



#8-01/21-21

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Submission to the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association

Mr. Clément Voule,

In this communication, we would like to bring to your attention information concerning the construction of Namakhvani¹ Hydro Power Plant Cascade by “Clean Energy Group Georgia” LLC on the river Rioni in Georgia. Within the project, the company plans to build two separate HPPs: the Lower Namakhvani HPP (333 MW) and the Upper Namakhvani HPP (100 MW).

Georgian Young Lawyers’ Association (GYLA) is membership-based non-governmental organization. GYLA has been dedicated to promoting human rights and the rule of law in Georgia since 1994. Organization provides legal aid free of charge to the individuals to help recover their violated rights and conducts activities to raise legal awareness across the country. In relation to the Namakhvani HPP, GYLA is a legal representative of the individuals from the local community in court proceedings against the Ministry of Environmental Protection and Agriculture of Georgia (the Ministry). Moreover, the organization represents several activists who were administratively detained during the demonstrations at the court.

¹ *Namakhvani is the name of the Hydro Power Plant Cascade, while Namokhvani is the name of the village near which the Lower Namakhvani HPP is to be constructed.

Background and Context

On February 28, 2020, the Ministry adopted a positive environmental decision on the modified project of the Lower Namakhvani HPP. The Ministry issued the decision with several procedural and fundamental human rights violations, which triggered the peaceful protests of the affected people.

Specifically, the company failed to conduct and provide several studies around the project's possible environmental and social impacts, which were required by the Georgian Law on Environmental Assessment Code² and the scoping opinion issued by the Ministry.³ These studies were essential in order to properly define and assess what kind of risks the project might pose to the environment, human life and health, cultural heritage and material values, define what measures are to be implemented to avoid and mitigate them, conduct cost-benefit analysis and adopt negative or positive environmental decision. Although, the studies were not provided by the company, the Ministry issued a positive environmental decision and required from the company to conduct these studies post-factum.⁴

Because of the failure of carrying out such studies, the local population, civil society organizations, and environmental experts express their concerns about the safety and rationality of the project.⁵ Specifically, the hydro-power plants are to be constructed in the seismically active area, where there is a high possibility of strong earthquakes and landslides, which might damage the hydro-power plants and create risks to people.⁶ For implementing the project, over 600 ha of the land and forests are to be flooded, which might change the micro-climate in the surrounding areas; these changes might distract natural eco-systems, contribute to the loss of biodiversity and affect the unique Georgian grape varieties.⁷ Damming the river Rioni, which is the habitat of the world's only population of Colchic

² Law of Georgia on Environmental Assessment Code, Article 12.

³ "Statement on Conducting a Public Discussion of Namakhvani HPP Cascade Project in Violation of Law", website of GYLA, 23.12.2019, available: <https://bit.ly/3wDGnRX>, last seen: 28.05.2021.

⁴ "Gyla And Green Alternative Demand Suspension Of Environmental Decision On Namakhvani Cascade", website of GYLA, 05.03.2021, available: <https://bit.ly/3wCw0Os>, last seen: 28.05.2021.

⁵ Green Alternative and CEE Bankwatch Network, „Namakhvani hydropower plant project“ (May, 2021), available: <https://bit.ly/3c3hM10> last seen: 28.05.2021.

⁶ Green Alternative and CEE Bankwatch Network, „Namakhvani hydropower plant project“ (May, 2021), available: <https://bit.ly/3c3hM10>, last seen: 28.05.2021; Open Letter from Climate Action Network: Eastern Europe, Caucasus and Central Asia, available: <https://bit.ly/3hZPokf>, last seen 28.05.2021.

