



**Comments on Nenskra Hydropower Project
Supplementary Environmental & Social Studies,
by JSC Nenskra hydro**

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Acknowledgements:

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Introduction

The 280 MW Nenskra hydropower plant (HPP) is one of 35 hydropower plants slated for development in Upper Svaneti, small mountainous region in Georgia. Over 70 per cent of the hydropower plants planned for Upper Svaneti would be sited inside or with a direct impact on the proposed protected areas – the Upper Svaneti National Park and the Upper Svaneti Protected Landscape.

The project is planned to be implemented by the JSC Nenskra Hydro, a joint venture between the Georgia's state-owned Partnership Fund and the Korean K-Water state company under the BOT scheme (Build-Operate-Transfer). International Financial Institutions such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB) and the Asian Infrastructure Investment Bank (AIIB) have considered the 1.054 million USD project for financing. Italian Export Credit Agency (SACE) and Korean Development Bank (KDB) are also part of the financial package. The project will be constructed by Salini Impregilo, Italian construction company known for its controversial track record.¹²

The government of Georgia issued the construction permit in fall 2015 on the basis of a national Environmental Impact Assessment (EIA) process. However, the EIA study was low quality.³ IFIs requested the project sponsor to undertake a full range of supplementary studies, including assessment of hydrology, biodiversity, social impacts and natural hazards.

The supplementary package released on 14th of March 2017 by a number of IFIs and JSC Nenskra Hydro constitutes a new ESIA document. It does not answer numerous questions and concerns raised by civil society organisations (CSOs) and public. Another problematic issue is that the current ESIA is based on findings of the original ESIA.

According to the project sponsor "Applicable Standards must comply with all Project activities (the "Project Standards"). Project Standards comprise: applicable Georgian Standards, Georgian EIA requirements, other commitments to and requirements of Georgian Government, authorities, lenders standards and other applicable international standards and guidelines, applicable JSC Nenskra standards, policies and

1 https://www.oecdwatch.org/cases/Case_459

2 <http://www.romaniajournal.ro/motorways-company-files-criminal-complaint-against-italian-company-impregilo-for-the-closed-and-demolished-lot-of-the-sibiu-orastie-highway/>

3 Review of Nenskra HEP ESIA Study To Ministry of Environment and Natural Resources of Georgia 13 May 2015, Prof. Dr. Frank Schrader International Consultant on Hydropower ESIA

procedures and other industry guidelines which JSC “Nenskra Hydro” has committed to comply with.”

However, under the applicable JSC Nenskra Hydro standards, policy and procedures and other industry guidelines which the company has committed to comply with the only additional commitment undertaking is to develop a community investment strategy (CIS) based on the IFC’s “Strategic Community Investment – A Good Practice Handbook for Community Investment”.

JSC Nenskra Hydro also claims “this CIS seeks to support the broad community relations objectives of JSC Nenskra Hydro – in line with the broad requirements of the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), the European Investment Bank (EIB), the Korean Development Bank (KDB) and SACE (Italian Credit Agency) to avoid, minimise and mitigate Project-related impacts”.

1. Key problems of the Project not addressed by ESIA supplementary package

1.1 Confidentiality of the Contract between the government of Georgia and JSC Nenskra Hydro

Confidentiality of the contract regarding the Nenskra hydro project is one of the most concerning issues. Despite the fact that supplementary study reveals some previously undisclosed information, the majority of questions such as the information on purchasing price of electricity, distribution of roles between the Government and the company and obligations of each party still remain unanswered. Without full disclosure of the information it is impossible to verify the need for the project nor to assess the benefits the state expects to receive from the project and whether the benefits outweigh the losses such as impacts on biodiversity, subsistence agriculture, ecotourism potential, etc. The confidentiality of the contract not only violates the main principle of the Energy Community but it also complicates transformation of the energy sector of Georgia.

It should be stressed that National Regulatory Agency (NRA) is not part of the contract. The contract was exclusively defined by the Ministry of Energy and Partnership Fund together with K-water without the involvement of NRA. As a result the government took an obligation to construct all the project related associated facilities including the Transmission lines (35, 110 and 220 KV), access roads, substation. The government already transferred around 200 ha of customary used land to the company under the right to build for the cost of 1 USD. Georgia signed the Association Agreement with

European Union in 2014. In the energy sector, Georgia undertakes commitment to become part of European Energy Community Treaty that was signed by Georgia in October 2016. According to the Energy Community rules “the Third Package do not in principle limit the government in establishing its national energy policy within which the NRA must operate, e.g. concerning security of supply, renewables or energy efficiency targets. This, however, shall not result in interventions in the NRA’s autonomy. While, e.g., a general policy commitment towards the support of renewable energy sources would be uncritical, **the definition of a specific support level must be seen critical in case setting of support fees is a competence of the NRA**”.

In case of the Nenskra dam “a specific support level” has been defined solely by the Ministry of Energy and Partnership Fund, with full omission of NRA.

The obligations taken by state parties regarding Nenskra include construction of associated facilities (TLs, substation and access roads), guaranteed power purchase agreement on generated electricity, transfer of the land plots and forest lands to the company’s property. Therefore it puts the project into the preferential position over other Georgian electricity producers, including the state-owned Enguri dam and excludes any possibility to involve the company in the competitive energy market planned to be created in Georgia on the long run.

The Nenskra power purchase agreement signed by the state and the investor is based on the ‘take or pay’ model that guarantees purchase of 1.196 GWh (12% of the total generation capacity of Georgia) no matter whether the state needs it or not while cheaper electricity generated by the already existing HPPs including Enguri HPP (price – USD 0.005) will be put on hold representing not only market distortion but also it is contradictory to public interests.

1.2 Environmental Flow

The issue related to the “ecological flow” and its impacts is scattered throughout the ESIA supplementary package, namely Volumes 2, 3, 4, 5 and 8. However, the document does not provide information about the methodology that has been used to determine the flow rate itself. According to the ESIA mandatory ecological flows were determined as part of the 2015 EIA but the EIA does not provide methodology used to determine the flow rate either.

Despite the abovementioned claims the “ecological flow” rate in Nenskra river even decreased from 0.9 m³/s defined in 2015 EIA to 0.85 m³/s presented in the ESIA supplementary studies without providing any justification for the change. According to

the document in the Nakra river it is projected to leave 12.9% (1.2 m³/s) of Average Annual Flow (AAF) of the river (9.3 m³/s) while in Nenskra river mandatory ecological flow is defined on 5.05% (0.85 m³/s) of AAF of Nenskra river (16.8 m³/s). This even contradicts the existing problematic practice of Georgia regarding ecological flow rates set at 10% of AAF.

It should be noted that information provided either in the ESIA supplementary documents or the ESIA (2015) regarding the flow is not sufficient and fails to address project related environmental and social impacts, such as the impact on river ecosystems, microclimate and health. The supplementary package claims that environmental and social impacts of the flow left downstream will be nonsignificant as the document proposes monitoring and adaptive management in order to avoid drastic impacts. The ESIA states that in case of need the company can use certain measures like “larger flow release if required for aquatic biodiversity reasons” and “the decision to take this action will be supported by an ecological / hydrological / water quality monitoring programme and clear thresholds (that can be monitored by that programme) for triggering adaptive management”⁴ while timings and thresholds for implementing measures will be defined in future.

Impacts of the flow on fish and invertebrate will be defined based on monitoring process as well like in case of other aspects (e.g. sediment transportation). It states that “Monitoring will be undertaken, pre, during and post construction as set out in the Environmental Monitoring section of this document. The monitoring will also include quantifying the use of the Nakra weir fish pass, gaining further information of the movement of the fish throughout the Nenskra and Nakra watersheds and their use of spawning areas as the river hydrology changes. Invertebrate surveys will be used to inform the health of the river system. The information gathered will also be used to inform the management of the fish habitat on the Nenskra river (creation of spawning areas) as well as the need for remedial measures on the Nakra (keeping the river navigable to fish).”⁵ It should be noted that such approach is violation not only of the Georgian legislation but also EBRD’s Environmental and Social Policy. The compliance review reports issued by the EBRD Project Compliance Mechanism (PCM) in the case of Paravani and Dariali HPPs reached the similar conclusions.

According to the conclusion of the PCM on Paravani HPP project “percentage of average annual flow (AAF) should be validated through calibration against local conditions established through an appropriate baseline assessment of the River ecology, morphology and flow rates in advance of the EBRD investment decision”. In Dariali

⁴ Volume 8; “5.1.4 Management Actions during the Operation phase”;

⁵ Volume 8; “5.9.1 Wildlife conservation”;

case, the PCM states that before approving the project, up to date data regarding the river flow has been available. It is a violation of PR 1 under the EBRD's environmental and social policy.⁶

In addition, it is notable that the Government of Georgia decided to establish national methodology and stepwise procedures for environmental flows and to support the Water Framework Directive (WFD) obligation taken by the Association Agreement with EU in 2014. For this purpose adjusted methodology for defining the environmental flow and guidance was prepared by international experts with the support of the USAID at the beginning of 2017. It is based on the best international practice. It should be noted that representatives of the Ministry of Environment and Natural Resources Protection and a number of consultants including Gamma consulting (the author of the 2015 ESIA) also participated in the practical trainings on application of the methodology.

According to the guidance document 14 concrete steps were set that need to be taken in order to define environmental flow. These steps are: (1) Scoping and initiation of Environmental Flow Assessment (EFA); (2) Appointment of EFA team; (3) Delineation of study area and selection of EFA sites; (4) Desktop and field hydrological, morphological, ecological and social analyses and surveys; (5) Definition of reference conditions; (6) Identification of river type(s); (7) Classification of present status of each site; (8) Setting of environmental flow objectives; (9) Hydrological characterisation of each site; (10) Determination of the survival flow; (11) Determination of ecologically and socially relevant low flow periods; (12) Determination of ecologically and socially relevant high flow events; (13) Completion of the Environmental Flow Requirement schedule; (14) Monitoring and reporting.

While the methodology has not been approved yet it is highly important to conduct additional studies of the rivers and determine proper environmental flow rates based on the up to date data before starting the construction. Otherwise it will be violation of not only of the local legislation but also the Environmental and Social Policy of the EBRD like in the case of Paravani and Dariali HPPs.

1.2.1 Environmental flow and microclimate

One of the shortcomings of the supplementary package is related to the lack of assessment of microclimate change in the Chuberi and Nakra communities as a result

⁶ "The Bank did not comply with PR 1.5 because the ESIA did not include up-to-date data regarding river flow" page 35 of Dariali compliance review report: <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html>

of reduced “ecological flow”. The project assesses only impacts on microclimate resulting from the Nenskra reservoir but it does not assess the role of these rivers in forming climate in the villages. Both communities are located along the rivers and these rivers play significant role in airing and conditioning of the valleys throughout the year.

In case the river flow decreases on the level proposed by the project locals fear that living conditions in these communities will be significantly deteriorated especially during the summer when the temperature increases significantly. Such impacts were not assessed at all neither in 2015 ESIA nor in supplementary documents.

It is notable that 2015 ESIA⁷ also recognised significant changes in these valleys from the microclimate point of view stating that “its [reservoir’s] effects on the climate will be substantial in spring, when the ice starts melting and breaking, and in late autumn, before ice phenomena begin. Sharp difference between water and air temperatures and strong wind will intensify evaporation. Evaporated moisture will cover buildings and fruit trees in a form of hoar frost and damage them. The damage caused by early frosts is graver as it will damage buds and sprouts, and ultimately result in premature aging, fruitlessness and dying of plants. For the people, that experience from rheumatism and/or need treatment respiratory or cardiovascular diseases the health condition will further aggravate.”

This assessment is absent from the supplementary documents. Contrary to the 2015 ESIA findings, the supplementary document states that “the impacts on micro-climate that could result from the impounding of the Nenskra reservoir are expected to affect the immediate areas around the reservoir and could possibly be detected at Tita but probably no further down the valley. The possible effects could be slightly increased humidity and slightly lower temperatures in the summer months and slightly warmer temperatures in the autumn months” without providing information what is assumed in slightly increased humidity, slightly lower and slightly warmer temperatures. Therefore the conclusion that “ it is probable that any changes to the micro-climate will be negligible compared to the effects of climate change on a regional scale” is absolutely inappropriate and unfounded.

⁷ subchapter 6.15.3.2 “Possible Cumulative Effects of Reservoirs on Different Climate Scales”

2. Project Need and Alternatives

2.1 Need of the project and the project alternatives

Taking into account the confidentiality of the contract between the government and the project sponsor, it should not be surprising that disclosed supplementary studies lacks proper assessments of the needs for the project as well as properly analysis of project alternatives.

Supplementary package contains certain chapters in order to justify project need such as: “1.3 need and rationale” of the volume 2, and chapter 3 “positive impacts and benefit sharing” in the volume 3 which on its hand contains subchapters: “3.1 National electricity production”; “3.2 Employment opportunities and supply chain”; “3.3 Upgrading of main roads”; “3.4 Tax; 3.5 Community investment programme”. However, the information provided in these chapters is neither sufficient nor it is detailed enough to justify the need of the project. In addition, the ESIA documents lack the societal cost-benefit analysis that would demonstrate how the country will benefit from the project.

Volume 2, Chapter 1.3 “Need and rationale”

The supplementary study states that the project is “part of the larger plans to increase the country power generation capacity while reducing the dependency from (i) fossil fuel-fired power plants and from (ii) imported power from neighbouring countries (mostly from Russia, Turkey and Azerbaijan)” following by description of existing power system. It is characterized “by a low demand and high generation in summer, and high demand and low generation in winter”. Thus “the Project is to guarantee energy during the winter season to meet higher domestic demand and promote exports by Electricity Market Operator (EMO, former ESCO) during the summer season”.

It is unclear what is meant by the authors under “the larger plans” as no reference to the plans is provided . In fact, the country still misses National Energy Strategy⁸ that would be based on energy needs assessment and it does not have clear targets or directions of how the hydropower development decreases energy dependence and fit together with renewable energy and energy savings alternatives.

