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Mr. David R. Boyd

Special Rapporteur on human rights and the environment

Office of the United Nations High Commissioner for Human Rights

United Nations Office in Geneva

Palais des Nations

CH-1211 Geneva 10

Switzerland

Dear Mr. David R. Boyd,

Please allow me, at the outset, to renew to you and the Office of the United Nations High Commissioner for Human Rights (OHCHR) assurances of my highest consideration.

Acting in good faith and in accordance with the principles of human rights, the provisions of the Charter of the United Nations, the Constitution of Georgia and the Organic Law of Georgia “On the Public Defender of Georgia”, as well as claiming to have direct and reliable knowledge of human rights violations in the country, I would like to extend this opportunity and draw your attention to the serious environmental and human rights concerns caused by the constructions of hydro electric power plants (hereinafter HPP) in the country.

I respectfully ask you to accept an individual invitation to visit Georgia at the earliest opportunity in order to analyze current situation in relation to the right to live in a safe environment described in more details in this letter.

During last ten years construction of a number of HPPs is ongoing process in many regions of Georgia. Despite a number of obligations and recommendations issued towards Georgia, Government’s decision to construct hydropower plants resulted in some of the most severe and most

pressing environmental, as well as the social and economic impacts and causes challenges on the individual level, in terms of human rights violations.¹

According to the information provided by the Ministry of Economy and Sustainable Development of Georgia the Office of the Public Defender of Georgia was informed that 26 hydro power plants are in exploitation since 2008 throughout the country, elaborating the strength of 536, 99 MW. Based on the same source, 187 memorandums of understanding² have been concluded with the investors since 2008 (by February 1, 2019), work is ongoing on 117 projects of hydro power plants,³ and 32 memorandums have been abolished. Grounds for such abolishment are found in violating contractual obligations by companies as well as failure of the companies to present technical-economic analysis within the timeframes established by the memorandums.

It should be emphasized that the Georgian government has not developed a policy document - a strategic plan, that will assess how much electricity the country needs for domestic consumption or for export purposes and how much electricity is required to achieve this. Without calculation and systematic view of the benefits that the HPPs should bring to the country, the current scale of HPP construction is ill-founded.

Office of the Public Defender of Georgia conducts active monitoring of the construction of hydro power plants in the country, as of the area closely linked to the right to live in healthy and safe environment.⁴

Public Defender considers that decisions made by the state bodies regarding the construction of hydro power plants fail to respond to the legitimate questions of the society and in the most cases, requirements set by law.⁵

Questions on the quality of surveys and environmental impact assessment documents have been acute for several years; other problems include, but are not limited to low level of involvement of the society in the decision making processes, failure to consider interests of local communities, legality of memorandums concluded with the investors, malpractice of formal administrative proceedings, issues pertaining to transparency of data and information, and reasonable doubts on the benefits to be accrued by the hydro power plant projects. As a result, decisions on construction of hydro power plant are followed with active protests from the population and lack of trust toward state decisions; planned projects frequently result in confrontation between citizens and state representatives.⁶

¹ Statement made by Organizations working on human rights and environmental issues regarding the crisis created in Chuberi, available at: <https://bit.ly/2pOgTUN>;

NGOs Demand Suspension of Hydro-Power Development Projects, available at: <https://bit.ly/2oC4nYw>;
NGO Statement on Khudoni Hydropower Plant Project, available at: <https://bit.ly/2N34Dcm>; <https://bit.ly/2NsFB5p>;
Human Rights Organization's response to the use of police forces in Pankisi Gorge, available at: <https://bit.ly/2JEQkc2>.

² Memorandums of understanding (MoUs) between the State and the investor, along with national (and international) law determine the terms of investment projects, as well as the ways the risks, costs and benefits are distributed. The rules (procedures) of signing MoUs and agreements determine, to a large extent, the quality of responsiveness to public opinion and accountability of decision-makers.

³ Out of this number, 23 are under construction, 25 projects at the stage of construction and licensing, and 69 projects at the technical-economic assessment stage.

⁴ Reports of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2013-2017: 2013, p 428; 2014, p. 559; 2015, p. 590; 2016, p. 522; 2017, p. 202.