⁷ "Why Green Alternative Demands Revocation of Permit for Construction of Namokhvani HPPs?", website of Mtisambebi, 17.05.2020, available: <https://bit.ly/2TmYxJn>, last seen: 28.05.2021; Green Alternative, "Land-Water: A Georgian Documentary to Save the Rioni Valley", 24.11.2020, available: <https://bit.ly/2SFIJSK>, last seen: 28.05.2021.



sturgeon and some of the last populations of five other endangered or critically endangered sturgeon species,⁸ might create serious risks to them and decrease their populations.⁹

The environmental and social impacts of the project were not fully assessed in a climate change context. The negative impacts of climate change are already noticeable in Georgia.¹⁰ Specifically, there is a decline in the mountain glaciers and increase in the frequency and severity of extreme weather events, floods, droughts, landslides, etc., that create risks to the environment and human well-being.¹¹ These extreme weather events and natural hazards will become more frequent and severe in the coming years. So, they might create risks of damaging the hydro-power plants and disrupt their functioning in the future.¹² Thus, the short- and long-term impacts of climate change on these hydro-power plants had to be properly assessed within the project in order to implement appropriate measures to avoid the abovementioned climate change-related risks and protect people.

We should also mention that healthy, free-flowing rivers are very important in climate change context.¹³ They contribute to the regulation of the carbon cycle on the Earth;¹⁴ they provide people with fresh water; they fertilize the places for farming; they allow migratory fish populations to thrive and contribute to the conservation of biodiversity and preservation of natural eco-systems.¹⁵ Thus, in this context damming the rivers, in this case, the river Rioni, might negatively affect the natural environment and eco-system services. Flooding the forests, which are the most important natural carbon sinks, might also contribute to climate change.¹⁶ Therefore, the full assessment of the

⁸ "Conserving Black Sea sturgeon in Georgia", website of Fauna & Flora International, available: <https://bit.ly/3wKpIMW>, last seen: 28.05.2021.

⁹ "Fauna & Flora International demands suspension of construction of Namakhvani HPP", website of Mtisambebi, 24.02.2021, available: <https://mtisambebi.ge/news/ecology/item/1273>, last seen: 28.05.2021; Green Alternative and CEE Bankwatch Network, „Namakhvani hydropower project“ (May, 2019), available: <https://bit.ly/3fxNg1v>, last seen: 28.05.2021.

¹⁰ 'Georgia', website of EU4Climate, available: <https://eu4climate.eu/georgia/>, last seen: 28.05.2021; WWF, "WWF Caucasus Position Statement on Hydropower and Protected Areas Development in Georgia", 11.05.2020, available: <https://bit.ly/3p05Oe7>, last seen: 28.05.2021.

¹¹ The Ministry of Environment and Natural Resources Protection of Georgia, 'Georgia's Third National Communication to the UNFCCC' (2015), <https://bit.ly/3c5pcB1>, last seen: 28.05.2021; Climate Forum East (CFE) and Georgia National Network on Climate Change, 'National Climate Vulnerability Assessment: Georgia' (2014), available: <https://climateforumeast.org/uploads/other/0/771.pdf>, last seen: 28.05.2021.

¹² Climate Action Network: Eastern Europe, Caucasus and Central Asia, a video covering the risks of Namakhvani HPP, 12.12.2020, available: <https://www.youtube.com/watch?v=OJZFXSRC2YI>, last seen: 28.05.2021

¹³ "Accelerating Renewable Revolution Can Achieve Global Climate And Energy Goals Without Damming World's Remaining Free Flowing Rivers", website of World Wildlife Fund for Nature, 07.05.2019, available: <https://bit.ly/3uvZbKT>, last seen: 28.05.2021; "Valuing Rivers Is Critical To Global Efforts To Adapt To Climate Change", website of the World Wildlife Fund for Nature, 12.07.2019, available: <https://bit.ly/3us89zl>, last seen: 28.05.2021.

¹⁴ "Climate Justice", website of the International Rivers, available: <https://bit.ly/3yPrQoc>, last seen: 28.05.2021.

¹⁵ "Free-flowing rivers are the freshwater equivalent of wilderness areas", website of World Wildlife Fund for Nature, available: <https://www.worldwildlife.org/pages/free-flowing-rivers>, last seen: 28.05.2021; International Rivers, "Free-Flowing Rivers Sustaining Livelihoods, Cultures and Ecosystems" (2018), available: <https://bit.ly/3vwU2KH>, last seen: 28.05.2021.