⁸ While the Ministry of Energy disclosed “Energy Development Strategy” in 2016, it can not be counted as proper document substantiating any project as it is focused only on electricity, not based on energy needs assessment and lacks measurable strategy goals. See below:

<http://www.energy.gov.ge/projects/pdf/news/Sakartvelos%20Energetikis%20Ganvitarebis%20Strategia%2020162025%20Samushao%20Dokumentielektroenergetikis%20Natsili%201642%20geo.pdf>

In 2013 the Netherlands Commission for Environmental Assessment (NCEA⁹) received a request by the Ministry of Environment of Georgia to review the ESIA report of the planned Khudoni HPP project and drew recommendations. NCEA made assessment based on international best practices for hydropower projects, including EU legislation and guidelines from the World Bank and the International Finance Corporation (IFC). In May 2013, the Commission came up with a final report¹⁰ underlining number of recommendations related both to the project, as well as addressing the general deficiencies of development of large hydropower projects in Georgia:

- *“A national policy on energy, preferably supported by a strategic environmental assessment (SEA), typically providing an overview of present and expected future social and economic development, resulting development in energy demand, an inventory of power generation potential of the country, alternative options to meet the future energy demand based on different sources of energy (fuel mix), the desired level of self-sufficiency etc.” and*
- *“An integrated water resources (or river basin) management plan for the Enguri River, also supported by an SEA, describing the available water resources, its present users and uses, its development potential based on, for example, an ecosystem services assessment, and identification of sites of unique natural or cultural heritage in need of protection”.*

The report concludes that *“Due to the absence of such policies or plans (and related SEAs) a proper justification of the project is not possible”.*

The same recommendations were made in the updated advisory report by the Dutch sustainability unit on June 1, 2017 stating that “based on an analysis of the need for additional energy/water/food supply, system-based studies are done on a mix of options. Large dams are one of those options, based on assessments of the social and environmental consequences and the governance context”.¹¹

The Supplementary package does not provide any information about the terms and price of the electricity that Electricity Market Operator (EMO, former ESCO) has to purchase from the facility. Without such data assessing increased power generation capacity as unambiguously the largest positive impact and the main factor for reducing

⁹ www.eia.nl

¹⁰ http://api.commissiener.nl/docs/os/i05/i0501/20-06-2013_final_advice.pdf

¹¹ Better Decision-Making about Large Dams with a View to Sustainable Development, Dutch Sustainability Unit, NCEA; http://api.commissiener.nl/docs/os/i71/i7199/7199_revised_advice_on_better_decision-making_about_large_dams_1june2017.pdf

energy shortage during winter times is misleading neither it does justify the need of the project.

The document claims that the project will promote energy exports during the summer season. It raises a number of questions. First of all, if the project assumes export possibilities of the generated electricity to Turkey what is the rationale behind handing the responsibility to export electricity to Electricity Market Operator (EMO) instead of to the company?

Additionally, the price of electricity is confidential by the contract. Taking into account the high construction costs (USD 4 mln per 1 MW, more than proposed Khudoni HPP construction price – USD 1.7 mln per 1 MW) it can be assumed that in order to ensure feasibility of the project EMO will be obliged to purchase electricity with high price¹² from Nenskra. This will happen in the context of the significant decrease in the electricity price in neighboring Turkey. According to the Galt and Tagart report on Electricity Market Watch¹³, the Turkish market clearing price is volatile. This has led to a reduction in the number of companies ready to export electricity from Georgia to Turkey. Even in June 2017 the price on electricity in Turkey decreased further to USc 4.1/kWh which is already less than price in Georgia (USc 4.7/kWh). Thus it is unclear what benefits EMO and the state will earn by exporting the electricity produced by Nenskra to Turkey and why the project is promoted as a big contribution to Georgian economy.¹⁴

Volume 3. Chapter 3.1 National electricity production

The text in chapter 3.1 is copied fully from chapter 1.3 (see above). In addition, it contains a paragraph that claims that the project will contribute to Georgia's economic development through other means of leverage: improvement of "scoring by international notation organisations" such as "Doing Business" and "World Investment Index". The explanation how the Nenskra investment will improve the scoring and how the scoring relates to business regulation is not provided. World Bank's Doing Business Methodology indicators presented and analyzed in *Doing Business* measure business regulation and the protection of property rights—and their effect on businesses, especially small and medium-size domestic firms.¹⁵ Therefore, it is not clear how the investments in the Nenskra HPP will impact the scoring proposed to assess the business environment.

12 Guaranteed power purchase agreement on Khudoni is USc 10.5 per kWh

13 <http://galtandtaggart.com/dw/downloadReport.php?fl=503>

14 <http://dektmk.org.tr/upresimler/turkish-energy-market-outlook.pdf>

15 <http://www.doingbusiness.org/Methodology/Methodology-Note>

Volume 3. Chapter 3.2 Employment opportunities and supply chain

According to the ESIA the “construction phase employment is expected to peak at 1,100 workers over the 5 years period. Construction activities may take place 24 hours a day, seven days a week which will require two or three shifts during peak periods. Of the job opportunities, 25% will be for unskilled workers with fewer skilled technical and managerial roles. A key social effect will be the provision of an income source for workers and their families contributing to their wellbeing and enhancing their quality of life”. The study however fails to provide details related to average salaries, positions, terms and timelines of employment.

Moreover, project assumes trainings of locals in order to increase their skills needed for the positions. The company plans to start construction works in September 2017, however it is not clear when the trainings will be organized nor what the topics would be.

The ESIA 2015 report approved by the Georgian government highlights that:

- “Noteworthy that there is certain risks of negative impacts in connection with employment, in particular: employment expectations and discontent of local population;
- Recruitment policy will be developed and published at a local, municipal and regional levels;
- Recruitment will be carried out through relevant testing.”

The experience from other projects demonstrates that the local population gets low-paid jobs. Also the access to the jobs is marred with difficulties (for example, in the case of the Paravani HPP, ordinary workers were required to know English and to have university diplomas). Taking into account that it is unclear when the recruitment policy will be developed or what kind of testing the company plans to hold, aim of the company to recruit at minimum 80% of Georgian citizens is exaggerated. e.g during the construction works in Shuakhevi HPP or BTC /SGC pipelines, working period of many locals were not exceeding 3 months after which the company was firing them and hiring their neighbors.

Volume 3. Chapter 3.3 Upgrading main roads

The supplementary package considers the upgrade of the main roads in valleys as one of the main benefits of the project. ESIA claims, that “overall, about 20 km of public road in the Nenskra valley, and about 9 km of public road in the Nakra valley, will be

upgraded during the construction period” and “the conditions of the road network within the two valleys will be significantly improved as a result of the Project activities. It should be noted that according to the procurement statement of the Mestia Municipality rehabilitation of the Chuberi and Nakra roads have been financed by the local budget including ongoing Khaishi–Sagergili–Chuberi road rehabilitation¹⁶[1]. Therefore it is unclear if the part of the main roads important for the local population of Nakra and Chuberi (From highway to villages) will be upgraded by state funding why upgrading of the rest of the roads (From village to Dam sites) needed for the project is considered as project benefits.

Volume 3. Chapter 3.4 Tax

The tax code of Georgia¹⁷ defines two types of taxes: state and local. The state taxes includes income tax, profit tax, value Added Tax (VAT), Excise Tax, and Tax on Import accumulating in state budget; Meanwhile the Property and land Tax is represented as local tax accumulated in local municipality budgets. each municipality defines it individually based on land price.

Information provided in this chapter is confusing. According to the ESIA document “the Project will be required to pay a yearly Property Tax to the Mestia Municipality based on 1% of the value of their assets. The Nenskra HPP will further be required to pay a Land tax in proportion of the land used for construction purpose and of land used permanently for the operation phase”.

Surprisingly, document states nothing about other taxes, paid by businesses, including hydro power plants. Therefore questions whether the company was excluded from these taxes through the contract and if yes, why, becomes relevant.

2.2 . Lacking broader costs and benefit analysis for Georgia

One of the key shortcomings of the Supplementary package is lack of societal cost–benefit analysis of the project for the country.

The NCEA report on Khudoni Hydro power plant from 2013, based the project scale and “its expected social, economic and environmental impacts, in addition, a financial analysis of the project’s profitability to the investor, a supplementary extended social cost–benefit analysis is typically recommended in order to get insight into the costs and benefits of the project for Georgia. Such an analysis should answer the following

¹⁶ http://contest.procurement.gov.ge/files/c_690648_1222.pdf

¹⁷ http://www.rs.ge/common/get_doc.aspx?doc_id=10174

questions: · Is the project beneficial to the country as a whole? By how much? · Who benefits and who loses? By how much? · How will those who lose (land, property, livelihood, cultural heritage) be compensated? By how much? · How will the benefits be shared? · Is this the most inexpensive way to generate additional energy capacity in Georgia". Taking into account the fact, that Nenskra hydro project related costs and impacts are comparable with Khudoni project, the same instrument should be used.

Recently disclosed "Memorandum of Economic and Financial Policies (MEFP)"¹⁸ between Government of Georgia and International Monetary Fund, recommends to use the cost benefit analysis and Value for Money (VfM) analysis in the energy projects approval process. It should be one of the main instruments used by the Ministry of Finance during the PPP schemes and Power Purchase Agreements (PPAs) in order to minimize the costs and maximize the benefits from the PPPs¹⁹.

Taking into consideration the scale and ownership structure (20% owned by the state company) of the Nenskra HPP, also its negative environmental and social impacts, preparation of the broader cost-benefit analysis for the country is highly important.

It should be underlined that cost benefit analysis is one of the requirements of Asian Development Bank²⁰ "with an aim to supporting ADB's strategic priorities" as "promoting rigorous economic analysis helps ensure that ADB finances projects and programs that are not only economically viable, but also represent the most efficient use of scarce resources". The guideline indicates that "the starting point for project economic analysis (or cost-benefit analysis [CBA]) is that a financial perspective alone will not capture the gains to society at large and that a quantitative assessment of economic costs and benefits is necessary. Thus CBA has to be "an analytical framework for converting the costs and benefits of a project to comparable monetary units, so they can be compared systematically and incorporated in a measure of project worth²¹." therefore, without given study justification and need of the project can not be verified.

18 <https://www.imf.org/en/Publications/CR/Issues/2017/04/13/Georgia-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Cancellation-44834> Amendment 1 "Memorandum of Economic and Financial Policies (MEFP)";

19 Paragraph 13 of the memorandum "Adopt a new PPP law and associated regulations"; Page 56; <https://www.imf.org/en/Publications/CR/Issues/2017/04/13/Georgia-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Cancellation-44834>

20 <https://www.adb.org/sites/default/files/institutional-document/33788/files/cost-benefit-analysis-development.pdf>

21 <https://www.adb.org/sites/default/files/institutional-document/33788/files/cost-benefit-analysis-development.pdf>

2.3. Project costs and overrun

The special attention should be paid to the total project costs and RoI (Return on Investment). International Financial Corporation in 2015 estimates that, the project cost fluctuates within USD 650–750 million²² State Partnership fund in 2015 claims that it would cost up to USD 1 billion. Recently disclosed Project summary document of the AIIB^[1] estimates the cost of the project to USD 1.035 mln.

It is notable that investment costs not include construction of key associated facilities of the Nenskra HPP. According to the Chapter 3.9 “Associated facilities: grid connection and power transmission” (Volume 2) of the supplementary package, “The 220 Transmission Line and the required Khudoni substation, as well as any access roads or borrow areas required for construction or operation”, Georgian State Electrosystem (GSE) will design, construct, install, commission, own, operate and maintain them. Thus the project is fully subsidized by the State contradicting principles of the energy community. Policy guidelines directly determines that specific supporting level has to be developed by the National Regulator Agency (NRA) and not by the Government.

Taking into account the obligations taken in the contract by the state, Georgian State Electrosystem (GSE) most probably will take additional loan from the international financial institutions to arrange number of transmission lines (35 KV, 110 KV and 220 KV), substation and access roads without any additional benefits. Therefore the project can be considered rather additional burden for the country than project of strategic importance²³.

It is notable that according to the supplementary document “At the time of writing, the TL route and the location of the tie-in point have not been defined. The tie-in point will probably be the Khudoni HPP substation. However, the position of the switchyard – and options under consideration – are not currently available” that means that project appraisal not takes into account (iii) the facilities and activities associated with the project. It represents violation of the environmental and social policy of the EBRD²⁴.

EBRD’s “E&S Eligibility Criteria for Hydropower Projects” states that “, the term “Project” refers to the hydropower project considered for financing, including all of its associated facilities as defined by EBRD 2014 Environmental and Social Policy. This

22 Letter from the country officer of the IFC dated July 15, 2015: “The total estimated project cost ranges from approximately \$650 million to \$750 million, depending on exchange rates, inflation, financing costs, the duration of the construction program, and contingencies, etc.”

23 According the the International experts Panel, EBRD will finance the loan to GSE. (see below)

24 Environmental and Social policy of the EBRD; Paragraph 30;

includes typically, but not limited to, access roads, temporary sites, borrow and spoil areas, and the connection to the grid”²⁵.

In order to assess the economic viability of the project and conduct proper cost benefit analysis (CBA) it's important to reveal all project related costs, rather to use the salami tactics in order to decrease its costs to gain the support.

The ESIA does not contains any potential scheme how the project will deal with costs overrun. Meanwhile, already in 2000 World Commission on Dam's stressed the issue of the cost overruns and its impacts both on projects and country's energy systems²⁶.

The 2013 Oxford University study regarding the actual costs of Hydropower Megaprojects²⁷ finds out that “the construction costs of large dams are on average +90% higher than their budgets at the time of approval, in real terms. This result is before accounting for negative impacts on human society and environment, and without including the effects of inflation and debt servicing; including these items, costs and cost overruns are much higher”. The study based on analysis of all large dams which were built between 1934 and 2007 (245 projects in 65 countries) showing that constructing of the Large dams can increase fiscal risks for the country and pose threats to sustainability of the country.

The issue regarding the project costs overrun and information about obligations and responsibilities of the contract parties neither provided in the ESIA nor mentioned during the public hearings. Therefore it is not clear in case of exceeding costs who will be responsible for the loan as well as what obligations are determined in the contract for the parties.

2.4 Fiscal risks

PPPs and guaranteed Power Purchase Agreement (PPA) represents the issue of concerns, as it has potential to expose the negative impact on either state budget or economy of the country, or both.. According to the ESIA ESCO is obliged to purchase 1.96 bln KWh electricity generated by the Nenskra HPP annually, does not matter do the system needs it or not.

²⁵ <http://bit.ly/2sHCjzv>

²⁶ Title: Should we build more large dams? The actual costs of hydropower megaproject development, <https://arxiv.org/ftp/arxiv/papers/1409/1409.0002.pdf>

²⁷ IBID

During the public consultation meeting the deputy director of the Partnership fund indicated that the price of the electricity that will be purchased from the Nenskra HPP will not exceed current price of the thermal power plants.

According to the electricity market operator (EMO) average weighted price of balancing electricity in 2017 is 11.9 Tetri (USc 4.9). Therefore, it should be assumed that price of the electricity defined in the contract is not exceeding USc 5. Taking into account the total investment costs of the Nenskra (Around USD 4 mln per MW), USc 5 can not ensure RoI on the project even theoretically.

