



ქვეყნის გარემოსდაცვითი რესურსების დაცვის
საერთაშორისო ორგანიზაციებთან
საქართველოს მუდმივი წარმომადგენლობა

MISSION PERMANENTE DE LA GÉORGIE
AUPRÈS DE L'OFFICE DES NATIONS
UNIES ET DES AUTRES ORGANISATIONS
INTERNATIONALES À GENÈVE

N 49/53265
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Dear Special Rapporteurs,

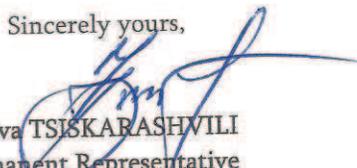
In reference to your letter of 9 September 2014, I have the honour to submit herewith the information from the Ministry of Environment and Natural Resources Protection of Georgia, Ministry of Culture and Monument Protection of Georgia and Ministry of Energy of Georgia concerning the construction of the Khudoni hydropower plant in the Enguri River gorge.

The Permanent Mission of Georgia in Geneva remains at your disposal for any further assistance that you may deem appropriate to receive on the above mentioned issue.

Please accept, Special Rapporteurs, the assurances of my highest consideration.

Enclosure: 5 pages

Sincerely yours,


Shalva TSISKARASHVILI
Permanent Representative

Ms. Leilani FARHA
Special Rapporteur on adequate housing
as a component of the right to an adequate standard
of living, and on the right to non-discrimination in this context

Ms. Farida SHAHEED
Special Rapporteur in the field of cultural rights

Ms. Hilal ELVER
Special Rapporteur on the right to food

Ms. Rita IZSÁK
Special Rapporteur on minority issues

**Information concerning the construction of the Khudoni hydropower plant
in the Enguri River gorge.**

Question 3

According to the decree N890 of April 21, 2011 the agreement between the Government of Georgia, "Trans Electrica Limited", "Trans Electrica Georgia" LTD, "ENERGOTRANS" LTD and "Electricity System Commercial Operator" LTD was signed on 28th of April, 2011. The agreement is the basic legal framework for the regulation of the relations concerning construction, operation and ownership of the Khudoni HPP. According to the amendments of May 28, 2013 to the agreement, the company is obliged to develop and implement procedures for the resettlement of the local population in accordance with the World Bank's Involuntary Resettlement 4.12 policy. In particular, paragraph 3.1, subparagraph (f) of Article 3 declares:

"(f) The Government of Georgia and the Project Company, having jointly prepared a rehabilitation and resettlement plan for local residents likely to be affected or displaced due to construction of the Project at the site, guided by World Bank's Involuntary Resettlement 4.12 policy".

Taking under the consideration the best international practices, World Bank's Involuntary Resettlement 4.12 policy is the most approved and sophisticated document for the regulation of the resettlement issues.

The action plan of the resettlement of local residents is not finalized currently. When the works start in this direction, the resettlement plan will be in line with the World Bank's Involuntary Resettlement 4.12 policy and agreed with the Government of Georgia, this is also one of the obligations of the company. On the other hand, the Government of Georgia will provide full protection of interests of the population according to the international standards. It should be noted that the Georgian legislation protects the owner's rights and prohibits any action against the property rights without the consent of the owner.

Question 4

The Ministry of Culture and Monument Protection of Georgia is cooperating with the Ministry of Environment and Natural Resources Protection of Georgia, the Ministry of Economy and Sustainable Development of Georgia, and organizations that did research in art history and archaeology according to the current law regulations, concerning the construction of the Khudoni hydropower plant in the Enguri River gorge. The Ministry of Environment and Natural Resources Protection of Georgia has sent Khudoni hydropower plant Environmental Impact Assessment, which covers a report on tangible cultural heritage within the area. According to the research there is no tangible cultural heritage within the area of the Khudoni hydropower plant constriction area, while the historic sights of the nearby area has been changed so much that there is no reason to inscribe them under the list of National Cultural Heritage sights. According the archaeological research of the project area and existing bibliographical and archive materials there has been a thorough analysis of the existence of cultural layers. In order to fulfill of the 2003 UNESCO Convention for the Safeguarding of Intangible

Cultural Heritage it is necessary to perform a research on Khaishi Community Appropriate measures will be taken according to the findings of the research.