¹⁶ Open Letter from Climate Action Network: Eastern Europe, Caucasus and Central Asia, available: <https://infoclimat.org/wp-content/uploads/2021/04/georgia-against-harmful-hydropower.pdf>, last seen 28.05.2021.



environmental and social impacts of constructing these large hydro-power plants on the river Rioni were essential in climate change context for identifying and mitigating the risks;

Besides the abovementioned violations, the Government of Georgia also failed to ensure the proper participation of the interested parties and affected local communities in the decision-making process.¹⁷ It also failed to provide the required information to the interested parties.¹⁸ The Government of Georgia, thus, violated the rights of public participation in the decision-making process and access to information, which are guaranteed under the Constitution of Georgia and the Aarhus Convention.¹⁹

Because of these violations and some other problematic issues arising out of the Agreement signed between the Government of Georgia and “Clean Energy Group Georgia” LLC locals have started peaceful protests against the project. They demand from the Government to suspend the construction works until the company carries out the essential studies and the environmental and social impacts of the project are fully and properly assessed. They also require from the Government to guarantee their rights to be included in the environmental decision-making process and have proper access to the relevant information. Alongside the peaceful protests, court proceedings have also been initiated by GYLA and Green Alternative against the Ministry, based on the abovementioned legal violations, 1 year ago,²⁰ however, not a single hearing has been held up to now. Despite these efforts, the company has not stopped implementing the project and continues carrying out the 'preparatory works'.²¹

Repressive Policy concerning the Freedom of Assembly of the Activists

As already mentioned, the local community has been peacefully protesting the construction of the Namakhvani HPP for several months.²² However, to this day the government continues to ignore the concerns and questions of the affected population and refuses to engage in dialogue with locals. Instead, the state has been interfering with the right to peaceful assembly of the activists responding principally with repressive methods.

¹⁷ “Statement on Conducting a Public Discussion of Namakhvani HPP Cascade Project in Violation of Law”, website of GYLA, 23.12.2019, available: <https://bit.ly/3wDGnRX>, last seen: 28.05.2021.

¹⁸ „Public Defender Responds to Public Protest over Namakhvani HPP Cascade Project“, website of the Public Defender of Georgia, 22.11.2020, available: <https://bit.ly/3bZBhHP>, last seen: 28.05.2021.

¹⁹ Convention on Access to Environmental Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, Aarhus, Denmark, June 23-25, 1998, Article 6; Green Alternative and CEE Bankwatch Network, „Namakhvani hydropower plant project“ (May, 2021), available: <https://bit.ly/3c3hM10>, last seen: 28.05.2021.

²⁰ “Green Alternative and GYLA Request the Declaration of the Environmental Decision as Null and Void Issued on the Project of Namakhvani Hydroelectric Power”, website of GYLA, 06.04.2020, available: <https://bit.ly/34sgjgA>, last seen: 28.05.2021.

²¹ “Police should immediately leave Rioni gorge and stop construction of Namakhvani HPP”, website of GYLA, 03.04.2021, available: <https://bit.ly/3fpJF5D>, last seen: 28.05.2021.

²² „Massive Protest Against Namakhvani HPP Underway in Tbilisi“, website of Civil.ge, 23.05.2021, available: <https://civil.ge/archives/421830>, last seen: 28.05.2021.



The oppression from law enforcement started on 14 November 2020, when the police dispersed a protest rally held by the local population in Zhoneti.²³ According to the locals, up to 100 police officers mobilized in the gorge and moved the protesters, including the elderly, women, and children, from the roadway using physical force.²⁴ As a result, pursuant to news reports and locals, several protesters were injured.²⁵ Despite the calls from the civil society²⁶ and Public Defender²⁷ the state's approach has not changed.