E.g. the total income of the project, 20 years of operation, in case of price USc 5 (not including expenses such as taxes, salaries, expenses and interest rates on loans) would not exceed USD 1.2 bln (1.2 bln KW.h*USc 5*20 years). Therefore, it is clear that USc 5 per 1 KWh not ensure acceptable RoI.

Even if the average annual interest rate of loans will be 5% during 20 years from the International Financial Institutions the company has to pay additionally more than USD 1 bln as interest for the loan taken. Therefore, in order to ensure RoI on the investment the price of the electricity has to be more than USc 10 per 1 KW/h. It is notable that apart from loan and interest the plant will have other expenses as well such as salaries, taxes and technical services that needs to be covered. Thus guaranteed Power Purchase Agreement (PPA) poses serious fiscal risks for stability of the country.

It should be noted that same risks have been identified by the International Monetary Fund as well. According to the recently disclosed "Memorandum of Economic and Financial Policies (MEFP)" signed between Government of Georgia and IMF.²⁸

Under the agreement Government of Georgia recognizes that power purchase agreements (PPAs) in energy sector contains fiscal risks associated with the State Owned Enterprises (SOEs) and Public Private Partnerships (PPPs). In order to minimize the risks and maximize benefits from the PPPs and Power Purchase Agreements (PPAs) the government committed to adopt a new PPP law complied with the best international practices. Namely, the law will include sound elements following best international practice: "(i) a wide institutional and sectoral coverage of PPPs (including PPAs in the energy sector) and a clear definition focused on optimal risk sharing; (ii) a strong integration of PPP projects with the overall investment strategy and budget cycle; (iii) a strong role for the MoF in the approval process (using cost-benefit and

²⁸ <https://www.imf.org/en/Publications/CR/Issues/2017/04/13/Georgia-Request-for-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-Cancellation-44834>

VfM analysis), checking budget affordability, and assessing fiscal risks (Fiscal Risk Management Unit)); (iv) transparent and competitive procurement processes (e.g. prohibiting direct agreements); and (v) providing for transparent reporting, accounting, and auditing of all PPP arrangements, including a ceiling on government exposure from such partnerships.”

It is clear that Nenskra project contradicts recommendations of the IMF and obligations taken by the Government. Moreover, the role of the MoF in decision making or assessing project related fiscal risks is fully ignored.

2. 5 Analysis of Alternatives

The supplementary package confirms that project was chosen on the basis of the political decision and not on formal sectoral or regional environmental assessments; it claims, that “the selection of alternatives at strategic level by the Government of Georgia was not based on (i) a Sectoral Environmental Assessment to distinguish among alternative strategies and investment programs within the power sector, or (ii) a Regional Environmental Assessment to compare alternative development scenarios.”

Therefore, both technical as well as optional alternatives provided in the ESIA have formal character, just to tick boxes under the requirements of IFIs safeguard policies. The ESIA also underlines that during the earlier stages of project preparation environmental and social aspects were taken into consideration by the Engineering Team while selecting the dam location, type and height documented into two technical documents that are confidential²⁹.

However, the PR1 of the EBRD requires that “the ESIA will include an **examination of technically and financially feasible alternatives** to the source of such impacts, including the non-project alternative, and document the rationale for selecting the particular course of action proposed. It will also identify potential improvement opportunities and recommend any measures needed to avoid, or where avoidance is not possible, minimize and mitigate adverse impacts”. The document not only not provides “an examination of technically and financially feasible alternatives to the source of such impacts” but not assessing non-project alternative at all.

According to the authors, renewable energy sources, such as solar and wind energy, do not represent realistic alternatives of the proposed Nenskra and therefore its consideration is deemed unnecessary. Document claims that “Most of all, using wind

²⁹ 1. Preliminary Feasibility Study prepared in 2010 by Stucky for Engurhesi Ltd; and 2. Feasibility Study – Phase 1, prepared in 2011 by Stucky for Georgian Railway Construction).

farm would not guarantee a continuous and minimum production during the winter months as planned with the Nenskra HPP; forecast of production of wind farms is difficult due to complexity of wind forecast”;

While in case of solar authors claim “However, solar power would face the same constraint of lack of reliable power production during the winter months as with wind power. Solar energy could not be an alternative to the Nenskra HPP without other forms of energy storage (e.g. hydro-cumulative power plants) to compensate the absence of power generation during the night or during cloudy days”. Strangely document not mentions new storage batteries that currently are spreading on the market with ability to store electricity and compensate absence of power.

The report does not consider possibility of development of individual solar micro-stations capable to connect to the grid, that is widely accepted practice in Germany and other European countries or Energy efficiency and/or rehabilitation of existing HPPs and etc.. There are numerous alternatives fully ignored in the document representing violation of the PR1 of the EBRD.

3. Overview of the project and overall social impact assessment scope

According to SIA the purpose of the SIA is to “identify potential impacts on the local communities so that any adverse negative consequences can be avoided, minimised or mitigated and positive impacts enhanced.” However, the “SIA is based on the current Project’s status described in the report Vol.2 – Project Definition”. However, it’s clear that “Despite the fact the transmission lines are recognised to be an associated facility to the Nenskra dam, they are not included within the scope of the SIA nor in the Land Acquisition Plan.(1.1.4 Associated facilities) The lines are located inside project’s area of influence and will pose additional impacts. The cumulative social risks of both the dam and the powerline ought to be identified within the Nenskra project ESIA. The international donors should follow the best practice put forward by the World Bank’s IFC whose Performance standards require that “Where the project involves specifically identified physical elements, aspects, and facilities that are likely to generate impacts, environmental and social risks and impacts will be identified in the context of the project’s area of influence.

That actually means that the project social impact assessment neither on communities nor terms of land impact and involuntary resettlement is not well grounded or sufficient.

The project plans to use in total 861 ha of the land, 407 ha for permanent facilities and 454 ha for temporary facilities. For those purposes, it finds out that the land intake impacts would be limited, as “there will not be any physical displacement caused by the Project. A total of 80 households will be affected by loss of land, non-residential structures, trees and annual crops, out of which 28 are vulnerable, including 9 woman headed households. In total, affected households will lose 36 ha of land, 14 wooden cabins, fences, 1180 trees, 0.1 ha of maize and 0.1 ha of potatoes. 3 pasture areas will be also affected, namely, *Kvemo Memuli* and *Mashritchala* at the Nenskra dam and reservoir site, and *Lagiri* at the Nakra water intake site.”

However, 80 households is not a final number. First of all, it does not include the households that would be impacted during the construction of associated facilities as 35 kV supply line, the 110 kV transmission line and the Nakra road widening. According to the ESIA “The land acquisition is expected to be in the order of 90 hectares, but the alignment of the transmission line and supply lines will be defined later and the Nakra road widening works have not been defined, and so the number of affected households and type of land affected will be defined at a later stage and an updated LALRP covering these areas will be prepared prior to any land take.”

In addition, ESIA totally ignores the number of the households that would be impacted by construction of the 220 kv Transmission line “to evacuate the electricity produced by the Nenskra scheme is an associated facility that GSE will design, construct, install, commission, own, operate and maintain. The land requirements for the 220 kV TL are therefore not included in this assessment”. Therefore, it’s almost not possible to assess the overall impact of the project on the land ownership in the area.

It should be stressed, that International Panel of Experts for Nenskra, also stress that “The overhead transmission line from the Nenskra switchyard to the Khudoni sub-station is yet to be addressed (a route was not available at the time the LALRP was prepared): while the planning and construction of this associated facility is under Georgian State Electrosystem (GSE) responsibility, the IPOE understands that the EBRD recently launched on behalf of GSE a call for tenders in regards of an ESIA and Resettlement Framework that covers this facility. It is essential that land impacts for this facility are addressed in conformance with compensation policies developed for the Nenskra project (and more generally with lenders policies). JSC Nenskra Hydro may have limited leverage to ensure it in this case. However, the IPOE recommends that EBRD, which is understood to seek involvement in the transmission line component, should ensure consistency (and compliance with its own resettlement and land acquisition standard).”

The attempt of salami slicing of the project is clear. Therefore, it's not complies the Directive 2011/92/EU.³⁰ According to EU, Salami slicing refers to the practice of splitting an initial project into a number of separate projects, which individually do not exceed the threshold set or do not have significant effects on a case-by-case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects.³¹

In Nenskra case, the environmental and social impact of 220 Kv transmission line would be significant, taking into account the geological factors and landscape in Nenskra gorge, as well as density of the people in the area. Therefore, present SIA by JSC Nenskra Hydro does not assess adequately the impacts of associated facilities.

The EIB's environmental and social practices handbook stressed "For all other countries, operations supported by the EIB are expected to follow the relevant EU environmental and social principles, standards and practices, taking into account such aspects such as affordability, local environmental considerations, and international best practice and with reference to such factors as the costs of application. Where there are gaps between national and EIB E&S standards and requirements, **the EIB E&S standards will bridge these gaps.**"

4. Socio- Economic Baseline information and Its quality

According to the the ESIA 85 households with 300 permanent residents live in the village of Naki. These numbers differ significantly from the Mestia Municipality records. In 2016 the Municipality recorded 120 households with 396 inhabitants in Naki. There is a risk of underestimating social impacts with the use of the wrong demographic data.

4.1 Baseline data collection

Forestry and access to energy resources

Due to the timing of the baseline data collection (september 2015), the SIA underestimates the economic dependency of the affected communities on logging. The impacts that the new licensing system will have on people's livelihoods have not been analysed properly despite these are expected to inflict negatively on the economic well-being of the families.

30 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

31 See COM/2003/0334 final, <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:52003DC0334>].

Both for Chuberi and Nakra the forestry has been main source of the income for years. However, since September 2015 there were ban on forest products export from Svaneti. As the region, has only one entrance, the police and environmental inspectorate are well controlling the exit. Taking into account that logging used to be the key economic activity in the Nenskra and Nakra valleys it is to be expected that the new license system will bring fundamental changes in the local economy. Due to the lack of alternative economic activities the new system is likely to trigger impoverishment of multiple families.

In addition, people are highly dependent on forestry products for cooking and heating. Despite the fact that svaneti region receives free electricity as bonus of Enguri hydropower dam construction since late 70ties, the distribution network is in very poor condition and often damages during the winter times plus the electricity is not stable, that often creates problems for its use³².

In general, people attribute the ban on exporting of forestry products to governmental pressure to ensure agreement with Nenskra project from locals (Bankwatch/Green Alternative FFM , July 2016).

Additional and accurate mapping of the economic dependency on logging should be prepared as a part of the SIA to have a correct baseline data set. While sources speak of over 15 sawmills operating in Chuberi, our estimate is that the number of family businesses and individuals active in logging and wood processing is much higher. At least one family member in every second family we interviewed in Chuberi in June 2016 was engaged in forestry.

Pastures (2.3.3.2)

The SIA claims that some locals collect hay in the mountains only if the hay in the vicinity of the villages is not sufficient. According to Bankwatch survey in summer 2016, the quality of hay in the lower parts of the valleys is poor so dozens of families resort to using mountain meadows for hay collecting.

Tourism (2.3..11)

The ESIA underestimates the overall tourism potential of the area.

On whitewater sport potential

³² In 2014 local teachers complained about the computers that has been severely damaged by frequency change.

The SIA authors say that: “In the last four years (since 2012) only two tourists have been seen by locals white-water rafting or kayaking in the Nenskra valley. This is probably underestimated; in 2015, SLR observed twice some kayak activities in the Nenskra River downstream of the powerhouse. (Figure 1 in May 2015 Figure 2 in October 2015).”

As demonstrated by travel logs, blogs and other internet testimonies, there is an active interest inside the kayakers community in the Nenskra river. Some of the outdoor specialists have called the river “one of the most beautiful rivers of Svaneti region”³³.

On hiking potential

The ESIA claims that “in the Nakra valley, all informants declared that they have not seen any tourists in the valley for years”. This statement is inaccurate. During Bankwatch survey we collected data about a number of travellers visiting a place each year, mostly coming from Central and Eastern Europe. We were also informed of at least three individuals who make living by guiding tourists in the local mountains in Nakra alone.

Moreover, we are informed that the area is planned to be connected to the [Transcaucasian Trail](#), specifically to the [100 km section leading from west of Utviri pass to Mestia](#). The Transcaucasian Trail team has lauded the area for its “[spectacular raw natural beauty](#)” and claimed to make improvements on this “3–4 day hike through the lush #valleys and quaint villages of this very special region”, a [destination recommended by National Geographic](#).

The SIA indirectly mentions the tourist potential of Chuberi when mentioning that the visits of the village by the police officer from the Khaishi post are more frequent in the summer when tourists visit the area (section C.1 Nenskra valley (Chuberi))

4.2 Identification of Vulnerable Groups and impacts

33please see some just random google search links on this issues

- <http://www.whitewater.ru/wiki/index.php/%D0%9D%D0%B5%D0%BD%D1%81%D0%BA%D1%80%D0%B0;>
- [http://www.ticket2ride.ru/2011/09/blog-post_11.html;](http://www.ticket2ride.ru/2011/09/blog-post_11.html)
- [http://www.pyranha.com/blog/?p=16891;](http://www.pyranha.com/blog/?p=16891)
- [http://two-blades.com/destinations/trip-to-georgia/;](http://two-blades.com/destinations/trip-to-georgia/)
- [http://www.kayaksession.com/ridetheplanet-georgia-whitewater/;](http://www.kayaksession.com/ridetheplanet-georgia-whitewater/)
- [http://www.pyranha.com/blog/?p=4366;](http://www.pyranha.com/blog/?p=4366)
- [http://www.ridetheplanet.ru/gruziya-verhnyaya-svanetiya/;](http://www.ridetheplanet.ru/gruziya-verhnyaya-svanetiya/)
- <https://www.youtube.com/watch?v=gzW718fSkPs>

Identification of vulnerable groups affected by the project is not complete. The major criteria for vulnerability are economic (families living under poverty line) and women-headed families.

The project consider the following”households, as vulnerable:

- Registered as poor in the local social services;
- Women-headed households;
- Elder-headed households (≥ 70 years old) without any other bread-winner in the household;
- Households headed by disabled people.”

However, even in this particular case it address only 80 families in that would be affected directly impacted by the project, therefore considers that social impacts would not be that significant. It does not assess the impacts that would be encompass segments of population for which social consequences have been unaccounted for, such as women, the elderly and internally-displaced people, even not directly affected.

4. 3 Gender Impacts

The ESIA does contains gender disaggregated data and some analysis of gender relations, dynamics and inequalities in the project area. It identifies among directly impacted households, the ones headed by women as vulnerable. (compliance with PR1). It describes more in detail the impact on women that according to the project will be directly impacted, as part of vulnerable households.

