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Preliminary comments on the Nenskra hydropower plant Environmental and Social Impact Assessment consultation process

On June 15–21, 2015, CEE Bankwatch Network organised a fact finding mission to the Nenskra hydropower plant (HPP) in the Upper Svaneti region of western Georgia in order to establish whether the environmental impact assessment (EIA) documentation and the consultation process are in line with standards of the international financial institutions (IFIs).

The following preliminary comments on the environmental and social impact assessment (ESIA) and some of the outstanding points from the ESIA report are based on:

- project site visit
- meetings with relevant stakeholders, including:
 - 24 locals in the villages of Chuberi and Nakra;
 - the Ministry of Economy and Sustainable Development;
 - the Ministry of Energy;
 - the Ministry of Environment and Natural Resources Protection;
 - the Asian Development Bank (ADB);
 - the European Bank for Reconstruction and Development (EBRD); and
 - JSC Nenskra and the Partnership Fund; and
- project documentation (ESIA), an information leaflet on the construction and operation of the Nenskra HPP

We were also seeking meetings with representatives of K-Water and the International Finance Corporation (IFC) but those were not possible in given timeframe. We hope to follow up with those through correspondence.

The following analysis concentrates primarily on the standards of the EBRD and the ADB as potential financiers of the project and the Equator Principles. We also refer to the gap analysis of the EBRD environmental and social standards and Georgia legislation undertaken by the project sponsor in the ESIA published by Nenskra JSC .

CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

Conclusions and recommendations

Although the project sponsor has declared its intentions to meet IFI standards and has prepared a gap analysis of Georgian legislation and EBRD policies, the ESIA and consultation process on this ESIA do not meet requirements of the relevant IFI policies.

Due to shortcomings in the consultation process by the project sponsor and the poor quality of the ESIA report, the project assessment and consultations will likely lead to two separate ESIA's. We expect that one will be prepared according to Georgian legislation, and the second according to IFIs standards. We fear this will create confusion for the stakeholders, in particular the local communities, and exacerbate the tensions between the affected population and the project sponsor.

We propose the following to substantially improve the quality of the documentation and the process:

- prepare and consult a stakeholder engagement plan and organise a scoping process that would include all relevant local stakeholders, and analyse all issues that could be raised during the scoping process;
- prepare a new draft of the ESIA and ensure the availability of documents in publicly accessible places for local communities and organise public hearings that would avoid current problems;
- provide detailed analyses of economic activities (incl. subsistent ones) in the project area and analyse the impact of the project on those areas;
- fully apply the policies of financial institutions related to indigenous people;
- release all relevant documents as an Annex to the ESIA (least-cost or social-economical benefit analyses for Georgia, geological surveys etc.);
- include all relevant issues into a cumulative impact assessment, including interaction with other planned projects in the region; and
- fully assess the alternatives based on the input from the scoping.

Main findings

Inadequate stakeholder analysis and flawed scoping process

The ESIA report notes that the project sponsor has identified and analysed stakeholders potentially affected by the project during the ESIA. The report also includes a Stakeholder Engagement Plan (SEP) and lists dates of a planned scoping meeting. While this might imply that the project sponsor has followed the obligations of the scoping, the **inadequate identification of stakeholders, the absence of a scoping meeting and the brevity of the SEP** demonstrate clearly that the developer is far from IFIs standards.

While the ESIA notes that “stakeholders (potentially affected by the project)” have been identified, the report **does not elaborate on the identification and/or the specific ways of engaging the impacted communities**. Given that Nenskra HPP is a category A project, a thorough SEP is required. However, the SEP included in the ESIA report does not conform with EBRD requirements.¹ Specifically it fails to outline:

- the handling of communication with identified stakeholders throughout project preparation and implementation;
- the grievance procedure;
- consultation with different groups in the community, identifying measures to remove barriers from participation; and
- effective participation of the disadvantaged or vulnerable.