The recommendations and remarks of the Public Defender and the Netherlands Environmental Impact Assessment Commission, will be considered in a new Environmental Impact Assessment Document, which is planned to be provided in the nearest future. According to the legislation, the document will be available to any interested organization or person. After the presentation of a revised Environmental Impact Assessment Document by the "Trans Electrica Limited" it will be apparent if the concerns of the Public Defender and the Netherlands Environmental Impact Assessment Commission were taken under the consideration.

Question 5

On 5 July 2013 according to the resolution №169 of the Government of Georgia the Interagency Council for Human Rights Strategy and Action Plan was established. The Council carries out thorough and effective work for elaboration of the documents that shall define the national human rights policy and priorities for the years to come. As a result of this work on 30 April 2014 Georgian Parliament adopted the National Strategy on Human Rights for 2014-2020. The strategy determines strategic priorities for 2014-2020. Each strategic priority includes particular goals and guiding principles.

For the purpose of implementation of the Strategy, the National Human Rights Action Plan (NHRAP) for 2014-2015 was adopted on 9 July 2014. Chapter 23 of the NHRAP prioritizes the protection of the environmental right. According to the Chapter, the main goal of the government shall be the ensuring of the right to healthy environment according to the recognized international standards. Amongst the activities prescribed by NHRAP for the achievement of this goal one may find the harmonization of the domestic legislation with the relevant international standards and EU directives (activity 23.1.1) and, what is more important, the establishment of a mechanism that shall ensure involvement of society into decision-making process as well as carrying out an awareness-raising campaign on the issue of environmental human rights (activity 23.1.2).

The main body responsible for the execution of these activities is the Ministry of Environment and Natural Resources Protection of Georgia. The process of implementation of NHRAP shall be monitored by a special unit created within the Government's Chancellery of Georgia.

Right to own property is directly declared under Georgian constitution. More specifically, article 21 paragraph 1 of Georgian constitution states that the right to own property shall be recognized and inviolable. Besides, paragraph 2 of the abovementioned article stipulates that abrogation of the universal right to ownership, acquisition, alienation, or inheritance of property shall be inadmissible. Right to own property may be restricted for pressing social needs in the case and under the procedure provided for by law so that the essence of property right is not violated.

Under paragraph 3 of this article, property may be deprived for pressing social needs as provided for

by law, by court decision, or if urgently necessary under an organic law, provided that preliminary, full, and fair compensation is made. Compensation shall be exempted from any taxes and fees.

This issue is more specifically regulated under Georgian law on "Rule of Expropriation for the Special Public Necessity". It defines the right of expropriation for public necessity and the expropriation procedure. According to the Article 2 of the law it is allowed to use the right of expropriation for the construction of buildings for public needs. Expropriation for public necessity is implemented under the order of the Minister of Economy and Sustainable Development and by the Court decision, with a prior, full and fair compensation of the owner. Additionally, the Rule specifically regulates issues connected with an appropriate compensation. The Constitution of Georgia protects everyone's right to apply to a court for the protection of his/her rights and freedoms. Procedural provisions which guarantee application to the court are established under the Procedural Civil Legislation/Code of Georgia.

The Government of Georgia is actively working with the local inhabitants settled in the area of the construction of Khudoni HPP. The aim is to have the constructive dialogue with the population and to achieve the agreement regarding the main issues and to protect the interests of the local population.

In cases connected with the involuntary resettlement because of the development-related projects determination of the rights of those people's social guaranties, appropriate strategies and programs are beyond the competence of the Ministry of the Environment and Natural Resources protection of Georgia. However, Ministry's only responsibility in connection with aforementioned issue is to determine the necessity of the expulsion of people from zones of hydro meteorological and geological catastrophes in Georgian territory. Also, determination and assessment of eco-migrants settlement places.

Implementation of the project has a strategic importance for the country's energy system, part of the produced energy will be substitution for imported electricity, export can be increased, the energy sector will receive a significant benefit in electricity price, country will receive a solid investment inflow and at the end it will have a positive impact on the population. The local population will be employed in the construction of the power plant and this will improve social situation in the Svaneti region.