The ESIA propose to increase benefits of project to women through introduction of the non-discrimination and equal opportunity policy, the women employment target and development of Equal opportunity Action Plan under the Community Investment Plan³⁴.

According to the Environmental and Social guidance note on hydropower projects “All potential gender-specific risks and opportunities associated with hydropower schemes development, modernisation or operation should also be clearly and systematically identified within the frame of their assessment”. From that point of view the ESIA supplementary package is still not complete. In case of identification of “other potential impacts on vulnerable groups,” regarding the women, ESIA stress its attention also on women, “notably in regards to employment opportunities”, but missed to recognize other impacts. E.g It does not analyses in depth all challenges that may rise in terms of gender impact assessment from workers influx and risks for health (see

³⁴ Community Investment Strategy, Annex 5

below). The project plans to hire 1,100 workers. even if 25% (275 workers) would be locals from Nakra and Chuberi, 825 non-local native workers influx for 3 years, in these small gorges would have sufficiently high impact on communities' life even if as the project promised that 75% of the all workers employed would be citizens of Georgia.

The specific health impacts of workers' influx on gender is considered in Community Safety Charter.

4.4 Internally Displaced People (IDPs)

The ESIA does not recognise internally displaced people (IDPs) residing in Chuberi and Naki as vulnerable groups with regards to the project's Impacts arguing that "they are Svan and have settled in the local communities, with whom they had kinship ties". This conclusion is arbitrary and not backed by reference to any internationally recognised standards. Contrary to this statement, we believe that IDP status needs to be taken into account as a vulnerability criterion due to the scale of the IDP population in the project area, the economic conditions of IDP families and the pronounced impacts of the project they are likely to feel.

The Mestia Municipality registers 171 IDPs in Chuberi and 46 in Nakra. In both villages the IDPs constitute nearly 15% of the residents. According to the national policy, an IDP receives a monthly allowance, free primary and secondary schooling, a plot of arable land and assistance with finding employment. Yet, not all of these welfare instruments are operationalized in Chuberi and Nakra. Due to the land scarcity in the mountain gorge, there is unavailability of extra plots to be given out to IDPs. Nor there are income earning opportunities that the IDPs could reach to. The state support in the area is hence limited to the monthly welfare and free education.

The interviews conducted by Bankwatch in June 2016 revealed that no livelihood programs are in place that would support the IDPs in Chuberi or Nakra to move to self-dependency. Overall, the economic status of IDPs is rather poor. The local IDPs rely on state allowances, other state benefits and on the support of the host families and relatives. As the IDPs grow old, the need of assistance and material support for medication is putting an increasing pressure on the family budget.

Alternative economic and employment opportunities should be explored as part of the livelihood restoration program of IDPs in the affected area. Alternative energy sources and eco-tourism are examples of unexplored areas identified by UNHCR's report on [Protection of Internally Displaced Persons in Georgia: A Gap Analysis](#).

4.5 Eco-migrants

The SIA does not reflect on the phenomenon of climate refugees in the Nenskra and Nakra villages despite the fact that both valleys are inhabited by people affected by natural disasters. Some of them had fled their homes and returned back to the place of origin because of unsustainable housing conditions, economic hardship and inability to adapt to a new place. In addition, several household in Nakra were identified by Bankwatch to live in houses endangered by natural risks and unsafe conditions. The eco-migrants we have interviewed lived under the poverty line. Climate refugees constitute a specific vulnerable population; the impacts on the eco-refugees should be assessed within the SIA.

5. Ethnicity, language and religion

5.1 *Inappropriate application of indigenous people's policy*

The ESIA states “Although Svans do possess, to a certain extent, some of the characteristics of “Indigenous Peoples”, overall the affected Svan communities do not fully meet the Lenders' definition of “Indigenous Peoples”, and therefore the Lenders “Indigenous Peoples” policies are not triggered.”

The project document claims that ‘The definition of Indigenous Peoples used in this SIA is quoted from EBRD’s Performance Requirement 7 ‘Indigenous Peoples’. Although slightly different in wording, policies used by other lenders involved in the Project (i.e. policies of the ADB, EIB and IFC) are similar in substance and spirit³⁵”

The facts and analysis brought by the authors of the ESIA is full of the mistakes and misleading, both in terms of interpreting of the IFI’s indigenous people’s policy, as well as poorly assessed history and development of Svans. That would also have far reaching heavy implications on Svans communities in case they would not be considered as indigenous (including issues as adequate land compensation, broad community support, cultural heritage and etc. all those issues will be stressed in relevant chapters).

5.2 *UN and Indigenous people*

First of all, the ESIA based its conclusion on EBRD’s performance standards on indigenous people, however, we find out that the arguments conflict with the UN approach on indigenous people’s that defines that “most fruitful approach is to identify, rather than define indigenous peoples. This is based on the fundamental

³⁵ Page 26 , footnote

criterion of self-identification as underlined in a number of human rights documents". It also stressed, that "The term "indigenous" has prevailed as a generic term for many years. In some countries, there may be preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, janajati. Occupational and geographical terms like hunter-gatherers, nomads, peasants, hill people, etc., also exist and for all practical purposes can be used interchangeably with "indigenous peoples³⁶".

EIB Environmental and Social handbook (2013) on indigenous people

According to the EIB's Environmental and Social handbook (2013) Volume 2, Rights and Interests of Vulnerable groups, Definition³⁷ claims "Indigenous peoples are defined as a distinct social and cultural group, **possessing some or all of the following characteristics in varying degrees:** a) Self-identification as indigenous; b) A shared experience of oppression or colonisation; c) Historical continuity within a given region prior to colonisation or annexation; d) Collective entitlement and/or attachment to ancestral lands, territories and natural resources in their habitats and use thereof; e) An indigenous language, often different from the national or regional language; f) Distinct social, economic and political systems; g) Activity in non-dominant sectors of society; h) Distinct languages, spiritual traditions, culture, beliefs and knowledge; Land/natural resources-dependent means of existence; primarily self-sufficient production; and j) A shared wish to maintain and develop a distinctive shared identity, spirituality as well as social economic, cultural and political institutions. In different countries indigenous peoples may for example be referred to as "ethnic minorities", "aboriginals", "hill tribes", "minority nationalities", and "tribal groups". Determining whether a particular group is considered indigenous peoples normally requires reference to the concerned country's own legislation. However, as indigenous people may sometimes not be recognised by their own national context, attention should be paid to evidence of self-identification as indigenous people, to the activity of indigenous people's representative organisations and institutions, to relevant international or regional intelligence, and to shared IFI knowledge and practice. Finally, the technical judgement of qualified social scientists should be sought. "

Furthermore, handbook stressed that "indigenous peoples are a specific case in terms of their history, their social and political organisation, their land-dependent livelihood strategies, their rights to self-determination and the need to safeguard both their collective and individual human rights. Where EIB operations encounter, affect or threaten the customary rights and interests of indigenous peoples, and where specific

³⁶ Who are Indigenous people http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

³⁷ page 65 ; http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

actions and outputs are required from promoters, particular attention to social due diligence is mandated. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)²⁴ is the guiding document of reference in this respect for the EIB.”

EBRD’s Indigenous People’s Performance standard

Itself EBRD’s PR 7 on indigenous people, was set by EBRD having in mind that “In practice, the PR is deemed relevant only in Russia as it has been assessed that no group in other EBRD countries of operations (COOs) is known to meet the five criteria set out in para. 10 of PR 7 (see Box 1).” Meanwhile the same guidance stressed that “The application of PR 7 outside of Russia may, however, need to be reviewed on a case by case basis if projects in other COOs were observed to impact upon groups that could potentially meet the five criteria of para. 10 of PR”. However, EBRD’s five criterias and requirements that should be fully met and substantially differs from the criterias of EIB (discussed above), ADB, IFC³⁸ and UN.

Therefore, claiming that “The definition of Indigenous Peoples used in this SIA is quoted from EBRD’s Performance Requirement 7 ‘Indigenous Peoples’. Although slightly different in wording, policies used by other lenders involved in the Project (i.e. policies of the ADB, EIB and IFC) are similar in substance and spirit” is irrelevant.

Below we assessed the ESIA judgment from the point of view of UN criteria’s and approach regarding the Svan’s people’s indigenous rights.

5. 3 Compliance of Svan’s to UN criteria to indigenous people

1. Self- identification as indigenous peoples at the individual level and accepted by the community as their member.

The Svan’s are qualified under the 1st criteria of EBRD’s IP. ESIA (page 28, volume 3). The ESIA states, that

³⁸ E.g. Actually for both IFC and ADB definition on application and criterias of IP are more close as it is seen from ADB IP Good Practices Sourcebook and IFC Guidance Note on IP 7. In both case, we read, considered that “term “Indigenous Peoples” is used in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees: Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or A distinct language or dialect, often different from the official language or languages of the country or region in which they reside”;
http://www.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012%20pdf?MOD=AJPERES
<https://www.adb.org/sites/default/files/institutional-document/33748/files/ip-good-practices-sourcebook-draft.pdf>

- “Svans are included in the official Georgian census as ethnic Georgian. Their way of life is akin to that of Georgians in other mountainous areas of Georgia. Svans identify themselves as Georgians and are proud to be one of the groups of **Kakhetians**³⁹ that had constituted the Georgian nation. They consider themselves a part of Georgian nation and state;
- Svans – including people living in the Project area – do identify themselves as Svan, are identified as such by others, and have kept specific ancient traditions and ethnographic features”. Their specific cultural identity is recognised by themselves and by others.”

2. Historical continuity with pre-colonial and/or pre-settler societies and Strong link to territories and surrounding natural resources;

The Svaneti is inhabited by Svan (Mushuani in Svan) who lead secluded and self-sufficient lives. Svans have known about the developments that could alter their traditional ways of life.

Archaeological, toponymic and linguistic evidence indicate that the ancestors of the Georgian people have inhabited the west-central part of the southern Caucasus region for at least 5,000 years and probably much longer. In the third millennium B.C. one group of Kartvelians migrated to the northwest, reaching the east coast of the Black Sea. Placenames believed to be of Svanetian origin are found in this area. Somewhat later, these ancestors of the Svans moved upland into what is now Svaneti. Axes and other artifacts—as well as the ruins of foundries for the production of bronze and iron—dating to the early Bronze Era have been discovered in Svaneti. This indicates that the local population was engaged in metalworking in the second and first millennia B.C. The Greek geographer Strabo mentions Svan’s at the end of the first century B.C.

Svan’s families still rely on subsistence agriculture, animal grazing and forestry. The attitude towards development of the local economy, in accordance with different surveys, leans towards sustainable use of natural resources and tourism. E.g. last years Svan’s has been using the forestry as major survival tool that has been reflected badly on forest quality. In numerous conversations, Svan’s claim that most sustainable way for development of Svaneti should be support of the sustainable forestry, including production of non-timber products and recycling of timber leftovers, vegetables and fruits processing small factories, using the existing variety of mineral waters for bottling and spa activities, etc.

³⁹ We guess that there should be Kartvelians, as using here the word Kakhetians sounds more than strange and non-understandable

Since ancient times Svaneti represents the place where gold was extracted. Strabo explains the legend of the Golden Fleece for which Jason sought by saying that the natives strained the gold from their mountain streams through fleecy. It should be mentioned that nowadays Svan gold hunters use wooden pans and similar methods to recover gold⁴⁰. One of the common methods handed down from their ancestors is to place a sheepskin, fleece upwards, in the river or burn to catch the flakes of gold as they wash down⁴¹.

3. Distinct social, economic or political systems

According to ESIA, the Svans were not found to have distinct social, economic or political systems in accordance with EBRD's IP requirement "descent from populations who have traditionally pursued non-wage (and often nomadic/ transhumant) subsistence strategies and whose status is regulated by their own customs or traditions or by special law or regulations". ESIA claims that "The third characteristic does not apply to Svans. The Svans are descended from tribes that were sedentary and the Svan society has been closely linked and integrated to that of the rest of Georgia since the 9th century AD. There are no specific laws or regulations applying to Svans."

There is few problems with that statement:

- ✓ Considering the Indigenous people as only those who have nomadic origin or those whose status regulated by law goes against ADB and UN criteria's for indigenous people. In accordance with UN "the term "indigenous" has prevailed as a generic term for many years. In some countries, there may be preference for other terms including tribes, first peoples/nations, aboriginals, ethnic groups, adivasi, janajati. Occupational and geographical terms like hunter-gatherers, nomads, peasants, hill people, etc., also exist and for all practical purposes can be used interchangeably with "indigenous peoples".
- ✓ ESIA claims that Svaneti is closely linked with rest of Georgia since 9AD, goes again of any researches conducted in the area, claiming that "Isolated by it extremely remote and hazardous geography, the Svaneti historically remained a strong local identity, rooted in a strong marital tradition and resisted easy incorporation into neighboring politics. Svaneti was loosely incorporated into the centralized kingdom from 1008-1442⁴²". Svaneti managed to avoid the Mongolian invasion and stay principality, and become part of Russian Imperia only after 1858.
- ✓ During the XI-XV centuries two Svaneti were formed free (nonfeudal

40 <http://www.eurasianet.org/node/62997>

41 Strabo, the Greek geographer, recorded this method in the 5th century and this may well be the origin of the legend of The Golden Fleece

42 above

Svaneti) and Dadeshkelian's Svaneti. The project area is located in place of so called Free , Non Feudal Svaneti were for thousands of years there were very strong traditions of self-governance, that's even practiced now.

4. Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities;

ESIA finds out that Svan's do not satisfy the 4th requirement of EBRD "customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture".

According to the ESIA, "Svans do attach importance and value to traditional practices, including a traditional dispute resolution system involving village elders; However :

- The same systems can be found in other areas of Georgia and are not specific to Svaneti;
- In the Project area, where elders cannot resolve the dispute, it is resolved through official Georgian institutions such as local authorities and/or justice.
- All Svans living in the Nenskra and Nakra valleys receive the same national education as rest of the Georgia.
- The Svaneti region has always been fully integrated into the overall legal, socio-economic and political institutions of Georgia. "

The first of all, However, first of all the Svan justice and governance system is much broader than just dispute resolution and absolutely different from "the same systems" that can be found in other areas of Georgia. The Svan system includes, not only dispute resolution and mediation courts, but defines the ownership and property laws, including land, also community decision making practices. The traditional custody laws are still in use, including Makshvi Council⁴³ and Popular Assembly – Lalkhor, as well as Svan Court Morvali, that represents the early form of Jury and Mediator Courts⁴⁴.

