in Tirana, these include proceedings for some of the cases described in the section on lawsuits below. Many members of the local communities attended these proceedings. In some cases, this involved people standing outside the court with banners and placards. “Going to court” was mentioned by over 50% of the interviewees as a way in which they had communicated resistance to the company. In October 2017, a protest was organized by TOKA outside the Inspectorate for Protection of Territory in order to draw attention to the lack of inspections. Approximately 30 people attended. In November 2017, two days of protests were organized in Tropoje outside the municipality and in Valbona outside the hydropower construction site. TOKA reported between 100 and 150 attendees, with some variance over the course of the two days of protest. Between November and December 2017, further protests took place in Tirana, each with a Facebook event page. The events taking place in Tirana attracted large followings on Facebook (between 3,500 and 6,800 people). Attendees at the protest itself were estimated at between 200 and 300 people at initial protests. A trip to Tirana is costly for many of the community members, nonetheless many of them traveled, illustrating the importance of the issue.

In January 2018 a protest was organized for Rinia Park in Tirana. The Facebook event had 364 RSVPs. On 24 May of the same year, TOKA was funded to conduct an event for artistic activism. For this event a projection of the Valbona River, with full sound, was done in the main square in Tirana. During that event, the petition to save Valbona was signed by 821 people, suggesting that the number of participants was at least that amount, but possibly more. In June 2018, a protest took place in Dragobi Village, which was referenced by the majority of the interviewees. It took place in direct reaction to what interviewees described as explosions in the Valley and rockfalls close to people’s houses. The subsequent protest was organized by local residents who blocked the road for six hours, to protest against the disturbances caused by the explosions used during construction. After this protest, there were a number of small attempts to organize protests in

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44 Some of the protests were organised by TOKA, while others were more spontaneous or organised by community members. At TOKA-organized protests, the NGO did not note the identity of each attendee, but the representatives were able to provide approximate numbers of attendees.
45 For a video of the Elementi I Peste protest, see https://youtu.be/L0-xkERASZM
Dragobi, many related to hydropower plants being constructed in the area but also related to dissatisfaction with the Village Head who had signed off on the hydropower plants initially.49

Lawsuits. One-fifth of interviewees indicated participation in a court action or protests linked to the litigation. Some interviewees were the named plaintiffs in the litigation, others followed the development in the cases and expressed support through, for example, attending the hearings as well as laying charges at the police station when applicable. TOKA and community members have filed six different actions contesting construction of HPPs.

The first lawsuit was filed in May 2017 and is against the Ministry of Energy and the Ministry of Environment, with Gener 2 and Dragobia Energy included as third parties. The case contests the validity of the concession agreement, environmental and construction permits, and related administrative actions. The court of the first instance (First Instance Administrative Court, Tirana) dismissed this case by a 2-1 vote, ruling that the plaintiffs did not have standing to sue for environmental purposes. The matter is currently on appeal at the Administrative Court of Appeal.

The second lawsuit was brought by TOKA and 27 local inhabitants against the National Territorial Council, the Ministry of Energy, Gener 2 ShPK, and Dragobia Energy ShPK.50 This suit is brought on the basis of the Law on Protected Areas, which mandates stopping construction of HPPs in National Parks. This case is described in greater detail below.

TOKA and local community members have also brought a criminal complaint against Gener 2 ShPK and Dragobia Energy ShPK, for falsification of signatures and minutes of the alleged consultation meetings.51 While the Prosecutor’s office in Tropoje requested that the Court dismiss the indictment on statute of limitation grounds, it indirectly acknowledged the potential validity of the complaint with regard to the use of falsified documents. That issue has been referred to the Prosecutor’s office in Tirana as the Tropoje Prosecutor indicated it is outside their competence.52 The Tirana Court has ruled that the falsification of signatures does not mean the meeting did not take place, and therefore the meeting itself cannot be deemed falsified. Notably, the defendants in this matter filed counter-charges against the community members who lodged the criminal complaint, asking the court to fine the complainants for “wasting the court’s time.”