⁵ Public Defender has been constantly underling these problems, from legislative and practical perspectives, for past years. See, Annual Reports of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2014, p. 558; for 2015, p. 591, for 2016, p. 523, for 2017, p. 207.

⁶ At this point following cases are pending at the Office of the Public Defender of Georgia: case №3383/18 of Oni Cascade; Case №3383/18 – Kheledula 3 Power Plants; Case №6523/18 – Samkuristskhali 2 Power Plants; Case №33494 Khadori 3 Power Plants; №2579/18 Khudonpower Plant;

Arbitrary intervention and negative impact on the ecosystem constitute accompanying outcomes of the construction of hydro power plants adversely affecting local residents' style of life or living conditions. The issues of energy and economic benefits deriving from the construction of HEPPs on the one hand and the legitimate interests of individuals on the other hand are particularly acute.

It should be underlined that the existing regulation does not foresee the obligation to assess energy and economic benefits that are foreseen by the exploitation of the hydro power plants at the moment when the construction permits are issued⁷. Thus, the Public Defender's inquiry before the competent state bodies⁸ on whether the state has studied mentioned issues and has analyzed reasonableness of implementing relevant projects met with negative response.

In order to clearly demonstrate the current situation, here is the brief description of relevant cases:

Khudoni HPP

The first construction works on hydropower plants began in the late 1980s. But in 1988, a significant part of the public in Georgia opposed the construction of Khudoni HPP. By that time, 25 percent of the work was completed, and the expenditures amounted to 150 million rubles [ed. then the currency of the Soviet Union]. Local residents began a hunger strike in Svaneti, and thousands of rallies were held in Tbilisi demanding that construction be stopped. Khudoni HPP is by far the most controversial hydropower project in Georgia. If constructed it will interfere with a rich cultural heritage⁹ and 2000 people will have to be forcefully resettled. As a result, in 1989, the construction of the Khudoni HPP was suspended. The Khudoni HPP was brought up again in the late 1990s, against the backdrop of a general crisis in the country. However, at the time, it was impossible to find an investor.

Aftermath of 2012 parliamentary elections, a group to study the Khudoni HPP was created in the Ministry of Energy.

In 2017, Minister of Energy said that the hydropower plant would definitely be built since it is very important for the economic development of the country. However, the construction of hydropower plant has not yet begun.

Khadori-3 HPP

Recently, on April 21, 2019, the construction of a small, 5.4 megawatt hydroelectric power station in the Pankisi Gorge in Georgia led to clashes between local residents and the police. The local residents opposed to the construction of the HPP and made physical barriers for the company workers to begin the construction works on the spot. The police used tear gas and rubber bullets to disperse the demonstration of the local residents, while locals threw stones at the police. The Ministry

⁷ Letter №09/163 of LEPL Technical and Construction Supervision Agency of January 31, 2019

⁸ Letter №04-11/539 16/01/2019 of the Office of the Public Defender of Georgia to the Ministry of Economy and Sustainable Development and to the LEPL Technical and Construction Supervision Agency.

⁹ Upper Svaneti is a candidate site to be listed by the UNESCO World Heritage for its natural importance and well-preserved medieval architecture.

While the dam is outside of the UNESCO site boundaries, the construction of a hydropower plant will interfere with the cultural sites (according to the official scoping document (pdf)). Twenty-seven villages will be impacted directly and indirectly by the project, including Khaishi which is regarded as a political and cultural gateway to Svaneti.

Khaishi's church of St. George, Lakhani's church of St. Nicholas, a cemetery and archaeological sites will be flooded.

of the Interior stated 55 people were injured, including 38 policemen and 17 local residents, and police cars and construction equipment were damaged. The hydropower station is called Khadori-3. It is the third station of Alazani Energy in the gorge. Khadori-1 and Khadori-2 have already been built on the Alazani River. The project would build a hydropower plant near the village of Birkiani, and stretch out over approximately 4.5 kilometers, redirecting approximately 90 percent of the water of the Alazani River via a pipeline. Locals are concerned that a decrease in the volume of water in the river will affect pastures, while most of the population makes a living in cattle breeding and livestock. In addition, there are fears that the hydropower plant will exacerbate the already serious issue with drinking water in several villages in the region, as well as hinder the development of tourism.