Each community elects the elder – Makshvi, that also convoke the community assembly and held consultation with experienced, smart, and honest people and held consultations with them before drawing conclusions on specific problems and familiarized the assembly with the conclusions. The problems concerned whole svaneti has been usually discussed at Lalkhor (large community Assembly).⁴⁵

43 Iran and the Caucasus 17 (2013) 153-169, Koninklijke Brill NV, Leiden, 2013 DOI: 10.1163/1573384X-2013- 0203, Oath of Memory: The Taking of Oaths on Icons in Svan Villages of Southern Georgia, Stéphane Voell, Philipps University, Marbur www.academia.edu

44 <http://www.msajuli.ge/index.php?m=794>

45 In Khevsureti and Mountainous Racha woman where not allowed and participate in popular assembly. Phasis 13-14, 2010-2011, Tamar Tarkhnishvili (Tbilisi) THE POPULAR ASSEMBLY IN GREECE AND GEORGIA'S HIGHLANDS,

This tradition still alive in Svaneti, e.g. the latest gathering of all 17 community Makshvis happened in 2014, where the issue of construction of Khudoni hydro power plant was discussed. It should be stated, that the format is more or less recognized by the government, as before the gathering, the number of high officials meet with Elderlies council⁴⁶. The community assemblies allow participation of both woman and man.

Another important element of traditional law still used in Svaneti widely is oath on icon. "it is a contract, but it also has an important religious dimension. In the presence of an image of a saint and in the presence of representatives from a village, men swear, for example, that they agree to a decision or that they are innocent of a crime. As the icon is a direct link to the divine, the oath is pronounced before God, but also before the community. God and the village witness the process of oath taking⁴⁷." The oaths are used in everyday life of Svan's. In recent practice, there were number of case where the oaths has been used against the hydroes. First time in 2013, when around 200 man from Khaishi and other parts of Svaneti takes the oath on icon that they will not allow construction of Khudoni dam and resettlement of Kaishi and surrounding villages. Second time, the number of Chuberi villagers make the same oath against Nenskra hydro. ^{48 49}

It should be stressed that, Svaneti and Svan traditions has been survived during the centuries and even during the Soviet time⁵⁰. The Soviet Government policy was directed towards depopulation of almost all major mountain regions in Georgia (Tusheti, Khevsureti, Racha) through uneven socio-economic policies and/or direct reselect of people to lowlands. The major idea behind was better control of the people, those customary law, religious and cultural traditions does not directly fits mainstream Georgian/Soviet culture. E.g. Khevsureti was depopulated by direct order of Stalin, that issue decree to resettle Khevsurs to Kakheti by the force during 1951–1952. As a result, of that policy in Khevsureti nowadays lives around 800 people.

46<http://www.interpressnews.ge/ge/regioni/269112-sozar-subari-da-viqtor-jafaridze-khaishis-mosakhleobas-khvdebian.html?ar=A>

47 Actually, this tradition are still widely used in Svan communities resettled from Svaneti in Shida and Kvemo Kartli, Oath of Memory: The Taking of Oaths on Icons in Svan Villages of Southern Georgia (2013)

48 According to Georgian church oath on Icon is nothing to do with christianity and represents the paganism tradition. <http://presa.ge/new/?m=bp&AID=24367>

49 In ombudsman report for 1st half of 2008, was described the case when in front of local elections 21st may 2008, local chief of policy requires from his subordinates to make oath that they will support the ruling party candidates and would not speak loudly that they support M.Saakashvili for presidential elections. One of the policeman, whose close relative was candidate from opposition party refused to gave oath regarding the supporting the ruling party representatives in forthcoming elections. As a result, on 22nd of May he was fired from the job. http://www.parliament.ge/ge/ajax/downloadFile/18658/report_2008_1 (page 26–27).

50<https://projectgeorgia.wordpress.com/2011/04/25/does-traditional-law-has-a-historical-continuity-or-is-it-a-recent-creation/>

The policy towards Svan's was different. E.g. After drastic avalanche in 1980s when half of the Chuberi village was buried, the Soviet Government forced to resettle some households in lowland, refusing strongly supported restoration of those who remained in the gorge. The depopulation of Svaneti, was connected both with construction of Enguri HPP 1947–1960 when around 10 Svan villages has been flooded, as well as in 1980–1990, when government starts promotion of Khudoni HPP⁵¹. Another depopulation of Svaneti happened in 2008, when around 2000 svans from Kodori Gorge in Abkazia has been forcible fled to Chuberi after Georgian–Russia–South Ossetia Conflict, when Georgia lost control over the gorge.

In addition, to the given argument that Svan's have access the same national education system, raise the questions widely addressesd by recent report of Inspection panel⁵². The indigenous people should not be considered as poor people without access to education, to shelter, health, sanitation and work. The fact that Svans enjoy the benefits of national education system and have more or less access to healthcare does not changes the sense of indigenosity. The Svans are right holders on land and natural resources they are using. The problem of assessment is that from one side its acknowledge the issue (see chapter 4. Land acquisition and involuntary resettlement page 98_) and from another side its rejects the rights of Svan's towards the land and natural resources.

5. Distinct language, culture and beliefs

The unwritten Svan language, represents the pro–Georgian language. Svan is thought to be branched off the Kartvelian Languages ancestor in the 18th Century BCE, and according to the major researches holds the most signs of pro–Georgian language. The Svan language is not mutually intelligible with any Languages of the Family.⁵³

According to UNESCO language is recognized as endangered and needs protection and believed to be spoken around 30000 people⁵⁴. By last census, only 10 000 people are living in Svaneti.

51 during the construction of Khudoni village , return back as soon as the construction of the hydro was stopped in early 1990ts.

52 <http://documents.worldbank.org/curated/en/447361478156710826/Inspection-Panel-Indigenous-peoples>

53 Source– Ethnic groups of Europe; An encyclopedia , edited by Jeffrey Cole

54 The language, called Lushnu in Svan, is one of the Kartvelian language family, that includes also Georgian, Megrelian and Laz. The three languages are officially regarded by Georgian authorities and institutions as dialects of Georgian, in spite of opinions expressed by linguists and other experts, who emphasize different linguistic histories of the three regiolects and classify them as separate languages. Lack of any support from Georgian state and the low prestige of Svan have resulted in an increased rate of language decay and endangerment. In recent years some of the traditional Svan settlements have been destroyed by land– and mudslides, resulting in the long–established clannish Svan communities being resettled to the southern, extremely poor, abandoned and plain areas, mainly along the borders with Armenia and Azerbaijan. The resettlement also supports decreasing of amount of the people speaking in Svan language.

While ESIA recognize that Svan language existence and its compliance with IP, simultaneously it tries to diminish its significance. It states “With very few exceptions, Svans are bilingual: they speak their own, unwritten Svan language, as well as Georgian, which is the official state language and is used for communication with other Georgians and in written communication.” For example

It acknowledges that, Svan qualifies as a separate language and is different from Georgian. While studies by linguists indicate that Svan, Megrelian and Laz all belong to the same Kartvelian group of languages, Svan is believed to have differentiated as a separate language in the 2nd millennium BC.”

Culture – Svaneti is well known for its rich and unique culture, that includes the famous Svanetian towers, erected mainly in the 9th–12th centuries, around one hundred Georgian Orthodox churches, with unique frescoes paintings and icons; The churches preserve the unique samples of Georgian culture, workcrafts and handicrafts from gold, bronze and earthen wares, traditional festivities from pagan times, and polyphonic Svan music.

Baptised in 4–6th century the Svan religion is a syncretic indigenous system, Mazdaism and Orthodox Christianity. Therefore, they still have number of the fates, as Lamaria, Lipanili, Murkvmboba, that addressed the old pantheon of gods.

5.4 Implication of non recognition of Svan's as indigenous people

There is number of practical implication of not recognizing Svan's as “indigenous people”, including the impact on land rights, as well as broad community support to the project and meaningful consultation.

During the public hearings government and project representatives try to play with fact that the term according to them in IFIs means ethnic minority, while Svan's are Georgian's ethnicity⁵⁵ and not “ethnic minority”⁵⁶.

This approach contradicts the UN approach, that states “In many cases, the notion of being termed “indigenous” has negative connotations and some people may choose not to reveal or define their origin. Others must respect such choices, while at the same time working against the discrimination of indigenous peoples”. In addition, government is specifically against to recognizing the Svan's as indigenous communities and giving them the right for Free Prior Consent even within under this

⁵⁵ <https://www.youtube.com/watch?v=fj3OvqpuyFk>

⁵⁶ Meaning ethnic minorities like Azeris or Armenians or Greeks settled in Georgia

particular project due to the planned projects for development of 35 Hydro power plants in Svaneti, as well as plans to develop the gold mining. Both almost decades, fiercely opposed by local communities.

6. Land rights in Svaneti and Land Compensation related problems

6.1 Failure to propose the clear mechanisms for land compensation

ESIA document recognized that “land tenure in the Nenskra and Nakra valleys is characterized by the coexistence of the legal system and locally recognized customary land rights”. It also acknowledges that “0.02 % of the land to be used by the Project is privately owned and registered. This represents 0.19 ha, distributed along the Nenskra road to be widened, between 11 households. These privately registered areas to be acquired range from 10 to 438 square meters. The rest of land to be used by the Project is either customary owned (by individuals or communities) but not registered, or State Land. These last two categories are overlapping in some areas”.

In non Technical Summary of the project, its stated that “Legalizable land will be registered in the name of landowners before acquiring. Customary ownership will be recognised by the Project even if there is no legally recognizable claim to the land.”⁵⁷

The ESIA volume 3, in pages 22–23 describes the land tenure in the affected area, “Customary land tenure is well recognized in the local communities. Within the settlements, individual land plots all well demarcated, and almost always fenced. Outside the settlements, in the forested areas, customary ownership is also most of the time well defined. Specific areas are owned by groups of families sharing the same ancestry and customary right of use of these areas are inherited. Ownership and right of use of pasture areas is defined by customary rights. These customary rights for pasture areas are not recognized by the Georgian legal system”.

In addition, the ESIA states that the project will compensate all land losses in affected area. According to the document, all “Legalizable land will be registered in the name of landowners before acquiring. Customary ownership will be recognized by the Project even if there is no legally recognizable claim to the land.” The project will use so-called the Property Rights Recognition Commission⁵⁸ for those, “whose land is not registered but is residential or agricultural land adjacent to the residential plot (“non-rightful land owners”, according to definition of Georgian regulations)”. So project takes responsibility that it traditional landowners to register their land plots whenever

⁵⁷ Page 16, Non Technical Summary

⁵⁸ Each Georgian municipality has commission for recognizing the land rights under non lawfull ownership

its feasible. Last year, the Parliament of Georgia, December 28th adopts the changes in the law, that gives possibility to the people with unlawful possession of the land (that in practice, for the land they simply have no documentation) to get title for a land, up to 5 ha. However, that law does not support any legalization of possession rights on State Forest Fund territories.

There is no clear explanation SIA does not respond how the project will deal situations;

- 1) When there clear overlapping of the private and state ownership?
- 2) How the land plots that fall under the State forest Fund territories, that could be characterized as the land with non-recognizable claims⁵⁹ will be compensated?

The situation becomes even more complicated as we move towards the JSC Nenskra Hydro – Nenskra HPP – Land Acquisition and Livelihood Restoration Plan, volume 9, which claims that “JSCNH has the overall responsibility for the implementation and monitoring of the LALRP. However, the management of the Land Acquisition and Livelihood Restoration process is shared by JSCNH and GoG; the Land Acquisition Process is managed jointly by the Government and JSCNH, and the Livelihood Restoration measures are implemented by JSCNH.”

According to ESIA :

- Land registration, prior to compensation: boundaries and land owners/users of affected land plots are identified, legalizable land is registered in the name of traditional owner and non-legalizable land is registered in the name of the State.
- Negotiation, between the affected households and JSCNH, on level of compensations for loss of lands. Agreements are formalized through (i) a Sales and Purchase Agreement between NASP and landowner if the affected land is registered in the name of landowner, or (ii) a Compensation Agreement between JSCNH and landowner if the affected land is registered in the name of the State.
- Payment made by JSCNH.”

While in case of non-legalisable land the project takes same obligations as in case of the legal owners, as it claimed in Table 30 – Entitlement matrix, it's still unclear how the project will pay to non legalized land owners, especially if the land is already owned and registered by the State.

⁵⁹ <https://napr.gov.ge/p/302>

In 2016 the same government registers almost all the land identified for the dam under Georgian state⁶⁰. According to Reuters report “this included 600 hectares of pasture and forest beneath the reservoir used communally by the Svans, the two homes in the power house and land owned by families”. Governmental representatives does not challenge the Reuters findings, even more, the deputy Minister “ Eloshvili told the Thomson Reuters Foundation that land registration by individuals takes time and “for the government to start construction, it cannot just sit around and wait until people get property rights”.

government provides around 200 ha of the land under the right to build agreements for next 55 years.⁶¹ 98 ha of those lands in Chuberi has been already privatized by JSC Nenskra for 1 USD in 2016, while another 98 ha has been given by state under the right to build agreement for next 55 years in March 2017 in Chuberi and Nakra. However, the ESIA neither mentions those facts neither describes how it will impact the land acquisition in the area.

By 31st of June, 2017 those lands has been still registered under the State⁶², despite the promise of the State Partnership Fund representatives that “re-register lands in the name of local families was not in writing, but would be upheld”⁶³.

This setup makes creates the danger that the affected people with non-recognizable land claims will be forced to accept any compensation from the company, rather than get adequate compensation. Therefore, PR5 requirements “All affected and impacted people must be consulted prior to agreements. Compensation must be agreed prior to handover of assets and prior to civil works commencing in affected area” in this particular case has no sense. Therefore, in order to ensure the adequate compensation for those whose rights are under threat, the best way out should be recognizing for the project purposes that customary ownership under the PR7, that would give far more guarantees adequate compensation for private and community properties.

it's not clear how through this particular approach project will comply with PR1 & PR10 of EBRD Safeguard policy that requires “to ensure that the consultation will be free of external manipulation, interference, coercion or intimidation” and how it can be meaningful and good faith.

60 Caucasus "land grab" feared in remote UNESCO heritage site <http://www.reuters.com/article/us-georgia-landrights-dam-idUSKBN15Z1FD>

61 Governmental Decrees N 1122 - 13.06.2016, N 2162 -7.10.2016, N492-14.03,2017 www.matsne.gov.ge

62 Caucasus "land grab" feared in remote UNESCO heritage site, <http://www.reuters.com/article/us-georgia-landrights-dam-idUSKBN15Z1FD>

63 IBID

In the best case scenario, the company will “compensate economically displaced persons who are without legally recognizable claims to land (see paragraph 31 (iii)) for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost,” as it is requirement by PR5 of EBRD.