On 30 January 2021, law enforcement officers removed a tent set up near the project site, where protesters have been taking shifts.²⁸ However, after several days of intense demonstrations and peaceful negotiations with the police, the activists were allowed to set up tents at the desired location.²⁹

The state had some only formal attempts to engage in dialogue with the protesters and respond to their calls. During the meeting concerning the issues related to Namakhvani HPP held on 12 March 2021, the Minister of Economy and Sustainable Development and the Minister of Environmental Protection and Agriculture left without answering any of the questions from the activists.³⁰ On 29 March 2021, the Prime Minister of Georgia stated that the construction of the dam of Namakhvani HPP would be suspended for 9-12 months.³¹ Although, this rhetoric served to mislead the public, as the company didn't have the appropriate permit, that precluded the possibility to even start the construction works of the dam.³² Following these circumstances, the authorities intensified their repressive activities towards the demonstrators.

²³ "Protests Against Namakhvani HPP Continue Despite Police Dispersal", website of Civil.ge, 16.11.2020, available: <https://civil.ge/archives/382567>, last seen: 28.05.2021.

²⁴ „The Sisantory Organization Respond to the Dispersal of the Protest Rally of Opponents of the Construction of the Namakhvani Hydropower Plant Using Police Force”, website of GYLA, 15.11.2020, available: <https://bit.ly/34p5nQX>, last seen: 28.05.2021.

²⁵ "Protests Against Namakhvani HPP Continue Despite Police Dispersal", website of Civil.ge, 16.11.2020, available: <https://civil.ge/archives/382567>, last seen: 28.05.2021.

²⁶ „The Sisantory Organization Respond to the Dispersal of the Protest Rally of Opponents of the Construction of the Namakhvani Hydropower Plant Using Police Force”, website of GYLA, 15.11.2020, available: <https://bit.ly/34p5nQX>, last seen: 28.05.2021.

²⁷ "Public Defender Responds to Public Protest over Namakhvani HPP Cascade Project", website of the Public Defender of Georgia, 22.11.2020, available: <https://bit.ly/3bZBhHP>, last seen: 28.05.2021.

²⁸ "Namakhvani HPP Works Resume Defying Local Protest", website of Civil.ge, 31.01.2021, available: <https://civil.ge/archives/394656>, last seen: 29.05.2021.

²⁹ "Another Rally was Held in the Village of Namokhvani - against the Cascade of Namakhvani Hydropower Plant", website of Humanrights.ge, 08.02.2021, available: <https://bit.ly/3bYQNUJ>, last seen: 29.05.2021.

³⁰ "Namakhvani Dam, Reservoir to Undergo Additional Safety Checks, Economy Minister Says", website of Civil.ge, 14.03.2021, <https://civil.ge/archives/405398>, available: last seen: 28.05.2021.

³¹ "Construction of Namakhvani HPP Dam will be Suspended for 9-12 Months – The Prime Minister", website of Netgazeti, 29.03.2021, available: <https://netgazeti.ge/news/530270/>, last seen: 29.05.2021.

³² "Organizations Working on the Issues regarding the Namokhvani HPP Respond to Defamation Campaign by the Company and the State", website of GYLA, 08.04.2020, available: <https://bit.ly/3oXT6fH>, last seen: 28.05.2021;



On 3 April 2021, representatives of the company, who were accompanied by the police officers, resumed preparations for the construction of Namakhvani HPP.³³ Afterward, the police blocked the road leading to the place of protests with metal barricades that made it impossible for the other activists to join the assembly.³⁴ Law enforcement also didn't allow in the legal representatives of defenders of Rioni Gorge.³⁵ According to the locals, devices suppressing the communication signals were installed in the area that complicated and, in some instances, made it impossible to provide or gain information regarding the circumstances happening in the Gorge.³⁶ Additionally, 2 protestors were detained³⁷ and those who were not able to join the rally were fined 2000 GEL for violating the curfew.³⁸