For the project planning stage of the process, the SEP indicates that consultations will involve only state officials, environmental services and experts. As per the SEP, the project **developer does not foresee meeting other stakeholders like affected communities** and non-governmental organisations

during the planning stage. The exclusion of significant stakeholders from the planning stage either implies the developer has not planned for a meaningful scoping process or has wrongly identified the stakeholders. This contradicts EBRD safeguards in that it does not offer an opportunity for stakeholders to “provide comments and recommendations on a draft SEP and other scoping documents”.

The EBRD ESP requires clients to engage in a “scoping process with interested parties and identified stakeholders at an early stage of the ESIA process to ensure identification of key issues to be assessed as part of the ESIA”.² Ideally, the project sponsor should hold a scoping meeting with interested parties at all relevant levels, provide them with information about the proposed project, the expected content of the EIA documentation, and a detailed description of the public participation process. The ESIA report says that on 24 and 25 April 2015 preliminary meetings were to be held in the villages of Nakra community (villages: Naki, Lekalmakhi, Zeda Marghi, Larilari, Sgurishi, Tita, Lakhami). However the deputy of Nakra at the Assembly of the Mestia Community said that **no scoping meeting took place in Nakra** on those dates.

Overall, the minimal scoping process affected the quality of the ESIA consultation process and report.

Limited availability of ESIA documentation for affected people

According to locals interviewed during the mission, there was one paper copy of the ESIA kept by the Nakra representative to the Assembly of the Mestia Municipality. The village of Chuberi had no access to the ESIA report until the Nakra community shared theirs briefly before the consultation meetings. The lack of access to the ESIA in Chuberi substantially limited the opportunities for effective participation.

¹ The EBRD ESP postulates that the SEP should be “appropriate to the nature and scale or the risks, impacts and development stage of the project”. Environmental and Social Policy. EBRD. 2014. Performance Requirement 10. Article 10.

² The Environmental and Social Policy. EBRD. 2014. Performance Requirement 10. Article 22.

Neither the Partnership Fund or K-Water have published electronic copies of the ESIA report on their websites. If not for Green Alternative, who disseminated electronic copies of the ESIA to the community leaders in Chuberi and Nakra, the affected people's ability to effectively engage in the consultations would have been further limited. Even if using electronic copies is complicated, as the electricity supply is highly unreliable in Chuberi.

Lack of dissemination about the ESIA consultation process and public meetings

The people interviewed in Chuberi and Nakra said that they had not seen any official announcement of the consultation process nor had they received an invitation to the public hearings. The ESIA report mentions that the developer advertised a set of public hearings in Mestia, Nakra and Chuberi through a text published in the *Sakartvelos Respublika* (The Republic of Georgia) newspaper on 4 April 2015. The choice of a communication channel that is not widely used by the local population raises questions about whether there was real interest in involving local stakeholders. As a result, local villages were not informed in a timely manner about the public hearings and could not prepare sufficiently for the meetings. This adds to the weakness of the scoping. Had the scoping process been done properly, it would have identified a more appropriate communication outlet for the Upper Svaneti villages.

Some of the people in Chuberi learned about the public hearings from their neighbours on the day of the meetings. What we find particularly problematic is that the developer undertook no initiative to invite the people who were possibly directly affected by resettlement or those at risk of losing their livelihoods. The developer has also neglected to disseminate information among the community leaders. For example, the Chuberi school director learned about the hearings from journalists who visited the village a day prior the meetings.

The failure to announce the consultations on time through culturally-appropriate channels has hampered dialogue with affected communities.

Lack of information about the rights of the affected communities and the absence of a grievance mechanism

Those who we interviewed and participated at the public hearings in Nakra and Chuberi said that the developer provided them with no information about their rights during the ESIA consultation and the project's operational phases. The local people have not been informed that a grievance mechanism would be established, despite the fact that the EBRD Environmental and Social Policy³ and ADB Safeguard Policy Statement⁴ requires one. The ESIA report fails to detail whether the grievance mechanism will be established, how it will operate and how its existence will be advertised among the people. Only a workers-related grievance mechanism is vaguely mentioned in the ESIA.

Unbalanced presentation of project risks and benefits

As per the information received from members with affected communities, the developer presented only the benefits that the project will bring to the villages, especially in terms of the jobs created. The developer omitted information about many of the risks included in the ESIA.

