

**Mandates of the 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; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to food; and the Special Rapporteur on minority issues**

REFERENCE: AL  
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Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to food; and Special Rapporteur on minority issues pursuant to Human Rights Council resolutions 25/17, 19/6, 22/9, and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the construction of the Khudoni hydropower plant in the Enguri River gorge**.

According to information received:

Recent developments in the energy sector indicate that the Government plans to resume construction of the 702 MW Khudoni hydropower plant ("Khudoni dam") in the Enguri River gorge in Upper Svaneti region, four kilometres south of the village of Khaishi. The construction is currently scheduled to resume in December 2014, following postponement last March.

It is alleged that the construction of the Khudoni dam will flood around 1,500 hectares of forest and agricultural land, and the village of Khaishi, which is the administrative centre of a number of villages in the area. Land and property, homes, a school, a hospital and several other facilities risk being flooded which could lead to the desertion of neighbouring villages. It is alleged that the construction would require the involuntary resettlement of an estimated 1,700 to 2,500 inhabitants from the region which includes a majority of individuals and families from the Svan minority ethnic subgroup (located in the Upper Svaneti region) currently living in Khaishi and other residents living in Lajra and Lukhi.

Reports refer to the long history relating to the construction of two dams in the Enguri River. The construction of a first hydro power station, Enguri Dam, in the

1960s already caused disruption and changes to the livelihoods, health, agricultural practices, environment and cultural heritage of the population. The construction of the second station, Khudoni dam, upstream from the Enguri Dam, started in 1979 but has been suspended several times due to various factors.

According to the reports received, 275 families residing within the location of the Khudoni dam construction were resettled to the Khaishi village area in 1992, just before the works were stopped. It is reported that on that occasion the residents suffered negative impacts on their livelihood, and mental and physical health. In particular, in this and other villages where families were resettled, there were problems with access to drinking and irrigation water. There was also social disintegration as a result of the resettlement, which had significant impact on the ethnic, linguistic and religious identity as well as the traditional ways of living and relative isolation of the Svan population in the region. Private land was reportedly expropriated through the eminent domain law, however compensation provided was kept in banks and allegedly lost as a result of the end of the Soviet regime.

Discussions about the Khudoni dam construction resumed in 2005 with a technical assistance grant request from the Government to the World Bank for preparatory work, such as feasibility and technical studies, and for assisting the responsible Ministries in carrying out an Environmental and Social Impact Assessment and preparing a Resettlement Action Plan. Sources note that the area of construction is situated close to Abkhazia (frontier with Russia), and a site of military activities, which has been a cause of further delays in recent years.

It is alleged that for many inhabitants in Khaishi village, if the construction takes place later this year, it will constitute their second involuntary resettlement. Given previous negative practices of resettlement caused by development projects in this region, those potentially affected fear that they will not receive adequate alternative housing or fair compensation, that land will not be well located and will not have irrigation facilities, and that their living standards will be seriously compromised.

Long-standing opposition to this project by the local population has also been reported. It is alleged that throughout the recent phase of the process (2005-2012), public consultation with affected communities on the construction project has been flawed. Apparently, since 2008, only a few discussions were held, either under the auspices of the World Bank, or organized by the project contractor, Transelectric Limited. However, community members allege that there has been a lack of information and transparent communication with them. In addition, some of the consultations appear to have been conducted under pressure and intimidation from the authorities, including in the presence of police officers. In May 2013 a Netherlands Commission report entitled “Advisory Review of the Environmental and Social Impact Assessment of the Khudoni Hydropower Project” concluded, inter alia, that the communication with the affected people of Khaishi had been incomplete and not transparent. The Commission called for a

supplementary cost-benefit analysis to address issues such as compensation for lost land, property, livelihood and cultural heritage, and also whether the overall project benefits will be shared with the local population.

As a result of displacement and the potential flooding of villages where their ancestral cemeteries, churches and traditional houses are located, the Khudoni dam also poses serious challenges to the Svan population in terms of cultural rights, especially their rights to enjoy and access their cultural heritage, and to maintain their forms of cultural expression, ways of life, religion and language.

According to the sources, in February 2013 the amended legal agreement between the Government of Georgia and Transelectrica Limited, an Indian-British company and contractor of the dam construction, indicated that the company was required to follow the World Bank Involuntary Resettlement Policy and hold public consultations with potentially affected residents.