48 A copy of the document consenting to Dragobia Energy, signed by the Village Head on behalf of the village was acquired by TOKA.
49 Many of the interviewees referenced many of these protests, details of the protests have been provided by a representative of TOKA.
51 Case No. 1410 Reg., dated 25 January 2018, Plaintiffs: Toka NGO and 27 local inhabitants Vs. National Territorial Council as Defendant; The Ministry of Energy, “Gener 2 SHPK” and “Dragobia Energy SHPK, as third parties
52 Case No.29, dated 6 March 2018, Criminal Complaint against Ms. Artila Ulaj (as the legal representative of Dragobia Energy Shpk) and Mr. Adem Metaliaj (the local administrator of Dragobia Village).
53 Some of the alleged falsified documents can be viewed here: https://www.youtube.com/watch?v=tEMeG3ud_4A;
54 Albania’s Criminal Code sets out three scales of punishment for the falsification of signatures, on the basis of the number of times the falsified signatures were used. Each level of punishment, in turn corresponds to a different statute of limitation. While the Prosecutor dismissed the claim indicating that the signatures were only used once, TOKA and the local community members argue that the falsified signatures were used to obtain environmental authorization, which is used extensively and should therefore receive a stricter punishment, and have a longer statute of limitations. See Article 66, Criminal Code of Albania. http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf
The fourth is a criminal complaint, currently under investigation, against Dragobia Energy and Gener 2 for operating under an expired construction permit. The case was brought by TOKA, with at least ten local community members listed in the text as willing to give evidence, against Gener 2 ShPK and Dragobia Energy ShPK, in the Tropoja District Court. The matter is currently being investigated by the Office of the Prosecutor of Tropoje.

Most recently, TOKA initiated two additional administrative cases. The first case is against National Agency of Protected Areas (AKZM) and Ministry of Tourism and Environment (as hierarchical superior), seeking the obligation of the administrative authorities to intervene in accordance with Articles 16 and 73 of the new Law on Protected Areas, and definitively close the Dragobia Project in Valbona Valley and restore the environment. After four hearings before the Tirana Administrative first instance court, the judge ruled against the Applicant (TOKA), on 2 April 2019.

The second case is against National Inspectorate of Territory Defense (IKMT), in order to oblige the administrative authority to act, pursuant Law no. 9780, dated 16.07.2007, “On the Inspection and Protection of the Territory from Illegal Constructions”, and to articles 16 and 73 of the Law “On Protected Areas”, regarding the construction and operation of the project “Dragobia” HPPs in the protected area of the National Park of Valbona Valley. This lawsuit argues that since May 2018, the Dragobia HPP Project has been carried out without a valid construction permit. The first procedural hearing for the case took place before the Tirana Administrative first instance court on 10 April 2019, but no substantive arguments had taken place at the time of writing of this report.

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55 Case (registration number not available) Criminal Complaint is against Dragobia Energy Sh.p.k. and Ms. Nurije Dinaj (as the legal representative of Dragobia Energy Sh.p.k.).
56 Case No. 1292 Akti, dated 31 January 2019, Plaintiff TOKA NGO Vs. National Agency of Protected Areas (AKZM) and Ministry of Tourism and Environment, as Defendants.
**Parties:** TOKA and 27 local inhabitants vs. the National Territorial Council, The Ministry of Energy, the concessionaire “Gener 2 ShPK” and the project company “Dragobia Energy ShPK.”

**Court:**
- Administrative Court of First Instance of Tirana (dismissed)
- Administrative Court of Appeal (case still pending)

**Claims:** Invalidity of decision of the National Territorial Council to extend the terms of the Construction Permit regarding the construction of the HPPs in the Valbona Valley.

**(Main) legal grounds:** In light of Albania’s 2017 Law on Protected Areas, any entity, which is carrying out the construction of a hydropower plant in a National Park, has to stop the construction, notwithstanding any concessionaire agreement.

**Current status:** This matter was instituted in November 2017 in the Administrative Court of Tirana, which tried the case and dismissed the claims of the invalidity of the administrative act for the extension of the construction permit. The court accepted the legitimacy and standing of the NGO TOKA and the inhabitants to sue for environmental protection purposes, pursuant to the domestic law and the Aarhus Convention, but found the merits of the case unfounded in the law.

An appeal was lodged and the case is pending before the Administrative Court of Appeal. If the court does not expedite the case, the hearing is expected to be held toward the end of 2019.

Because of the irreparable harm from the ongoing construction work, plaintiffs filed a request for preliminary injunction to stop the ongoing work, pending the results of the appeal. The First Instance Court dismissed the appeal. However, due to the pending appeal, the Administrative Court of Appeals accepted the request and on June, 6 2018 issued an injunction measure to stop the works for the construction of the HPPs until the merits of the case are examined by the appropriate court.

TOKA engaged the state bailiff service in Tropoje to enforce the injunction measure. However, Gener 2 ShPK and Dragobia Energy ShPK petitioned the Tropoje Court to stop the bailiff on the grounds that the extension period of the construction permit had expired and that the current works were not commissioned under the mentioned permit extension, which was the permit in dispute in the underlying case. Tropoje Court ordered the bailiff to stop the enforcement of the injunction measure.