In July 2017, Bankwatch and Green Alternative team undertake the Fact Finding missions in Chuberi and Nakra gorges. people that has been agreed to receive compensation mainly claim, that “government will do it anyway, so at least we get some money for it”.

The quality of negotiations were more than poor. Actually, it was partially clear due to vague process described in the land acquisition, as well as the Community Engagement parts (please see below). e.g. People were informed mainly through text messages about the meetings and those who express their negative attitude towards the project were not anymore involved or informed about the compensation.

In addition, the person whose traditional property land has been already used by project, stress that there were no negotiation. The decision about the land, he received number of letters with constantly changes information; process is full incomprehensible – e.g. people working for the company were claiming the project will not have any impact and collecting signatures on a blank paper. In addition, he says that company compensates only part of his customary land, while other part that will not be used but become inaccessible would not be compensated.

6.2 Associated Facilities and compliance with EBRD's PR1

The ESIA does not assess the environmental and social impact of the full scale development, including the associated facilities, essential for the project's viability, including the 220kv transmission lines;

it does not also assess the impacts of 35 kv and 110 kv transmission lines and access roads that represent the part of the project. Meanwhile the EBRD's Environmental and Social Guidance Note for Hydropower Projects, states “The EBRD's PRs do not apply to these associated activities or facilities but the environmental and social assessment process will need to identify and characterise potentially significant environmental and social issues associated with them, as defined by Performance Requirement 1 (PR1), paragraph 9”.

The EBRD's guidance note stressed that "affected population and vulnerable persons/groups are identified on the basis of a good understanding of the project's impacts (not limited to people living in the reservoir area)", that is the case with the major parts of present ESIA.

in addition, its goes against of ADB's requirement that "Project impacts and risks should be analyzed in the context of the project's area of influence. The area of influence may span:

"Associated facilities not funded by the project but whose existence and viability are entirely dependent on the project and whose services are essential to project operation. Examples of associated facilities are a transmission line constructed by government for the sole purpose of connecting an ADB-supported hydropower project to the existing electricity grid, and a gas pipeline installed by the gas supplier to supply an ADB-supported thermal power plant. Even though the impacts and mitigation measures from the development of associated facilities do not have to be analyzed in detail in the EIA/IEE of the project financed by ADB, basic information about the main design features, their location, the significance of potential impacts, the required approval process, and institutional arrangements should be described in the EIA/IEE. ADB reviews these facilities as part of its due diligence to determine if the associated level of impacts and risks to the environment and people is acceptable, recognizing that the borrower/client should address these impacts and risks in a manner that is commensurate to the borrower/client's control and influence over the associated facilities."⁶⁴

7. Community Safety

7.1 Project workforce influx on gender

The project will affected two small villages where total number of settlers not exceed 1400 people. In this circumstances, the fact that project plan to attract at least 1,100 workers creates even with the assumption that at least 75 % of all workers will be from Svaneti and Georgia, does not dismiss the fact that the construction phase and workforce influx will have the significant impact on the communities and will also affect the gender relations in the gorge.

The EBRD guidance note also stressed that for the projects in remote locations, specific provisions related to labour and workers' accommodation should be taken into

⁶⁴ <https://www.adb.org/sites/default/files/institutional-document/33739/files/environment-safeguards-good-practices-sourcebook-draft.pdf>

consideration in early project planning stages, in accordance with IFC/EBRD guidance notes on workers' accommodation⁶⁵. That has not been done.

e.g. in accordance with guidance notes, it's important to assess the "specific environmental and social challenges arising from the temporary and permanent disturbances generated by the project development, the presence of workers and the increase of human activities such as traffic, pressure on resources, noise and pollution risks, and so on." The ESIA does not present any gender related assessment and in general considered that impact of the project construction on the community would be moderate.

The project does not recognize in depth, how to prevent **an increase of communicable diseases in the communities and within the project's workers. The document plans to** "organize awareness raising campaigns on health issues for settlements close to camps and its associated facilities (via posters, leaflets, through health clinics, community meetings)", as well as health screening of local communities to set the baseline. It plans to ensure the number of Environmental and Social Specifications of the EPC contract, including:

- Health screening for all personnel, including sub-contractors;
- Health awareness training for workers including sexually transmitted diseases and
- HIV/AIDS at induction and then periodically throughout their employment;
- Availability of condoms from the first aid and medical installation at the construction sites and construction camps, without charge;

However, from this point of view, it's important to ensure that the project would not lead towards not only increased STDs, but also trafficking and sexual abuse. It should be also clearly addressed under the security & human rights. The ESIA does not "Involve both women and men in efforts to prevent the spread of STDs and HIV/AIDS, especially when a temporary and/or mobile workforce is involved."(non compliance with PR 4).⁶⁶

Another problem, is that while project plan through CIS program some activities to improve the health services and its accessibility, it's not considered the foremost priority. The ESIA clearly, mentions that poor local health service (one clinic in Chuberi and none in Nakra gorge), when for any more or less serious treatments, including

⁶⁵ **Workers' Accommodation: Processes and Standards** , IFC/EBRD 2009, <http://bit.ly/2t3lvGo>

⁶⁶ EBRD Gender Matrix 1

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395241747328&pagename=EBRD%2FContent%2FDownloadDocument>, identifies relevant gender issues in relation to each of the EBRD's ten Performance Requirements (PRs).

delivery, the patients should be transferred in Zugdidi or Mestia. Therefore, the question regarding the capacity of local health clinics to deal with increased demand, becomes quite serious.

Despite project efforts to ensure increased employment of women, as in case of most constructions, the majority of the employees up to 75% will be the man.

The ESIA does not assess the impacts on women as the economic power redistribution within the families, increased women's vulnerability in case of inflation and increased prices for food, increased violence and etc.⁶⁷

The assessment of transport impact on community includes assessment of the only project's construction related traffic. According to the ESIA "The construction activities will generate additional traffic on public roads over the 4 years of main construction, the densest project traffic will be created from March 2018 to April 2020, and the increase in traffic can be summarised as follows:

- Khaishi, on the road to Mestia – one truck every 46 minutes and one light vehicle (car, minibus or light truck) every 7 minutes.
- Nenskra road downstream of the future bridge across the Nenskra River – one truck every 48 minutes and one light vehicle every 8 minutes.
- Between that future bridge and the dam – one truck every 10 minutes and one light vehicle every 13 minutes,
- Nakra village – one truck every day and one light vehicle every hour."

While ESIA assess the some impact on safety of transportation schemes and provides mitigation measures, in same time it diminishes the overall impact of the construction over villages; As it does not estimates the transportation of those workers that would work on the construction. These people will also will need to commute for their own personal needs.

7. 2 Health risks of the impacts on water resources

The health risk impacts on water resources and impact on downstream communities are not assessed adequately. 2.5.5 chapter of SIA describes correctly the local water supply system as one that comprise long plastic pipes that convey groundwater by gravity from nearby springs or seeps, the information that it function 24 hours a

⁶⁷ Project plan to monitor inflation rates, however, no mitigation is proposed

day, and throughout the year is not accurate. During Bankwatch research in the summer 2016, households in Nakra complained about the water shortages in the summer and argued that this is one of the reasons they move to the mountains to have access to the potable water.

While the SIA anticipates there will be no impacts from the project on potable and domestic water supply systems, the hydro-geological review commissioned by Bankwatch demonstrates that the project may impact the sources of groundwater. In chapter “Analysis of the hydrogeology and natural hazards raised in the ESIA of the Nenskra Hydropower” (see Quality report review of the hydrogeological and natural hazards ESIA studies for Nenskra HPP, Georgia. Sylwester Kraśnicki, Ph. D.), the reviewer notes “Hydrologic research with some hydrogeological problems described in the Environmental and Social Impact Assessment concentrates on the part of the Nenskra River catchment downstream from the projected dam site, but it does not analyse the impact on groundwater around the projected reservoir”.

The local communities expressing concern regarding the fact how the leaving only 5% of water in Nenskra river and 10% of Nakra river will impact also on access to drinking and irrigation, and how it will impact the springs they use. In Nakra, the people with whom we met, stressed that “investor proposed alternative supply from the reservoir further away, but we don’t believe him”. Actually, improving of water supply system is mentioned as one of the 12 priorities that JSN Nenskra commits to work during 2012–2017 under Community Investment program totaling 4 mln USD (see below in respective chapter) .

In addition, the ESIA does not study any impact on water resources that may occur and have drastic impact on the water quality and people, as oil spill “ not directly to the water, but into the ground, it is still a threat because groundwater vulnerability for pollution in this area is very high⁶⁸”. SIA chapter 6.6 Health risks of impacts on water resources , just mentions that there is some concerns around that but does not really follows and or study the issue.

Addressing the Women’s Perception of the project

Both ESIA, as well as our studies revealed that women are quite sensitive towards potential microclimate changes and its impact on livelihood of the people as well as the safety of dam and its both in Nenskra and Nakra gorges.

⁶⁸ see Quality report review of the hydrogeological and natural hazards ESIA studies for Nenskra HPP, Georgia. Sylwester Kraśnicki, Ph. D

In old ESIA (2015) it was written “Its impact on climate will be essential in spring, when the whole ice cover will start melting–breaking and in the late autumn, before the ice events will start. The significant difference between water and air temperature in these periods and strong wind will activate evaporation. Evaporated moisture in form of snow–ice will lie on buildings, fruit trees and will damage them. The damage caused by early freezes is heavier, because the freezes cause the death of buds and sprouts, due to which the useful plants start premature aging, infertility and death. The population living in the vicinity of the reservoir will get a heavy living conditions, who are sick with rheumatism or/and respiratory and require vascular system treatment.”

The Supplementary package claims that “In terms of micro–climate change, it is possible that there may be localized micro–climate change in the vicinity of the dam–reservoir – but not extending down the valley further than Tita – with slightly lower temperatures in summer and slightly higher humidity in the summer. No detectable changes are expected in the winter months. However, it is more likely that the micro–climate changes are negligible compared to regional climate changes as a result of global warming”.

Therefore, the question arose, should the women in Nenskra and Nakra fully forget the old ESIA documentation, potential problems caused by micro and regional climate change in the area and rely only supplementary package?

7.3 Concerns regarding the Climate Change impact on health

In general, the ESIA supplementary study lacks assessment of health status. it claims that “No data were available at the local level on public health profile”, while “According to data from National Centre for Disease Control and Public Health of Georgia, the public health Profile of the Mestia Municipality corresponds to the general public health profile of the country with two noteworthy exceptions: (i) injuries and accidents and (ii)endocrine diseases.

Meanwhile, The micro–climate and regional climate impacts on the healthcare of the local population and the environment should be considered in a global climate change context. For example, “Results of the study conducted within Georgia’s Third National Communication to the UNFCCC revealed that the frequency of climate–dependent diseases, such as injuries, pathologies of the cardiovascular and the respiratory systems, mental disorders increases in Upper Svaneti and specifically in Mestia Municipality. The reason of such changes may be the change in climate parameters, namely: The average annual air temperature at the beginning of the current century in comparison with the previous century (the average values of the years of 1986–2010

are compared with the same figures of 1961–1985 period) increased by 0.3 °C, the annual amount of precipitation increased by 10%, while the total number of hot days during the 25-year period, when the air temperature exceeded 25 °C, increased by 178.⁶⁹

“By taking into account the survey conducted within Georgia’s Third National Communication to the UNFCCC, non-communicable diseases, including injuries should be mainly considered relevant for Upper Svaneti from the climate-dependent diseases. From the chronic pathologies – mental disorders, cardiovascular diseases (especially hypertension), respiratory diseases and the number of death caused by them should be mainly considered relevant. The incidence and the prevalence⁷⁰ of these pathologies in Upper Svaneti region exceed the same data from other regions of Georgia..... The prevalence of transmitted diseases (infections) is high in Upper Svaneti, the dynamics of the increased frequency is also observed, although the rate still cannot be considered as alarming at this stage.”

In addition, the same study finds that e.g. some increase of non-communicable (like mental disorders and cardiovascular diseases) as well as communicable diseases (like hepatitis and influenza) that may be connected with ongoing climate change processes in Svaneti⁷¹.

Taking into account that WHO recommends the full scale Health Impact Assessment for large Dam projects. The report highlights that health is considered to be: “...a state of complete physical, mental and social well-being, and not merely the absence of disease and infirmity” . In addition, the WHO among the human health issues related to dam construction and operations recognises the following communicable diseases (vector-borne, water-borne, sexually transmitted, zoonoses, other parasitic), non-communicable diseases (poisoning by minerals, biological toxins, pesticide residues, industrial effluent, circulatory and skeleton diseases, injuries and malnutrition), as well as psychosocial disorders.⁷²

7. 4 Natural Hazards and Dam Safety

There is number of wide spread risks regarding Nenskra hydro project from the natural hazards point of view among population. the locals considered especially the risks related to the decreased of the water flow in Nakra river and its impact on Naki village.

69 Upper Svaneti Adaptation Strategy to the Climate Change, Tbilisi 2014 ; © UNDP Georgia 2014

70 Incidence – the primary infection; Prevalence – the total incidence;

71 Upper Svaneti Adaptation Strategy to the Climate Change, Tbilisi 2014 ; © UNDP Georgia 2014

72 <http://apps.who.int/iris/handle/10665/66163>

Itself ESIA Volume 6, Natural Hazards and Dam safety acknowledges that is “increased risk of flooding in the Nakra valley that is an indirect result of the Project. The Nakra River is vulnerable to a risk of flooding as a result of mudflow events occurring on lateral tributaries. The mudflow events lead to temporary blocking of the Nakra River, creating temporary flooding upstream of the blockage, and downstream flooding when the river breaches the blockage. Without mitigation measures, the Project could result in an increase in this risk because the capacity of the river to flush away sediment will be reduced and there will be a tendency for sediment to accumulate in the river. To address this risk the Project will periodically open gates on the weir and close a gate on the Nakra transfer tunnel in order to reinstate the natural flow of the Nakra River. A study will be undertaken to establish the best solution for managing the existing sediment accumulation in the Nakra and to ensure that the exposure to floods is finally reduced and not increased.”

According to IPOE⁷³ report “The revised Nakra Weir layout, which includes gates to control the flow through the Transfer Tunnel, provides safe control of floods and an appropriate arrangement to manage sediment, environmental flows and fish passage“.

It should be admitted that in contrast with ESIA 2015 the project more accurately assess the factual situation on the ground, including the acknowledgement of existence tributary mudflow rivers that represent the major concern for local population. That also lead towards of changing of the design of weir and intake place of Nakra tunnel.