Nenskra and Mestiachala HPPs

Several other protests have broken out in the country against the construction of the Nenskra HPP and the Mestiachala HPP 1 and 2, which are being built on the river of the same name.

The construction of a hydropower plant on the Mestiachala River began in the summer of 2017. The investment cost of the project is \$65 million, and the total capacity of the power plants is 50 megawatts.

In December 2017, the local population blocked the road to builders and construction workers.

Then a demonstration took place on March 31, 2018, when several women lay on the road, blocking the path for construction equipment. They claimed that the construction of hydropower plants had already harmed their living environment and that sources of acidic water had dried out in the construction area. Since March 2018 there have been no preparatory construction works carried out on the site. Due to an incident with locals, the subcontractor company halted construction and left the project area.

A large protest followed in Mestia after the start of construction of the Nenskra HPP. The project calls for a dam with a height of 135 meters and a length of 820 to be built on the Nenskra River. 400 hectares of forest and pastures should be flooded and the population of three villages of the Chuberi community relocated.

Local residents demand that the hydroelectric station be built in an alternative way, without flooding the gorge. On May 20, 2016, the special forces of the Ministry of Internal Affairs dispersed the demonstration of the opponents of the Nenskra HPP with the use of force and eight people were detained.

In March 2018, Lalkhori – a unity of representatives of Svaneti communities, derived from old local tradition – passed a unanimous decision to ban the construction of hydropower plants in Mestia.

“From now on, hydropower plants will not be built in Svaneti, including the Khudoni HPP, the Nenskra HPP, the Mestiachala HPP and more than 50 other hydropower plants that are planned to be built in Upper Svaneti”, the Lalkhori said in a statement.

A similar meeting against the construction of large hydroelectric power stations took place in another high-mountainous region, in Racha. The population opposed the construction of two large hydropower plants on the Rioni River – the Oni-1 and Oni-2.

The total capacity of these hydropower plants would be 206 megawatts.

HPPs in the mountainous region of Ajara

Shuakhevi HPP

Shuakhevi power plant is one of the examples of the halted project, which through the million value investment and large scale nature, should have been the most costly and dense project in the country.¹⁰ The construction of the power plant was finished in 2017 with total cost of \$400 million, however in the same year water transmitting tunnel of Shuakhevi in the village of Didachara in Khulo (which reportedly is the second largest tunnel in the world) collapsed.¹¹ Local population and civil society posed questions on the quality and reliability of the Shuakhevi Hydro Power Plant project even at the initial stage of constructing the power plant; Protest demonstrations have taken place in the village of Buturauli of the Shuakhevi municipality in April, 2019. Local residents say that after the construction of hydropower plants, landslides have intensified, houses cracked and 40 families are awaiting resettlement.

Public Defender reflected the outcomes of the analysis of this case study in the Parliamentary Report for 2014.¹² In accordance with the information provided to the Office of the Public Defender of Georgia by the company implementing the state project,¹³ the company claims that the collapse was caused by “unpredictable geological processes,” in particular the degradation of rocky layer was identified, whereas in areas where the quality of the layer was good, degradation tendency of the layer was still noticed. Based on the findings made by the Public Defender, reinforcement, done previously was inadequate due to layers being in water environment for a long time; the collapse of the layers was largely caused by this.

Rehabilitation works are still ongoing. Therefore, the Shuakhevi power plant does not operate yet. Damage caused due to dismantling of the tunnel has not yet been evaluated.

Machakhela HPP

On February 9, 2019, in the gorge of Machakhela in Adjara, a movement against the construction of hydroelectric power plants was established – A Man of Words.