3 The Environmental and Social Policy. EBRD. 2014. Performance Requirement 5. Article 21.

4 Safeguard Policy Statement, ADB, 2009, Involuntary Resettlement Safeguards, Safeguard Requirement 2: Involuntary Resettlement, Section 7. Grievance Redress Mechanism

Inconsistent information about resettlement, land acquisition and livelihood restoration

The ESIA provides inconsistent and inaccurate information on resettlement and livelihood restoration. According to its conclusions, the project developer foresees neither physical nor economic resettlement of the registered real estate during project implementation.⁵ In contradiction to this, the overview of mitigation measures during the construction phase listed in the ESIA contains an action point to “Inform one family living within the project influence zone about the physical and economical resettlement issues”. As the ESIA contains no further details it is difficult to distinguish the location of the family involved in the resettlement. Our findings revealed a different scale of physical displacement.

During our visit to Lekalmakhi we identified two families – each of which are eight people and include internally-displaced people – who were told by an unidentified official that they would be resettled due to the construction of the power house. The families said that the official visited them during the subcontractors visit to the Neskra site and threatened them with immediate resettlement or they would be displaced without any compensation.

The ESIA’s overview of mitigation measures for the construction phase includes provisions for the “acquisition of land plots existing within the power unit area and building infrastructure disposal area”. As these lands belong to the two families and the land ownership registration on these is pending, this only increases questions about the scale of the resettlement process involved.

The families to be resettled said that they have

repeatedly voiced disagreement with the resettlement plans. Yet the ESIA notes that, “during the meetings conducted in the environmental impact assessment process, discontent related to property rights have not been expressed. Complaints or disputes related to property rights are not recorded by March 2014.” This statement is striking in the light of the fact that the draft ESIA report was written and released prior to any consultations taking place on 1–2 June 2015. Additionally, the developer has not yet made any effort to establish a system that would record grievances.

According to the ESIA mitigation plan, the developer needs to prepare a resettlement action plan (RAP) and present it to stakeholders. Yet the families claim that no details of the resettlement have been discussed with them. This in spite of the fact that EBRD safeguards note that “experience demonstrates that the direct involvement of the client in resettlement activities and an assessment at the earliest stage possible in the project design, can result in cost-effective, efficient and timely implementation of those activities”⁶. Similarly the ADB requires Resettlement Planning⁷ and the Equator Principles refer to IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement⁸

Both in Nakra and Chuberi, we observed a number of local economic activities, in particular forestry, animal grazing, subsistence agriculture. These will be impacted by the project either directly (e.g. through the loss of land based on customary use by families or the community) or indirectly (changes in the microclimate). The ESIA report says “only 4 privately owned lands will be subjected to economic displacement, which should be considered as a positive impact of the project”. This is surprising given the previous information stated in the ESIA that the project involves no economic displacement. Since no livelihood restoration plan has been prepared as a

5 Environmental and Social Impact Assessment Report. Project on the Construction and Operation of Nenskra HPP. „Nenskra” JSC. Executor: Gamma Consulting Ltd. Tbilisi 2015. Chapter 11. Conclusions and Recommendations. Article 12.

6 Environmental and Social Policy. EBRD. 2014. Performance Requirement 5. Article 4.

7 Safeguard Policy Statement, ADB, 2009, Involuntary Resettlement Safeguards, Section 3. Resettlement Planning,

8 Equator Principles III. June 2013. p. 22.

part of the ESIA, it is unclear how many families are to be impacted by economic resettlement after all.

The ESIA neglects the management of economic displacement for people who have customary lands but not land titles. In the light of the findings in Lekalmakhi and Chuberi, we believe that the ESIA report downplays the scale of the resettlement and the impacts on the livelihoods.