In order, “to minimise the risk of flooding of the Naki village, as a result of solid material transported by the Lekverari and the Lakanashura torrent a study will be carried out to determine the most suitable actions to be implemented”. However, the study should be part of the ESIA in order to define the accurate measures.

In addition, according to the studies “the glacier’s exaration (destruction and removal of rocks) is not only glacial, but also a geological phenomenon. Along with exaration, the so-called glacial mudflows formation is associated with glaciers. The latter phenomena are characterized by unexpectedness and extreme degree of negative manifestation. Glacial mudflows have occurred a number of times in Upper Svaneti and in the context of climate global warming we have to expect “surprises” from those in the future”

The same study finds “mechanical erosion of the rocks will increase, while the role of waterborne erosion will decrease. The rise of temperature will accelerate the process

73 <http://nenskra.ge/file/2017/04/IPOE-Report-27-Feb-2017.pdf>

of glacier melting; Therefore, the formation of glacial mudflows is expected. “Therefore it’s important to study Nakra river mudflow tributaries threats to local community in light of climate change should be modelled and their impact on the projected hydropower plant should be predicted.

7.5 Community Investment Program

The ESIA claims that the biggest contribution of the project will be provision of electricity to the country (not free of charge). On local level, “in addition to employment, contracts, payment of taxes, the voluntary Community Investment Program will offer an important additional avenue for enhancing positive impacts and socioeconomic benefits.”

As part of the Community Investment Programme, the Project plans to “work with local authorities to obtain funding for the rehabilitation and support the existing health facilities to address additional pressure from newcomers, as well as to support vulnerable groups, rehabilitate schools and kindergartens, design water supply system and etc.

ESIA stress that “Although the Implementation Agreement signed by JSC Nenskra Hydro and GoG in 2015 and the local legislation do not require any provision of Community Investment, the owners are committed to high international standards.” and allocates 4 mln USD for 2017–2022 under community investment Strategy.

8. Stakeholder’s engagement and Public participation

“At this point, and although some consultation did take place (focus groups and face-to-face interaction), there is yet limited evidence that proposed consultation and livelihood restoration are agreeable to affected communities, as measures as they stand in the LALRP are yet to be consistently consulted upon. This will take place during the disclosure period. Similar to recommendations above, this will have to be documented and related evidence will have to be included and publicly disclosed (as part of an updated version of either the SEP or the LALRP), ” as stated by EPOE conclusion, 27/02/2017.

However, during the project disclosure period there were two meetings in Tbilisi, one for NGOs and one for Svans living outside of Svaneti and three meeting in affected project areas (Lakhami, Chuberi, Nakra). However, it should be stressed that most of the questions and concerns raised have not been answered, or answered with some hesitance, including on questions on Transparency of Contracts, community safety,

indigenous people's policy and etc. The major focus was on so called positive aspects of the project – as employment, assurances that everybody will receive compensation and etc. As a result, the meetings rather raised the temperature between project supporters and opponents and leaves lot's of the questions unanswered.

It should be also noted that in case of Nakra, the company appointed Rodam Gvamriani as the Public Relations Officer⁷⁴. Simultaneously, he is elected representative of Mestia Sakrebulo, head of Commission⁷⁵. Despite the fact, that he represents the project, he also gives the interview as representative of local community⁷⁶ stressing that in his community the majority of people are supporting the project.

The project established the grievance mechanism. However, the updated information about received grievances not available. In addition, please see the photos of grievance box that BWN/GA team takes in Chuberi in 5th of July, 2017. (see Annex 3.)

9. Biodiversity Impact Assessment

“Biodiversity Impact Assessment” is a separate volume within the Supplementary Package. As in case of other parts assessments are of very poor quality: surveys were made mostly in September 2015 when the period was not appropriate for most of the species, endangered species threatened by enhanced permeability of the habitat were not evaluated at all, no real survey on fish species has been made. A review of key biodiversity and environmental problems follows, taking into account the Environmental and Social Impact Assessment, 2015 (ESIA), the Supplementary Package, 2017 (SP) and the Bern Convention complaint, 2016

9.1. EU and international substantive environmental standards infringements

The Nenska HPP doesn't meet EU and international substantive environmental standards and, subsequently, EBRD and EIB standards⁷⁷.

The project has already provoked the violation by the Georgian Government of Article 4, point 1 and 2, Article 5 and Article 6 of the Bern Convention. Complaint No. 2016/9

74 Nenskra Hydropower Project Supplementary Social & Environmental Studies Volume 7, Stakeholder Engagement Plan, page 109 (attachments).

75 <https://declaration.gov.ge/Home/DownloadPdf/29675>

76 <https://www.facebook.com/SakmisKursi/videos/1181077675335085/>

77 "The EBRD, as a signatory to the European Principles for the Environment, is committed to promoting the adoption of EU environmental principles, practices and substantive standards by EBRD-financed projects, where these can be applied at the project level, regardless of their geographical location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent." Art. 7. of the Environmental and Social Policy (ESP) <http://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>

– Possible threat to “Svaneti 1” Candidate Emerald Site (GE0000012) from Nenskra Hydro Power Plant development (Georgia) is being currently assessed by the Standing Committee of the Bern Convention. The construction permit could lead to destroying significant protected habitats and species from Resolution No. 4 (1996) and Resolution No. 6 (1998) of the Standing Committee of the Bern Convention situated in Emerald Site GE0000012 “Svaneti 1” as adopted at the Biogeographical Seminar held between 27th and 29th of May 2015. The Emerald site included most of the Nenskra HPP area – Nenskra River, headrace tunnel, power house, Nakra intake, Nakra transfer tunnel and half of Nenskra Dam and reservoir, as well as most of the roads and transmission lines. Moreover Georgian Government disregarded procedures for evaluation of sufficiency of proposed Emerald sites as adopted by the Standing Committee in 2013 (T-PVS/PA (2013) 13), when in February 2016 (a month after a meeting with project promoter) excluded from Emerald Site GE0000012 “Svaneti 1” all territories part of Nenskra HPP⁷⁸.

The project is also an infringement of Art. 4 of the Habitats Directive by using criteria of a non-scientific nature for excluding the area of Nenskra HPP from the Emerald site. The Emerald Network is an ecological network which was launched by the Council of Europe in compliance with Resolution 3 of the Bern Convention adopted in 1998. It is based on the same principles as Natura 2000, and represents its *de facto* extension to non-EU countries⁷⁹. When selecting sites for inclusion in the list (of potential Natura 2000 and respectively – Emerald sites) the states should follow three conditions:

- only criteria of a scientific nature may guide the choice of the sites to be proposed;
- the sites proposed must provide a geographical cover which is homogeneous and representative of the entire territory of each state (...);
- the list must be complete, that is to say, each state must propose a number of sites which will ensure sufficient representation of all the natural habitat types listed in Annex I and all the species' habitats listed in Annex II to the Directive (respectively Resolutions of the Bern Convention for non-member states) which exist on its territory.⁸⁰

If the project is carried on it will additionally lead to infringement of Art.6 of the Habitats Directive. It will lead to drastic impacts on 9 habitats and 8 species from Resolution No. 4 (1996) and Resolution No. 6 (1998) of the Standing Committee of the Bern Convention found in Svaneti 1 Emerald site. (Annex)

78 ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 121

79 <http://biodiversity.europa.eu/topics/protected-areas>

80 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999CJ0220>

The project could also lead to the violation of Article 8 of the Convention on Biological Diversity by affecting populations of globally endangered species – Western Tur (*Capra caucasica*, endangered species[5]), Persian Leopard (*Panthera pardus saxicolor*, critically endangered in the region[6]) and Caucasian Grouse (*Lyrurus mlokosiewiczii*, near threatened⁸¹).

9.2 Environmental and social impact assessment procedure infringements:

9.2.1. Construction permit was issued before consultation and evaluation procedures were finalized.

9.2.2 Construction started in 2015 before biological, geological and social surveys were finalized and the Supplementary Package was issued. The construction works included renovation of existing roads, building of new roads, building of permanent settlements for workers, etc.

9.2.3. Alternatives for the project design were not evaluated – according to Supplementary Environmental & Social Studies, Volume 2, Project Definition (page 6) "*project identification had largely been completed, and elements of the Project fixed (in two confidential documents from 2010 and 2011)*". "*The objective of the present chapter is not to justify, a posteriori, why the proposed Nenskra HPP is the least-impact alternative to achieve the power production objectives required by the Government. There are other considerations such as politics preference (...) which have – and will – prevail-(ed)*". Afterwards in the 2015 ESIA and 2017 Supplementary Studies all environmental and social impacts were evaluated only for Alternative 1: Nenskra Storage and Nakra Diversion Project. This is an infringement of Georgian and EU Legislation as all alternatives should have been evaluated before choosing the alternative that will not have a significant environmental and social impact.

9.2.4. There were "*conceptual changes in the design since the completion of the feasibility study and issue of the 2015 ESIA*" with slight modifications of some project parts. No new Environmental Permit has been awarded though.

9.3 Unclear description of the project and of other projects:

Even after the Supplementary Package was made public there are uncertainties in the project design, construction and operation, as well as in other hydropower projects, which do not allow to evaluate the environmental and social impacts:

⁸¹ <http://www.iucnredlist.org/details/22679483/0>

9.1. It is unclear how much water will the project use. Monthly flows of Nenskra and Nakra Rivers are missing. The lack of specific on-site studies has unsuccessfully been compensated by hydrological modeling done as part of the ESIA. If there is no monthly information on the inflow to Nenskra Dam and Nakra diversion tunnel – impact over riparian ecosystems downstream can't be evaluated.

9.2. Precise description of the operation regime is lacking.

9.3. Any description of Enguri Hydropower Plant is lacking – current operation regime, change in the operation regime expected if Nenskra HPP is built, current impacts on the Enguri River downstream and upstream of the Enguri Dam. In fact there is absolutely no information on the current biological value of Enguri River below and above the Enguri Dam.

9.4 ESIA and Supplementary Package of poor quality

9.1. Insufficient and inadequate field surveys to evaluate the impacts on biodiversity

9.1.1. Key species were not evaluated: Persian Leopard (*Panthera pardus saxicolor*, endangered subspecies assessed by IUCN), Caucasian Tur (*Capra caucasica*, endangered species endemic to the western part of the Great Caucasus Mountains), Booted Eagle (*Hieraaetus pennatus*), Red-breasted Flycatcher (*Ficedula parva*), Caucasus Chiffchaff (*Phylloscopus lorenzii*), Caucasian Snowcock (*Tetraogallus caucasicus*), Caucasian Grouse (*Lyrurus mlokosiewiczi*, near threatened species). Fish species were not evaluated at all (except habitat survey of trout), as well as many reptiles, amphibians and invertebrates.

9.1.2. No survey on fish species was made – "*Accurate estimation of the population and density of fish within the Nenskra and Nakra rivers is not possible without employing standard quantitative fish survey techniques. One such technique is based upon electrofishing (...) However at the time of survey (2015) electrofishing in Georgia was illegal so could not be undertaken (...)*"⁸². It is obvious that other quantitative techniques could have been used as they were proposed in the Mitigation Strategy: box traps, casting net, fishing rods, trotlines and seine netting.

9.1.3. Key habitats were not evaluated: Riverine scrub (EUNIS code F9.1), Continental humid meadows (EUNIS code E3.46), Montane river gravel habitats (EUNIS C3.552), Unvegetated river gravel banks (EUNIS C3.62), Continental river bank tall-herb

communities dominated by *Filipendula* (EUNIS code E5.414), Continental tall-herb communities of humid meadows (EUNIS code E5.423, Euxinian ravine forests (EUNIS code G1.A47). The habitat Ponto-Caucasian montane *Alnus* galleries (EUNIS code G1.127) was only mentioned.

9.1.4. Field surveys were conducted in inappropriate season for many species and habitats. It is stated that "*the investigations were conducted from August to November 2015 and additional surveys in May to June 2016 in the project-affected area. (...) The (May/June) surveys were designed to search for Eurasian lynx and brown bear at a watershed level*"⁸³. Breeding birds were not evaluated at all as breeding season in the Caucasus Mountains ends in June or July depending on the species. Plants flowering in spring/early summer and grassland habitats could not be evaluated according to internationally recognized methodology.

9.1.5. Geographical insufficiency of the surveys: for many species and habitats only the area of the Nenskra Dam is investigated but not the Nenskra and Nakra valleys above the water catchments (problem with increased accessibility for sensitive habitats and species). The 17 km of Nenskra River (17 km) between the dam and the confluence with Enguri and 9 km of Nakra River between the catchment and confluence with Enguri were investigated very roughly, not taking into account all project impacts: drastic change in hydrological regime and extreme floods, drastic change in temperature, sedimentation and oxygen regime, future change in microclimate (that could lead to change in the vegetation of both valleys). The Enguri River was not surveyed at all.

9.1.6. Lack of quantitative data – there is no data on number of breeding pairs of bird species, areas of river habitats or alluvial forests to be affected, etc.

9.2. False mitigation strategy

Most of the mitigation, enhancement and compensation measures are not really planned, but additional "monitoring", "inventory", "mapping" and "surveys" are proposed before the on-site measures. This means that the most important impacts of the project on biodiversity are not *de facto* assessed (or have been hidden):

9.2.1. There is no idea how large is the population of the endemic plant *Paracynoglossum imeretinum* that will be destroyed at the reservoir site.

9.2.2. The real value of the habitats is unknown, so additional detailed floristic inventory and habitat loss areas mapping and survey is proposed.

9.2.3. Monitoring brown bear populations is proposed but no anti-poaching measures.

9.2.4. Only trees which have been certified nest free will be felled during breeding season, but it is unclear what will be the methodology to assess each and every tree. No bird surveys during breeding season were done until now.

9.2.5. Potential effects on downstream biodiversity are not understood. *"After a number of years of operation, the first reservoir sediment flushing operation will be required. As part of the preparation for this event an impact assessment will be performed to understand the potential effects which may occur on downstream biodiversity."*⁸⁴

9.2.6. Invertebrates sampling for Nenskra and Nakra Rivers, using European Union (EU) standard methods (EN ISO 5667-3, ISO 7828, EN ISO 8689) is proposed for the future, but no base information is available.

9.2.7. A negotiation with the Government is proposed to identify *"conservation project(s) to (part) fund to aid in the creation of the proposed Svaneti Protected Area"*. But the protected area boundaries were modified before its creation in order to exclude the Nenskra and Nakra valleys.

10. Most significant risks for biodiversity

10.1. Impact on habitats

10.1.1. Nine habitats of European importance will be affected by the project. From 2% to 12% of the total area of distribution of those habitats in Svaneti will be destroyed or will suffer severe degradation. For more information on the impacts on these habitats see Bern Convention complaint and Appendix 1.