In accordance with the Government Decree N253 of May 24, 2007, the Memorandum of Understanding on "Construction of the Khudoni Hydro Power Plant and Relevant Infrastructure in Georgia" was signed between the Government of Georgia and the "Continental Energy LTD" on 29 June 2007. On 14th of May 2010 the Government of Georgia, the company "Continental Energy LTD" and the company "Trans Electrica Limited" signed an agreement, according to which, "Continental Energy LTD" – fully transferred all its rights, obligations and responsibilities to the company "Trans Electrica Limited". After the entry into force of this agreement "Trans Electrica Limited" is the assignee of the "Continental Energy LTD". According to the memorandum and the amendments from December 23, 2009, the company "Trans Electrica Limited" has completed the feasibility study on the construction of "Khudoni" HPP and presented the project proposal to the Government of Georgia.

Question 6

The Ministry of Environment and Natural Resources Protection of Georgia refers to the information on Environmental Impact Assessment in terms of providing the public with information and opportunities for public participation, as well as in terms of helping decision makers to take informed decisions on activities that might have a significant impact on the environment and well-being of the population.

Public hearings were held regularly and the local population was actively involved in all stages of the project development works. According to the Georgian legislation, one of the precondition for the issuance of the construction permit for the HPP by the Ministry of Economy and Sustainable Development is the submission of the Environmental Impact Assessment Report issued by the Ministry of Environment and Natural Resources, therefore, the legislation not only provides for the inclusion of environmental issues in the process, but inapplicability of the procedures is directly connected to the legal outcomes.

In accordance with article 6.1 of the law of Georgia on Environmental Impact Permits, the developer shall hold a public hearing of the EIA report prior to its submission to a permitting body. For the purpose of organizing EIA public hearing, the developer shall publish the information about the planned activity. The information shall be published in national print periodical, as well as in print periodical (if any) of the administrative territory of that self-governance unit where the activity is planned to be implemented (Article 6.2).

From 2007 to 2010 with the financing of the World Bank feasibility study of the Khudoni project was prepared. It was carried out by the Swiss company "Stuck and Colenco". At the same time with the financing of the World Bank the French company "BRL" prepared Environmental and Social Impact Assessment document for the Khudoni project. Since "Trans Electrica Limited" became a project developer, all relevant materials were transferred to the new investor. The company updated existing feasibility study report and additionally implemented number of new research works, such as geological exploration works, the detailed project and other. Also, Environmental Impact Assessment Report was updated by the advisory firm "CENN" and Irish company "Replan" is working on creation of the resettlement plan.

On 29th of July, 2013 "Transelectrica Georgia" submitted an Environmental Impact Assessment (EIA) report of the 702 MW Khudoni hydropower plant ("Khudoni dam") to the Ministry of Environment and Natural Resources Protection of Georgia for preliminary review in compliance with above mentioned law of Georgia on Environmental Impact Permits. The EIA report was uploaded on an official website of the Ministry in order to make it available to the public.

The Ministry of Environment and Natural Resources Protection of Georgia reviewed the EIA report from the perspective of Georgian legislation and provided detailed comments to be taken into consideration.

Instead of Mestia municipality the EIA public hearing was scheduled to be held in Khaishi, were the project was planned to take place. However, the local population protested against the project and did not allow the company representatives to hold the public hearing.

Within one year after the EIA public hearing, documenting its results and finalizing the EIA report, the developer shall be authorized to submit an application on obtaining a permit (or construction permit) to the permitting body in accordance with the law on Environmental Impact Permits and the rules specified by the Georgian legislation.

Considering that “Transelectrica Georgia” did not release the revised EIA report within the timeframes prescribed by the law, the Ministry is unable to assess whether the public concerns and provided comments are taken into consideration. Accordingly, the Ministry is not aware what measures were taken by the developer to address the issues raised by Netherlands Commission in May 2013.

In order to resume the construction of the 702 MW Khudoni hydropower plant, “Transelectrica Georgia” is obliged to undergo the above mentioned procedures envisaged by the Georgian legislation.