Application of indigenous people policy

The ESIA says that EBRD Performance Requirement 7 on Indigenous People is not applicable but does not provide any further explanation. We believe this is incorrect:

In the EBRD Policy⁹ as well as the IFC Performance Standards¹⁰ that the Equator Principles¹¹ refer to, the term “Indigenous Peoples” is used [...] in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of the following characteristics in varying degrees:

- self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
- collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories
- descent from populations who have

traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations

- *customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture*
- *a distinct language or dialect, often different from the official language or dialect of the country or region.”*

Similarly the ADB defines “[f]or policy application purposes, “Indigenous Peoples” is used in a generic sense to refer to a distinct, vulnerable, social, and cultural group possessing the following four characteristics in varying degrees:

- (i) *self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- (ii) *collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;*
- (iii) *customary, cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- (iv) *a distinct language, often different from the official language of the country or region.”¹²*

The Svans inhabiting the area threatened by the Nenskra HPP fall into this wide definition as a distinct ethnic group for the following reasons:

- Svans identify themselves as both Svans and Georgians, and they are also recognised by other Georgians as a distinct ethnic group;
- Svans live in the Svaneti region and use the traditional division of customary land in the communities; currently part of the population depends on subsistence farming, and use of land transfer has been regulated by customary law;

9 Environmental and Social Policy. EBRD. 2014. Performance Requirement 7. Article 3.

10 IFC Performance Standard 7. Indigenous Peoples. January 1, 2012. Article 5.

11 Equator Principles III. June 2013. p. 7–8. “EPFIs recognise that indigenous peoples may represent vulnerable segments of project-affected communities. Projects affecting indigenous peoples will be subject to a process of Informed Consultation and Participation, and will need to comply with the rights and protections for indigenous peoples contained in relevant national law, including those laws implementing host country obligations under international law. Consistent with the special circumstances described in IFC Performance Standard 7 (when relevant as defined in Principle 3), Projects with adverse impacts on indigenous people will require their Free, Prior and Informed Consent (FPIC)”

12 Safeguard Policy Statement..ADB. June 2009. p. 56.

- Svans maintain some of their decision-making and judiciary institutions such as the Councils of Elders or the traditional court system; and
- There is a distinct Svan language, although most are bilingual, as the education system is in Georgian

The application of IFI policies on Indigenous People is particularly important, as the Nenskra project is planned to be constructed on land where the ownership and its use are still to large extent regulated by customary laws. This issue needs to be properly addressed.

Addressing mudflow rivers in vicinity of Nakra village

One of the risks identified in the EIA is related to the mudflow river Lekvedari which runs north of the Nakra village and joins the Nakra river from the right side. In the EIA this river is identified as a significant threat to the village. According to the EIA, at present solid sediment is regularly washed by the Nakra river and therefore the risk of spreading mudflow to the village is reduced. But downstream from the Nakra dam only the minimal flow will be released and thus the river will lose capacity for transporting sediments brought by the Lekvedari river, “due to which riverbed may be blocked and mudflow may spread towards the village”. Locals pointed out that north of the village, there exists an even bigger and active mudflow river called Leknashera that is not mentioned in the EIA.

Based on their observations, Nakra villagers and the local geologist perceive this risk of mudflow as very high, and it is not adequately addressed in the EIA as both mudflow rivers are quite active and according to locals almost every year it brings significant amounts of sediment. For example in 2010 the Leknashera river completely washed out the village cemetery, as well as some agricultural land plots, and in 2001 the Lekvedari river washed out part of the land plots and a tractor of one family living near the river.

Engineering–geological survey

Another issue detected in the ESIA is related to the evaluation of erosion and landslides. The report states “According to the results of engineering–geological survey of the project area, HPP infrastructure facilities (dams, tunnels entrance and exit portals, power unit, construction infrastructure and others) will be arranged on areas where dangerous geodynamic processes are less expected.”¹³, but a detailed survey was not released.

Additionally, the ESIA states that “active dangerous geological processes have not been observed within the perimeter of the reservoir (nearest landslide area has been observed 3.5–4.0 km away from end point of the reservoir, which will not have significant effect on its operation) and therefore, no activation is expected on the operation phase. Therefore, the volume of the reservoir will not be reduced due to erosions or landslides.”¹⁴ During the site visit we observed two recent landslides, as well as several active mudflow rivers. Additionally according to the ESIA, there is a need to cut down around 370–380 hectares of forests, which include the slopes of the gorge likely leading to increased erosion.