It is noteworthy that the Tropoje Court tried the case without notifying and calling the interested party (i.e TOKA NGO and the involved inhabitants) to take part in the process. It has also been reported that Albania’s Deputy Minister of Justice requested that the High Justice Council investigate the controversial decision of the Tropoje Court.

The bailiff challenged the Tropoje Court’s halting of the decision, by taking the matter on appeal to the Shkodra Appeals Court. However, that court confirmed the judgment of the Tropoje Court. The bailiff then filed a recourse to the Supreme Court, where the matter is presently pending.
Expression through social media, banners and stickers. At least a third of the interviewees indicated that they use Facebook and social media when showing resistance to the hydropower projects in Valbona. In addition, over half of the interviewees mentioned stickers as a form of protest.

Reports to police. Three interviewees said they had reported the falsification of signatures to the police. Four others indicated reporting other related issues to the police, including unauthorized explosions and rockfalls or other incidents. However, there was also a significant lack of confidence in the efficacy of reporting anything to the police, and ten interviewees indicated that they did not believe it would be useful to report incidents to the police.
Harassment Faced by Outspoken Community Members

Instances of harassment and violation reported by interviewees relate to disproportionate use of formal processes against them, including formal charges, fines and imprisonment; smear campaigns; threats to job security, retaliatory lawsuits or threats of lawsuits by a company.

Arrests and threats of arrests. Multiple interviewees described incidents where their right to liberty and security had been impacted. These incidents included brief periods of detention that the interviewees describing the incident felt were a means of effecting harassment or intimidation. One interviewee indicated that he had been arrested and detained over a weekend on a trumped-up administrative charge. He further indicated that upon going to court in relation to the charge, he had successfully won his case at the first instance court, but the state has now taken the matter on appeal. He linked this to his activism in relation to HPPs in Valbona as he believed that other residents who are less vocal and who live in Valbona Valley were not subject to the same level of scrutiny by the local authorities.

Another interviewee indicated that he had approached the police to report an incident where an explosion had caused a rockfall. Around the same time, he had also blocked the road in protest. When reporting the explosion and rockfall, he was told by the police that he was being criminally charged for blocking the road. He believed that the charges against him were in retaliation to actively opposing the HPPs in Valbona Valley. He expressed dismay that the police charged him for blocking the road instead of addressing the fact that the company construction practices were putting home-owners’ lives and safety at risk. He indicated a belief that the charges were as a result of his protesting the rockfalls, and that the local police may have been told by more senior members of the law enforcement that they should clamp down on individuals resisting the HPPs in the area. This criminal case has not been finalized by a court yet and the individual involved is obligated to report to the police once a month and is restricted from leaving the country.

Three other interviewees indicated that they knew of people who had been arrested or threatened to be arrested in retaliation for their participation in protests or voicing their concerns regarding the hydropower constructions in Valbona. One reported hearing police officers threaten protesters with arrest while another indicated that the Project Manager for Dragobia Energy had told protestors that they would be arrested. The latter incident was recorded and put on social media. In addition, two interviewees indicated that after a protest they were approached by police and told that they should not attend protests. In one of those cases, the interviewee was threatened with a fine for failure to have a valid vehicle registration. The same interviewee who recounted that incident, indicated that it is well-known that many people in the area do not have up-to-date vehicle registration, and that this meant that the threat was designed to intimidate and silence him.

Interviewees speculated that there may be a link between these threats and the police potentially receiving orders from more senior officials (either in the police force or within government more generally) to clamp down on protests against the HPPs and on individual activists related to such protests. Some interviewees described what they perceived to be potential links between senior
members of the police and members of government or the head of Brecani, the security company hired by Gener 2. However, apart from the family ties between the head of Brecani Security and an ex-high-ranking police official in Tirana, there was no evidence to support these claims. Some interviewees expressed sympathy for the local police, indicating that they may have received such pressure from higher up, while perhaps being more sympathetic to the anti-HPP cause locally.

Respondents repeatedly indicated their perception that only those actively resisting the construction of hydropower plants appear to be the ones targeted for arrests or fines in response to minor infractions, and that often the punishments are overly harsh.