Nevertheless, the company and the Minister of Energy and Affected Population reportedly rejected invitations from the Public Defender's office of Georgia to meet with the affected people on numerous occasions during this year. In addition, the Public Defender's office did not receive any comments on their report published on 14 May 2014 stressing that the fundamental rights of Khaishi residents will be affected if not adequately addressed prior to and during the construction of the dam. Some of the issues raised by the office of the Public Defense include the need to bring the legal procedures in line with international standards, adequate, comprehensive and timely access to information on next steps and involvement of residents and the public in the decision-making process; a resettlement plan issued and monitored with the participation and agreement of local residents, and measures to protect tangible and intangible cultural heritage.

As of June 2014, Transelectrica Ltd reportedly has not released a full Environment and Social Impact Assessment with due consideration of more than a hundred comments provided by the Ministry in September 2013. Also a full-fledged Resettlement Action Plan has not been released to this day.

Concern is expressed that the residents of the Upper Svaneti Region will face violations of their right to an adequate standard of living, including food and housing, and their right to take part in cultural life as a result of the construction of Khudoni dam and their resettlement.

In connection with above alleged facts and concerns, please refer to the **Reference to international law Annex** outlining the applicable international human rights instruments and standards that we would like to recall.

Since it is our responsibility under the mandate provided by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. What administrative or judicial mechanisms are in place, both at national and municipal level, to ensure access to remedies and accountability of various actors so that individuals and communities can claim their rights to housing and food?

3. Please provide details of any measures taken to ensure the enjoyment of the right to an adequate standard of living, including food and housing, in particular, in relation to the families and households to be affected by involuntary resettlement as part of the construction of the dam and the flooding in the region.

4. Please provide full details of measures taken to address the issues raised by the Netherlands Commission in May 2013; and also by the Public Defender's Office in May 2014 about the social impacts of the dam construction and measures to address or mitigate such impacts, including on tangible and intangible cultural heritage.

5. Please provide full details of any national legislation, policies or programmes directly relevant to development-related involuntary resettlement. In particular, please provide information on the specific ways in which the international human right to adequate housing has been considered and implemented. Further, please explain subsequent steps and measures to hold genuine consultation with the potentially affected residents in order to consult and agree on a Resettlement Action Plan prior to December 2014 when the construction will resume.

6. Please provide information on the Environmental Impact Assessment (EIA) both 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.

We would appreciate a response within sixty days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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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

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Special Rapporteur in the field of cultural rights

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## **Annex**

### **Reference to international human rights law**

In connection with the above concerns, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which Georgia is a party since 3 May 1994, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

Furthermore, according to the Committee's General Comment No. 7 on forced evictions, paragraphs 15 and 16, procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. In paragraph 17, the Committee further emphasizes that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

We also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.

In additionally, we also wish to draw your attention to Article 25 of the Universal Declaration of Human Rights and to Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR). Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, as well as the fundamental right of everyone to be free from hunger.

The Committee on Economic, Social and Cultural Rights has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee clarified that States have an immediate obligation to respect the right to food, which

means that it and its agents must refrain from any actions that negatively affect the right to food and result in preventing existing access to adequate food of its people.

We would also like to refer to your Excellency's Government to the international standards in relation to the protection of the rights of minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities). Article 1.1 of the Declaration refers to the obligation of States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within its territories and article 1.2 further calls on States to "adopt appropriate legislative and other measures to achieve those ends". Additionally, article 2 states that persons belonging to national or ethnic, religious and linguistic minorities have, inter alia, the right to enjoy their own culture without discrimination. Furthermore, article 4.1 notes the obligation of States to ensure that persons belonging to minorities may exercise all their human rights without discrimination and in full equality before the law.

In accordance with article 27 of the UDHR and article 15 (1) (a) of the ICESCR, all persons also have the right to participate in cultural life. As set out by the Committee on Economic, Social and Cultural Rights in its General Comment 21, States have the immediate obligation to refrain from interfering in the enjoyment and development by people of their cultural practices. More precisely, States have the obligation to respect the right of people to have access to their own cultural and linguistic heritage; they must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. States must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life. Everyone also has the right to take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life and on his or her rights under article 15, paragraph 1 (a). The Committee has also stressed the obligation of States to respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development policies and programmes (E/C.12/GC/21, paras. 44, 49 d, 50 b).

In her report on the right to access and enjoy cultural heritage, the Special Rapporteur in the field of cultural rights has also stressed that States have the duty not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties. States are encouraged to develop cultural heritage mapping processes within their territory and should utilize cultural impact assessments in the planning and implementation of development projects, in full cooperation with concerned communities. States should make available effective remedies, including judicial remedies, to concerned individuals and communities who feel that their cultural heritage is either not fully respected and protected or that their right of access to and enjoyment of cultural heritage is being infringed upon. In arbitration and

litigation processes, the specific relationship of communities to cultural heritage should be fully taken into consideration. (A/HRC/17/38, para. 80 b, e and l)