According to the statement of the Ministry of Internal Affairs (MIA), the mobilization of the police force in Rioni Gorge was connected to resuming of the preparatory works for Namakhvani HPP and aimed at ensuring safety and rule of law.³⁹ However, the law enforcement didn't explain and substantiate with objective information and circumstances what was the imminent danger that created the necessity for installing the barricades.⁴⁰ Therefore, the police disproportionately interfered with the right of citizens to free movement and practically deprived them of the opportunity to participate in an assembly.⁴¹ This is especially important given the fact that organizers announced in advance that they would hold a peaceful demonstration and they did not voice any violent goals.⁴² Moreover, the fining of individuals, who gathered on the spot in order to join the rally and who, for reasons beyond their control, were unable to enter the desired territory, should also be assessed as interference with freedom of assembly.⁴³

³³ “Public Defender Calls on Ministry of Internal Affairs not to Use Force against People Protesting against Namakhvani HPP”, website of the Public Defender of Georgia, 04.04.2021, available: <https://bit.ly/3wEjEFE>, last seen: 28.05.2021.

³⁴ “Tensions at Namakhvani HPP Site as Works Resume with Police Backing”, website of Civil.ge, 05.04.2021, available: <https://civil.ge/archives/410565>, last seen: 28.05.2021. „Public Defender Calls on Ministry of Internal Affairs not to Use Force against People Protesting against Namakhvani HPP“, website of the Public Defender of Georgia, 04.04.2021, available: <https://bit.ly/3wEjEFE>, last seen: 28.05.2021;

³⁵ “Police Should Immediately Leave Rioni Gorge and Stop Construction of Namakhvani HPP”, website of GYLA, 03.04.2021, available: <https://bit.ly/3unRjli>, last seen: 28.05.2021;

³⁶ Ibid.

³⁷ Ibid.

³⁸ „Public Defender Calls on Ministry of Internal Affairs not to Use Force against People Protesting against Namakhvani HPP“, website of the Public Defender of Georgia, 04.04.2021, available: <https://bit.ly/3wEjEFE>, last seen: 28.05.2021;

³⁹ “Statement of the Ministry of Internal Affairs”, website of the Ministry of Internal Affairs, 04.04.2021, available: <https://bit.ly/3fusxvA>, last seen: 28.05.2021;

⁴⁰ Social Justice Center (Former EMC), “Evaluation of Police Measures during the Namokhvani Protest – (Analysis of the April 3-11 and Subsequent Events)”, 2021, 4, available: <https://bit.ly/34q2BuO>, last seen: 28.05.2021;

⁴¹ Ibid.

⁴² Ibid.

⁴³ „Public Defender Calls on Ministry of Internal Affairs not to Use Force against People Protesting against Namakhvani HPP“, website of the Public Defender of Georgia, 04.04.2021, available: <https://bit.ly/3wEjEFE>, last seen: 28.05.2021;



On 11 April 2021, the police dismantled the tents of the defenders of Rioni Gorge, located on the land owned by one of the protesters in Namokhvani.⁴⁴ A particularly large police force gathered in the area and the movement was fully restricted in the direction of Namokhvani, including the movement of protesters towards the camp area.⁴⁵

The MIA put out contradictory versions as to the basis for removing the tents.⁴⁶ Moreover, the activists requested from the police to allow setting up the tents in a different area in the village of Namokhvani, as an alternative to dismantled tents, nevertheless, the Ministry denied this possibility without any reasonable and legitimate substantiation.⁴⁷ Eventually, the protesters were obliged to leave their protest site in Namokhvani and relocated to Gumati.⁴⁸ It should also be noted that the day after dismantling the tents the police dug up the area the activists were protesting without any reasonable basis.⁴⁹ This is one of the arguments, that prove the real rationale behind the activities of the law enforcement was not ensuring the safety, but dispersing the protests in Namokhvani.⁵⁰

Moreover, on 14 April 2021, the police administratively detained 6 protestors during the demonstrations in Gumati.⁵¹ Administrative detentions and fines were principally unsubstantiated and aimed at decreasing the assembly.⁵²