**Disproportionate use of formal processes such as inspections, criminal charges, lawsuits.** An interviewee who is a business owner reported excessive inspections due to being an outspoken critic of the hydropower projects. He illustrated that during 2017 he had been subjected to up to 18 inspections of his business per month. As a result of one such inspection he was charged with stealing electricity and arrested. The substance of the charge, according to him, was that one of the three screws inside his electricity meter was loose. On another occasion he was charged with building without a permit for constructing a small (3 m x 3 m) portable wooden cabin on his property, the cabin was not fixed to the ground through excavation or construction of a foundation. The interviewee believed that these incidents of threat and harassment were due to his vocal opposition to the construction of hydropower plants in Valbona. He further indicated his perception that only those in opposition to the hydropower projects were subjected to high levels of inspections by law enforcement agencies. He has contested both of the charges in court, which has cost him more than 3,000 Euros in legal fees. Both cases are currently on appeal.

Another interviewee indicated a similar narrative where their house had been in need of repairs, which would have involved reconstruction work on the upper floor of their home, situated in the National Park, and they had sought the appropriate permissions from the local municipality. However, they had started the repair work prior to receipt of confirmation from the local municipality, and so criminal charges had been laid against them. In the interim the permission for the repair work had been granted. The head of that household was told he must present himself to the police every week for six months. The interviewee indicated that they are aware of other families who have done repair work, or even new construction, on properties situated in the National Park without the relevant permissions and they have not been subjected to the same fines or criminal charges. The interviewee linked the fines to their activism because they believed those who have not been treated similarly are individuals who are less vocal or outspoken on the issue of HPPs in Valbona.

One interviewee believed that he was denied access to social welfare as ‘punishment’ for his participation in a protest.

Another interviewee indicated that they had been approached by members of the Democratic Party who had questioned them on why they were involved in protests against the HPPs because these were decisions made during the time that that party had been incumbent. The interviewee expressed the view that their career prospects may be limited as a result of their activism, particularly should they wish to work for the government or aforementioned party.

**Threats or perceived threats to job security.** Three interviewees indicated that they or their relatives working for state companies (examples of these include working for the local municipality and working for state agencies) had either been fired or been threatened with termination if they or their family members continued vocally resisting the hydropower construction in Valbona. One example was an interviewee who worked for local government. He was fired and when he pursued
the matter in order to ascertain the reasons, including checking with the relevant department whether there were any complaints made about him, he was told that no complaints had been lodged. He indicated a perception and belief that the order for him to be fired was at the request of more senior officials, but could not provide further proof of this.

Another interviewee indicated that he was cautious about which protests and events he attended because he is fearful that somehow this may result in powerful individuals intervening to ensure he is fired from his job as it is a state job. Another interviewee indicated that while he had not been threatened personally, members of his extended family who work for the government, had been approached and told that they would be fired because of their relative’s involvement in resisting the hydropower plants in Valbona and criticizing the company.

Another interviewee gave an example where a relative had been fired from a private company, related to his criticism of Gener 2. The interviewee indicated his belief that it was linked to his activism, because the company that fired his relative is a subsidiary of Gener 2. However, other than the timing of termination, he did not have any further evidence.

**Threats from the company.** Gener 2 brought a defamation claim (defined in the Albanian law as an indemnity claim) against TOKA and its Director, Catherine Bohne, personally for approximately 150,000 Euros for “waging a denigrating campaign against Gener 2 and Dragobia Energy, including through making defamatory public statements.” The Tirana District Court dismissed the lawsuit. However, the company has filed an appeal at Tirana Court of Appeal, where the case is pending.

| Parties: Gener 2 ShPK and Dragobia Energy ShPK vs. TOKA NGO and Catherine Bohne |
|-----------------------------|------------------------------|
| **Court:** Tirana District Court (which dismissed the case) |
| Tirana Court of Appeal (case still pending) |

| Claims: Indemnity claim of approximately 150,000 Euro made against TOKA and Catherine Bohne. |

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<th>(Main) legal grounds:</th>
<th>The court in which this case was launched is a civil court. The claims made were that TOKA and Catherine Bohne have been waging a denigrating campaign against Gener 2 ShPK and Dragobia Energy ShPK, including through defamatory public statements.</th>
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<td>Part of the proof presented against Toka and Catherine Bohne in this matter was the fact that the NGO had held an “information table” event in Bajram Curri on December 17, 18, and 19, 2017. The event was designed as an information sharing event, where members of the community would be able to have questions answered and could engage in free discussion. TOKA specifically indicated that the NGO would be willing to answer any questions that any member of the community may have for them, as well as to hear about issues and barriers community members might be encountering. TOKA offered free information about the Valbona River case at the event, as well as copies of laws and other public documents.</td>
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| Current status: | The court of first instance (the Tirana District Court) dismissed the application. However, the applicants have appealed that decision. Thus, the matter is pending before the Tirana Court of Appeal. |

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58 Case No. 5154, dated 26 January 2018, Plaintiffs “Gener 2 SHPK” and “Dragobia Energy SHPK” Vs. TOKA NGO and Catherine Bohne, as Defendants.
During one of the hearings in the lawsuit brought by TOKA and community members against Gener 2, the company lawyers requested of the Court that individual fines be levied against all 27 plaintiffs personally for “wasting the court’s time” by bringing a lawsuit. One interviewee who is a plaintiff in the case against Gener 2 on falsification of signatures, indicated that he had received a notice from the company’s lawyers indicating that he must “apologize about what he is saying about the company.” He saw this as a form of harassment and as an attempt to discourage him from participating in further resistance efforts related to the hydropower project.