All these habitats should be considered of conservation concern as they are listed in Resolution No. 4 (1996) of the Standing Committee of the Bern Convention. Annex 1 of EC Habitats Directive is still not updated with all Caucasian habitats, so should not be considered. The 9 habitats also contain viable populations of Georgian Red List species – lynx, brown bear, brown trout, etc.

⁸⁴ ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 157

The assessments in the ESIA and SP documents that the "*habitats present in the CHAA are not considered to be highly threatened or unique ecosystems*"⁸⁵ and "*the area in which the reservoir is to be located, while forested, has been modified by man and so does not represent pristine natural habitat*"⁸⁶ are either a result of poor quality field work or are manipulated. Photos provided in the ESIA , Supplementary Package and Bern Convention complaint clearly show that the project will affect some unique ecosystems – pristine and old-growth forests, natural river and riparian habitats and semi-natural grassland habitats in favorable conservation status because of the sustainable use by local people through the centuries.

10.1.2. For habitat Caucasian beech forests (EUNIS code G1.6H , called in the Supplementary Package Colchic relic broad-leaved mixed forest) in the area affected by the Nenskra Dam stands of old growth forests predominate, because of inaccessible slopes.

The wrong conclusion that the habitat is "*degraded, forming an ordinary phytocenosis*" can be explained by the locations of floral survey points. All points from 2011–2014 and 2015 surveys (shown on the Broad habitat maps⁸⁷) are located in areas with easy access (not on the steep slopes). The expected impact of the project will be significant related to direct destruction due to road and dam construction and especially flooding after the dam construction. The direct destruction of the habitat will occupy an area of about 200 ha, which is about 7% of the total area of the habitat in Svaneti. The construction of new roads for the project have already destroyed several hectares of old-growth beech forests.

10.1.3. Possibly the most representative stands of alluvial forests in Svaneti (EUNIS code G1.127 – Ponto-Caucasian montane *Alnus* galleries) will be affected. Large part of the Nenskra Dam area is covered by an unique forest of *Alnus barbata* and the river banks of Nenskra and Nakra Rivers are covered with *Alnus* galleries. Botanical descriptions during the environmental impact assessment procedures didn't show any scientific prove of the degradation of the habitat as stated in the Supplementary Package⁸⁸.

10.1.4. River and riparian habitats are not assessed as the impacts over them will be irreversible. Riverine scrub (F9.1, 17,5 ha affected), Montane river gravel habitats (C3.552, 16 ha affected), Unvegetated river gravel banks (C3.62, 60 ha affected) and Continental river bank tall-herb communities (E5.414, 30 ha affected) will be

85 ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 117 [12] ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 150

86 ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 150

87 ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 21–24

88 ES Nenskra_Vol 4_Biodiversity_Feb 2017, page 117

destroyed not only because of the Nenskra Dam, but also over the 17 km of Nenskra River downstream and 9 km of Nakra River because of complete change in hydrological and sedimentation regime. The mandatory ecological flow for Nenskra River will be only 5% of the average annual flow. For Nakra River it will be 13%. The impacts on Enguri River habitats up to Enguri Dam should also be significant because of unpredictable operation of Nenskra powerhouse causing floods totally different from natural.

10.2. Impacts on plants

10.2.1. One of less than 20 locations in the world where the Georgian endemic Imeretian hound's tongue (*Paracynoglossum imeretinum*) is found would be destroyed at the Nenskra reservoir site. Only one individual plant was found, but this is because of inappropriate survey season. The conclusion that "*the habitat is not considered critical for this species as it is likely to sustain a population less than 1% of the global population*" has no scientific proof.

10.2.2. The Great Caucasian Mountains are a biodiversity hotspot and many other Caucasian endemic plants will be destroyed. No assessment is made.

10.3. Impact on mammals

10.3.1. Even with the limited data collected it was proven that the area of the Nenskra reservoir is core area of great importance for the brown bear with as many as 14 signs of the species found in 2015 and 2016. The conclusions that the impacts are not significant are not justified with any scientific methodology and we assume this is made in order not to change the location of the reservoir. No special surveys were made to search for bear, wolf and lynx dens, so there is no proof that reproduction areas for these species will not be affected by the project.

Direct destruction of habitats, increased disturbance and poaching will affect the population in the upper Nenskra and Nakra valleys, our estimation is for 4–6% of brown bear and 7–10% of lynx population in Svaneti.

10.3.2. The most significant impact on mammals is the increased permeability of the habitat. New roads will be constructed and existing ones will be rehabilitated. Roads will be maintained all-year-round giving access to the upper parts of Nenskra and Nakra valleys. Permanent human presence associated with the project (500–600 people during construction for 4.5 years, 50–60 people during operation), lack of real control on poaching in Georgia and lack of any anti-poaching measure could lead to the

disappearing of two endangered species – the West Caucasian tur and the Persian leopard.

According to data provided by the Russian Federation – the Leopard is present in the Great Caucasus just north of the construction site of Nenskra Hydropower Project: Interviews with local hunters and shepherds from Nakra and Chuberi communities made in October 2016 show that the species is present in the upper Nenskra and Nakra valleys. At least one individual was found dead by avalanche, there was one sighting of a Leopard feeding on Tur carcass and another chasing Tur. The status of the species in Svaneti is unclear, but some of the few Leopards remaining in the Western Caucasus could be threatened after the construction of the Nenskra Hydropower Project by disturbance, poaching and disappearing of the main prey species – Western Tur.

The Western Tur is endemic to the western part of the Great Caucasus Mountains in Georgia and Russia. Listed as Endangered because of a serious population decline, estimated to be more than 50% over the last three generations. The total world population was given at 5,000–6,000 animals by Weinberg (2004), and might now be lower. Approximately 1,000 tur live in Svaneti region in Georgia (NACRES, 2006). Our estimation is that at least 150 animals live in the Nenskra and Nakra valleys, but the numbers could be much higher. The construction of the Nenskra Project could threaten 3–4% of the world population by poaching, disturbance and destruction of winter habitats.

10.4 Impacts on birds

10.4.1. Booted Eagle (*Hieraetus pennatus*)

1–2 pairs could be breeding in the area to be flooded by the dam. One adult (dark phase) was registered on 06.06.2016 west of the school in Chuberi. One adult (light phase) was registered on 11.06.2016 at the Khudoni dam site, west of Khaishi (see attached photo). The area of the project is suitable for several pairs of the species. The Booted Eagle is assessed with population D in the proposed Emerald site GE0000012 Svaneti, but our opinion is that this assessment is underestimated.

10.4.2. Red-breasted Flycatcher (*Ficedula parva*)

During the fact finding mission on Nenskra Project one breeding pair was registered on 08.06.2016 south of the Nenskra dam site and 5 more pairs on 15.06.2016 in old-growth beech forest west of Nakra village

50 to 100 pairs possibly inhabit the area affected by the project. The area that could be flooded by Nenskra Dam is suitable for 10 to 20 pairs. The species is missing from the Emerald Data Standard Form for Svaneti 1.

10.4.3. Caucasus Chiffchaff (*Phylloscopus lorenzii*)

One of the target species for declaring Important Bird Area 012 Svaneti. Endemic to the Caucasian Mountain. On 09–10.06.2016 five pairs were registered in the Nakra River valley:

On 11.06.2016 two more in the Enguri River valley close to Khaishi. The area to be flooded by the Nenskra dam possibly holds several dozens of pairs.

10.4.4. Caucasian Snowcock (*Tetraogallus caucasicus*)

Healthy population in the Nenskra and Nakra river valleys would be threatened by increased permeability of habitat. According to local people – easy to spot above tree line. In winter descends to lower altitudes, including the dam site. One of the target species for declaring Important Bird Area 012 Svaneti. Endemic to the Greater Caucasus – Russia, Georgia and Azerbaijan. Poaching is a major threat in Svaneti. 2–3% of the population in Svaneti could be affected by the project.

10.4.5. Caucasian Grouse (*Lyrurus mlokosiewiczii*)

This species is listed as Near Threatened species in the IUCN Red Data Book. Healthy population in the Nenskra and Nakra river valleys would be threatened by increased permeability of habitat. On 10.06.2016 at 2100 masl a lek site was registered at the river Nakra with 8 displaying males.

The species is regularly poached but some lek sites have more than 30 males according to local people. The population of Nenskra and Nakra valleys is possibly more than 200 calling males. More than 5% of the population in Svaneti could be affected. One of the target species for declaring Important Bird Area 012 Svaneti.

10.4.6. Green Sandpiper (*Tringa ochropus*)

On 10.06.2016 an adult was registered feeding at the banks of the Nakra River: This locality is outside the known breeding area of the species.⁸⁹ If a breeding population is proven in the project area it could be the first for Georgia.

⁸⁹ <http://maps.iucnredlist.org/map.html?id=22693243>

10.4.7. Other endemic subspecies of birds:

The Nenskra Hydropower Project will affect many other endemic to the Caucasus subspecies of birds (registered in June 2016), including: *Picoides minor colchicus*, *Picoides major tenuirostris*, *Anthus spinoletta coutellii*, *Troglodytes troglodytes hyrcanus*, *Cinclus cinclus caucasicus*, *Prunella modularis obscura*, *Erithacus rubecula caucasicus*, *Sylvia atricapilla dammholzi*, *Aegithalos caudatus major*, *Parus ater michalowskii*, *Sitta europaea caucasica*, *Certhia familiaris caucasica*, *Carpodacus erythrinus kubanensis*, *Carpodacus rubicilla rubicilla*, *Pyrrhula pyrrhula rossikovi*, *Garrulus glandarius krynicki*.

10.5. Impacts on fish species

10.5.1 ESIA and SP documents do not provide any scientific proof that there is only one fish species in the Nenskra and Nakra Rivers while drafting such conclusions. "The aquatic biodiversity survey had to rely on a habitat assessment and the examination of fish caught by local anglers as electro-fishing was not licensed in Georgia at the time of survey." is written in the Supplementary Package. But later in the same document other techniques were proposed: "To catch adult fish the following devices will be used: box traps, casting net, fishing rods, trotlines and seine netting. The juvenile trout will likely be caught using seine/landing nets, drift traps and cone traps⁹⁰." Lack of fish data is one of the biggest problems of the biodiversity assessment.

10.5.2. It is not even clear which species or subspecies of trout (*Salmo* sp.) is/are present in the affected rivers. The trout caught by local fisherman and photographed were not examined afterwards to determine the species. "The survey team encountered a local fisherman who caught 10 trout on-site. Detailed dissection of fish was not possible on site given that the fish were food for the fisherman". Genetic studies in the last years have split *Salmo trutta* into many species throughout its distribution.

10.5.3. If any quantitative fish survey techniques was used we suppose that the 8 other fish species of which 5 endemic would be caught in the Nenskra and Nakra rivers or middle stretches of Enguri river: Transcaucasian sprinlin (*Alburnoides fasciatus*, endemic species), Colchic minnow (*Phoxinus colchicus*, endemic species), stone loach (*Barbatula barbatula*), Angora loach (*Oxynoemacheilus angorae* or other endemic species of *Oxynoemacheilus*), Crimean barbel (*Barbus tauricus*), Colchic khramulya (*Capoeta sieboldi*, endemic species), Colchic nase (*Chondrostoma colchicum*, endemic species), spined loach (*Cobitis taenia*, or other species of *Cobitis*).

Leaving 5% of the river flow in the Nenskra River and 13% in Nakra River would lead to complete extermination of these fish species (before they are even assessed).

11. Cumulative Impact Assessment

Taking into account the fact that 35 Hydro projects is planned on Enguri River Basin in Zemo Svaneti region, the Cumulative impact assessment report (CIA) supposed to objectively study the cumulative impacts of all hydro's in the region as well as associated facilities. However, CIA deliberately underestimates the cumulative impacts even in cases when drastic negative impacts are obvious. E.g. report claims that "Reduced flow in certain reaches of the Nenskra River's tributaries caused by small run-of-river schemes may represents a loss of fish habitat even though ecological flows will be maintained and fish passes constructed at the run-of-river weirs" however, "with effective ecological flows and use of fish passes, the residual impact is expected to be low and not significant." Or "No significant cumulative impacts are predicted on terrestrial ecosystems and biodiversity because there is no spatial overlap of the affected areas of the different projects. On a watershed scale, the overall loss of resources is not significant".

CIA claims that three potential large hydros (Khaishi, Tobarı and Pari HPPs) planned upstream of the potential Khudoni HPP have been excluded from assessment, based on the verbal consultations with Ministry of Energy while confirmation is not documented officially.

The CIA claims that "Valued Environmental and Social Components" (VECs), important for assessing environmental and social risks, were identified with the participation of the local communities⁹¹." However, it turned out that group of 10 people with whom CIA authors conducted consultation on April 5, 2016 consisted of 2 representatives of JSC Nenskra, 1 representative of SLR and 4 representatives of local municipality.

Cumulative Impact Assessment chapter does not provide any information about the current working regime of Enguri Hydropower Plant, the planned working regime of Nenskra HPP or other hydropower projects in the Enguri basin. No biodiversity surveys were made in the Enguri river at all.

Significant cumulative impacts on fish species can be expected if the Nenskra HPP project is built. Adding up to all impacts on the middle stretches of Enguri River and its tributaries (Nenskra and Nakra) it is expected that also lower stretches of Enguri River will be affected. The Enguri Dam (Jvari HPP) already has an significant impact on the

⁹¹ According to the CIA, Consultation meeting was held on April 5, 2016;

lower Enguri River by releasing more water in winter and less in summer than the natural hydrological regime. The Nenskra Dam will add up to that problem by regulating even more the outflow from Enguri Dam. This could lead to the complete extinction of species like the critically endangered Russian Sturgeon (*Acipenser gueldenstaedtii*), Ship Sturgeon (*Acipenser nudiventris*), Stellate Sturgeon (*Acipenser stellatus*) and European Eel (*Anquilla anquilla*). These species are reported from the lower Enguri river and depend on high water levels in the warm season for reproduction. No assessment on this species (or any species of fish, except habitat of trout) has been done.

Annex 1. Information Desk and Grievance Box in Chuberi and Nakra, Nenskra Project Area

1. Information board in Nakra⁹²



2. Comments box in Chuberi



3. Availability of grievance registration forms in Chuberi;



4. Information board in Chuberi;



Annex 2. Bern Convention Complaint

Annex 3. Quality report review of the hydrogeological and natural hazards ESIA studies for Nenskra HPP, Georgia. Sylwester Krańicki, Ph. D. Ludów Polski, May 2017

⁹² Comments box is missing in Nakra;



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