It should also be mentioned that the MIA launched an investigation under article 187 of the Criminal Code of Georgia regarding the case of damaging metal barricades set up by police in Gumati.⁵³ This is yet another attempt of the state to suppress the rally. Moreover, 8 more activists were detained during the demonstrations on 27 May 2021 near the metal barricades.⁵⁴

⁴⁴ "Civil Society Organizations Respond to the Current Events in the Rioni Valley", website of GYLA, 12.04.2021, available: <https://bit.ly/3vuRug5>, last seen: 28.05.2021;

⁴⁵ Ibid.

⁴⁶ "Statement of the Ministry of Internal Affairs", website of the Ministry of Internal Affairs, 11.04.2021, available: <https://bit.ly/3unSst6>, last seen: 28.05.2021;

⁴⁷ Ibid. "Tensions Mount as Police Dismantle Protest Tents in Namakhvani", Website of Civil.ge, 12.04.2021, available: <https://civil.ge/archives/412110>, last seen: 28.05.2021;

⁴⁸ Social Justice Center (Former EMC), "Evaluation of Police Measures during the Namokhvani Protest – (Analysis of the April 3-11 and Subsequent Events)", 5.

⁴⁹ Ibid, 6.

⁵⁰ Ibid.

⁵¹ "Police Detain Six Anti-Namakhvani HPP Protesters", website of Civil.ge, 14.04.2021, available: <https://civil.ge/archives/412651>, last seen: 28.05.2021;

⁵² Social Justice Center (Former EMC), "Evaluation of Police Measures during the Namokhvani Protest – (Analysis of the April 3-11 and Subsequent Events)", 13.

⁵³ "Statement of the Ministry of Internal Affairs", website of the Ministry of Internal Affairs, 27.05.2021, available: <https://bit.ly/3ftqcRv>, last seen: 28.05.2021.

⁵⁴ "Eight Detained at Anti-Namakhvani Rally Site", website of Report.ge, 27.05.2021, available: <https://bit.ly/3uxBKrt>, last seen: 28.05.2021.

It should be highlighted that the Administrative Offence Code of Georgia fails to meet the requirements of due process and is frequently used to unjustifiably restrict the right to peaceful assembly,⁵⁵ that was the case in most of the instances of the aforementioned administrative detentions.

Besides the repressive practice from the authorities, the activists were attacked with disinformation and attempts to discredit their protests aimed at affiliating the peaceful and legitimate resistance to the fight against energy security.⁵⁶ Several cases of false “support pages” disseminating false photos have been identified.⁵⁷

It should also be underlined that this is not the first time when the Government violated the legal requirements for issuing the permits in relation to the construction of the HPPs, ignored the protests of affected populations and did not take into consideration their environmental and climate change concerns; Therefore, it is very important to ensure that people enjoy their right to peaceful assembly and make sure that their voices are properly heard on national and international levels.

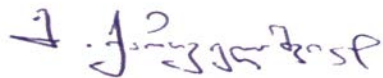
Recommendation to the State:

Stop using repressive methods against the peaceful and just protest of the local population, restore the free movement within the area, let the demonstrators return to the Namokhvani to continue their rally, and fully guarantee their freedom of assembly.

Sincerely,

Merab Kartvelishvili

Director of Human Rights Program at GYLA



⁵⁵ “Coalition Communicates with the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association”, website of GYLA, 05.07.2018, available: <https://bit.ly/3fxYVh6>, last seen: 28.05.2021.

⁵⁶ “Organizations Working on the Issues regarding the Namokhvani HPP Respond to Defamation Campaign by the Company and the State”, website of GYLA, 08.04.2020, available: <https://bit.ly/3oXT6fH>, last seen: 28.05.2021; „Discrediting Campaign Disguised as Support on Facebook”, website of ISFED, 24.05.2021, available: <https://bit.ly/3oUF1Qk>, last seen: 28.05.2021.

⁵⁷ Ibid.