Given the potential risks, an engineering–geological survey should be released as an Annex to the ESIA.

Cumulative Impact Assessment

According to the Georgian Academy of Science, the Nenskra project accumulation would reduce accumulation at the Enguri and Khudoni dams (if completed), and thus would reduce the utility of the state–owned Enguri dam. These issues are not assessed in the Nenskra ESIA.

¹³ Environmental and Social Impact Assessment Report. Project on the Construction and Operation of Nenskra HPP. „Nenskra” JSC. Executor: Gamma Consulting Ltd. Tbilisi 2015. Chapter 6.7.2.1 of the EIA

¹⁴ Environmental and Social Impact Assessment Report. Project on the Construction and Operation of Nenskra HPP. „Nenskra” JSC. Executor: Gamma Consulting Ltd. Tbilisi 2015. , p. 353

Additionally, the construction of transmission lines for the Nenskra HPP will have significant cumulative impacts. Together with the Khudoni dam, there will be three high voltage transmission lines, and the construction of these line and the related access roads might lead to a substantial increase in landslides and thus sedimentation in the already-exposed Enguri dam: “During the site visit of 6 March 2013, the manager of the Enguri Dam showed that sediments have filled the reservoir up to the lower spillway level, indicating that the dead storage of the Enguri reservoir is filled up in only 35 years of operation”¹⁵ Yet the ESIA fails to address this issue reasoning that the “environmental impact assessment will be developed after preparation of working project of transmission lines.”¹⁶ We believe that this is a typical “salami” approach to project appraisal, particularly if the transmission lines are an integral part of the project.

Relation of project to Electricity Sector Strategic Environmental and Social Assessment

During our meetings with the Ministry of Energy, we got confirmation that a Strategic Environmental and Social Assessment¹⁷ of the Hydro Sector is under preparation. Nevertheless we were informed that the participation of the ministry in the preparations is rather minimal, and they are waiting for the World Bank to finalise this work. Although we are still seeking more details on the process (for example why the original plan to make the SEA for the electricity sector was replaced by more the narrow analyses of the hydro sector) , we assume that these documents are likely to be prepared – eg. least-cost analyses – and might provide important background for the Nenskra ESIA.

15 Advisory Review of the ESIA of the Khudoni HPP Project, p. 16

16 ESIA–Nenskra_HPP, p. 67

17 Electricity Sector Strategic Environmental and Social Assessment is a component of the World Bank Loan for Transmission Grid Strengthening Project (<http://www.worldbank.org/projects/P147348?lang=en>),

The ESIA for the Nenskra project should be related to electricity (or eventually hydro) Sector Strategic Environmental and Social Assessment that is currently under the preparation in Georgia.

Alternatives

Due to the lack of scoping, the alternatives related to electricity production or energy efficiency presented in the ESIA are in our view considered only as a formal requirement and lack any specificity and adequate analyses. For example, the ESIA highlights the potential for hydropower in Georgia, but it does not consider options such an increase in the penetration of small-scale hydro options for the use of solar, geothermal or hydro. A combination of these is also not considered, which would be part of a proper cost-benefits analysis for Georgia (which was previously recommended by the Dutch commission on the Khudoni dam)¹⁸.

While the Ministry of Energy admitted that such an analysis might be useful and would consider performing one, it is surprising that such analysis was not done in the first place to identify what are least cost options for Georgia. Further a number of other economic factors appear not be considered. For example at a meeting with the Ministry of Energy, we did not get a clear response about whether the project site land will be or has been transferred to the project sponsor. Such ambiguity is surprising, given the fact the project has a total area of 450 hectare, meaning that the land transfer is a significant economic factor.

We recommend to identify specific alternatives to the Nenskra HPP project through a scoping process with relevant stakeholders and assess those in full detail.

18 Advisory Review of the ESIA of the Khudoni HPP Project, chapter 2.4