Top Channel TV Host Endrit Habilaj reported that one of his crew members was physically assaulted by members of the security company, Brecani, employed by Gener 2, while filming the construction process after a stop work order was issued. The police were called to intervene; however, Habilaj stated that the local police did not come until the police in Tirana were called. One of the assailants was arrested at the time, but was reportedly released a short while later. The incident was captured on camera, and the footage is available online. A criminal complaint was filed by the journalists with the prosecution. However, there were no further developments with regard to that criminal complaint.

One interviewee reported being attacked physically, by members of the same security company linked to Gener 2, while several other interviewees indicated that they know of one or two incidents of physical assault of an individual who was outspoken against the HPPs and who has since left the area.

Attacks on character. The most common form of harassment or intimidation reported by interviewees was attacks on one’s character. This is done through the media, social media, and in the community itself through the spreading of rumors. Although this type of attack does not seem particularly egregious, the interviews illustrated that in localized communities, this amounts to harassment and intimidation that can cause deep-seated conflicts within previously amicable communities. An example of this type of intimidation was that the head of the security company (Brecani) contracted by Gener 2 had on numerous occasions indicated that TOKA staff are corrupt and stealing money. A representative of TOKA noted that this puts additional demand on the time of an already understaffed organization, as they need to spend time refuting these allegations and proving the contrary.

59 For further details see Top Channel’s crew attacked filming Hydropower Plant construction in Valbona, TOP CHANNEL (July 13, 2018), available at http://top-channel.tv/english/top-channels-crew-attacked-filming-hydropower-plant-construction-in-valbona/
Other threats. Some interviewees reported receiving veiled threats, such as one person being told to “remember how many people died in Tropoja in the 1990s and that was only politics, whereas now it is about money, so imagine what will happen.” Others report being stalked by unknown persons, receiving anonymous phone calls, being followed, and being shouted at in public. One such incident included someone shouting at an interviewee and saying “we’re going to drain every drop of Valbona.” One further threat reported by at least three people was the destruction of a protest banner suspended on a cliff face near the entrance to the Valbona National Park. Shortly after it was suspended in place, it was punctured and ripped by unknown individuals and it appeared as if there were bullet holes in the rock face next to where the banner was ripped.
Conclusion and Recommendations

During the fact-finding mission, people voiced discontent with regard to the lack of transparency about HPPs, difficulty of accessing information even after the necessary requests are made, safety concerns with the construction process, impact on livelihoods of people and harassment of those who have been outspoken against HPPs. TOKA has voiced concerns that under the name of small hydropower, the government and companies get away with irreversible, cumulative impacts of a multitude of HPPs built within short stretches of the river, including protected areas, such as Valbona National Park.

The ABA’s Center for Human Rights echoes these concerns as well as recommendations that directly follow:

The government of Albania should:

- Streamline the information about HPPs nationally, providing clear information about the number and location of concessions made, licenses granted and their current status, and it should disclose names of companies and beneficial owners that are recipients of concessions and permits, as well as other information, as required by Albanian law. The requirements for environmental assessments and public participation should be triggered on the basis of the cumulative effects of multiple HPPs built in the short stretches of rivers.
- Investigate the documented harassment incidents in this report and hold accountable those responsible.
- Investigate harassment against community members and environmental human rights defenders who are outspoken about impacts of HPPs and other projects more broadly.
- Comply with the Law on Protected Areas and immediately halt any unlawful construction in protected areas, such as Valbona National Park.

Gener 2 and other HPP companies should:

- Comply with their responsibility for consultations by conducting timely consultations and notifying the public in advance.
- Document the human rights impact and engage with those impacted on the best approaches to remedy harms caused by the companies.
- Not engage in security contracts with companies that are known for harassing communities and engaging in violence.
- Put in place grievance mechanisms to address claims by those who have been impacted by the construction process, including rockfalls.
- Stop retaliating against TOKA and community members for their activism and exercising their rights to be informed and to peaceful assembly.