Residents of five villages of the Machakhela gorge united in the movement, who pledged not to sell their land to the company building the hydroelectric power station. The construction of the 30-

¹⁰ In 2011, a memorandum was concluded between the Government of Georgia, Clean Energy Invest AS and “LTD Adjaristskali Georgia; based on the amendments of 2012, agreement was made to construct 4 hydro power plants, with a total capacity of 399,8 MW, generated average per annum 1165,6 mio kWh, Investment capacity of 700 million USD; During 10 years generated energy as a result of the exploitation of each power plant should have been sold on local market, that would reflect positively on meeting internal needs and energy tariffs. Rest of the energy should have been exported. Letter №04/158 of Ministry of Energy of January 20, 2014. Investment capacity of the project reaches 420 million USD, total capacity -187 MW. Can be retrieved from the link: available at: <https://ces.to/X8sRT0> . [last visited on: 13.03.2019]

¹¹ available at: <https://bit.ly/2JHbGrM> according to the official statement of the company, dismantling of a small part of the tunnel would not hinder the work of the power plant, which is ready for commercial activities: information available at <https://ces.to/B2RjGS> [last visited on: 13.03.2019]

¹² Office of the Public Defender studied this case based on the joint application of the local population and Department of Prevention and Monitoring of the Office of Environmental Defender; Outcomes of the analysis can be found in Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2014, pp 558-564;

¹³ Letter №09/168 of LEPL Technical and Construction Supervision Agency of 31/01/2019 №09/168.

megawatt hydropower plant on the Machakhela River is planned by the company Machakhela HPP. The local population claims that it plans to develop eco-tourism in the gorge and that this plan would be prevented by the construction of a hydropower plant. A lack of safety around hydropower plants in recent years has fanned the flames of the conflict.

In Khelvachauri, the Adjar Energy company, which manages the Kirmati HPP, has flooded the river Chorokhi to the extent that water has covered the land plots of the inhabitants of the villages of Maradidi and Kirmati. An official government reaction has yet to come.

Conclusion

Public Defender of Georgia shares the state position *vis-à-vis* the importance of the development of natural resources and energy potential. However, monitoring conducted by the Office on construction of hydro power plants for several years and circumstances mentioned above illustrate the necessity of consistent and complex approach from the government's side. This necessitates the planning of a long-term energy policy and elaboration of subsequent strategy, with the due consideration of the rational use of natural resources, sustainable development, legitimate public interest to protect environment, social-economic needs of the local population and the right to live in a healthy and safe environment. To balance three dimensions of sustainability (economic, social and environmental) policy documents shall be elaborated based on surveys, best international practices, public discussions and active inclusion of field experts and groups. Furthermore, to plan and implement future activities effectively, comprehensive study and analysis of already performed work, made and planned investments, cost-benefit of the projects and lessons-learned is necessary.

In individual cases, possible negative impacts of the project on the environment, expected costs and energy and economic benefits have not been studied; Public Defender repeatedly called upon the state authorities to change the malpractice of administrative proceedings, be guided and enforce new regulations set by the Code on Environmental Assessment envisaging real inclusion of broad spectrum of stakeholders in the decision making processes.

Public Defender decided to invite Special Rapporteur to visit Georgia to share his expertise on the abovementioned issue, since it is very important to take into consideration present-day attitudes worldwide with regards to the constructing HPPs as a justified solution for country's energy independence; and to urge the Government to thoroughly study the possible impacts that hydro power plants have on the environment, proportionality issues between the necessity to build HPPs and possible damage they cause to society and the environment.

The visit of Special Rapporteur's will create an extraordinary opportunity to share international standards and examples of good practices with the State authorities and Georgian public in general. This visit will assist us to clarify what are the crucial elements that should be taken into account while deciding whether or not to build hydro power plants in the country. Since this is an area of specific expertise outside of the professional skills of the Public Defender's Office we consider it to be of an utmost importance to hear unbiased, professional evaluation of the current situation and receive recommendations for future positioning on this topic.

I once again emphasize the importance of your visit in order to study environmental and human rights concerns caused by the constructions of hydroelectric power plants and I believe that your respective

mandate can play a critical role in ensuring Georgia's compliance with its relevant international obligations in this regard. Therefore, I respectfully ask that you accept an invitation for a country visit to Georgia, and engage with the authorities on the steps that need to be taken to guarantee the right to live in a safe environment.

In order to be fully informed on the mentioned issues I stand ready to provide you with additional information and arrange respective meetings with various authorities and focus groups, including the representatives of international and national organizations and state agencies.

Respectfully yours,

Nino Lomjaria

Public Defender (Ombudsman) of Georgia

A handwritten signature in blue ink, consisting of a stylized 'N' followed by a series of loops and a long horizontal stroke.