



THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

## Human Rights and a 10-year Practice of Development Projects

Joint Research Prepared by the Office of the Public Defender (Ombudsman) of Georgia and The Danish Institute for Human Rights

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## 1. Introduction

Modern-day human activities, including the construction of infrastructure and extraction of natural resources, metals and minerals can cause negative impacts on the environment. This can include pollution, deforestation, and contributing to climate change. The environment and enjoyment of human rights are inter-related and negative environmental impacts can cause negative human rights impacts, which can hurt those who are already vulnerable. This is also true for large-scale renewable energy projects, including hydro-power dams and wind parks, which can cause negative human rights impacts despite their potential to ‘do good’ with the aim of addressing the climate change crisis and providing clean energy.

State-owned or privately-owned businesses play an important role in such mega-projects, whether that is leading, designing, funding, and/ or implementing projects as contractors and suppliers. As such, business activities can cause, contribute, or be directly linked to adverse environmental impacts and associated negative human rights impacts.<sup>1</sup> During the implementation of HPP, transmission line, road, and similar large-scale projects in Georgia, as a rule, the environmental and rights-related challenges become always relevant, which will be discussed in detail below.

Environmental impact assessment (EIA) is a commonly used process which can help businesses and states identify and assess how to address the potential environmental and social impacts of projects as part of project approval decision-making. EIA is often mandated by law for projects of a certain size, conditions, or location. International Finance Institutions (IFIs) have also adopted formal EIA procedures to improve project selection, design, and implementation and to minimize adverse environmental impacts.<sup>2</sup>

However, EIAs often do not capture the potential negative human rights dimensions of adverse environmental impacts. In addition, EIAs are often conducted in a way that does not respect or take into consideration the human rights of relevant stakeholders involved in EIA processes due to, for example, lack of resources or expertise, the need to approve projects fast, or different interests of parties involved.

This research is prepared jointly by the Office of the Public Defender (Ombudsman) of Georgia and the Danish Institute for Human Rights. The document aims to: (1) give a brief overview of the relationship between the environment and human rights in international law; and (2) review various projects implemented in Georgia over the last 10 years that had/may have had impacts on human rights, given their scale and/or peculiarity of their activities.

## 2. Environment and human rights

2021 was a historic year in terms of environmental protection. The United Nations recognized access to a clean, healthy, and sustainable environment as a fundamental human right. Which is a logical continuation of the dynamic changes in approaches to the relationship between environmental protection and human rights in

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<sup>1</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, 15 July 2020, A/75/161, Para. 75 (Report of the Special Rapporteur on the environment and human rights A/75/161)

<sup>2</sup> See: <https://www.oecd.org/investment/investmentfordevelopment/2076277.pdf>, p. 3

recent decades. This chapter will briefly review such important international instruments that have pointed out the close link between human rights and the environment.

As far back as 1972, The Stockholm Declaration on the human environment provides that humans have the right to live in a quality environment “that permits a life of dignity and well-being.” The 2015 Paris Agreement acknowledges that “climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”. At the regional level, the Charter of Fundamental Rights of the European Union requires that “a high level of environmental protection and the improvement of the quality of the environment” be integrated into the Union policies and ensured “in accordance with the principle of sustainable development”.<sup>3</sup> The 1998 Aarhus Convention notes that “that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself”.<sup>4</sup>

Sustainable development instruments, including The 2030 Agenda for Sustainable Development (2030 Agenda) recognise the environment as one of the three foundational dimensions of sustainable development, with an aim of the 2030 Agenda being to “... ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment.”<sup>5</sup> Apart from this overarching principle, environment is linked with human wellbeing and sustainable development in many sustainable development goals (SDGs) and specific targets. SDG 13 (action to combat climate change), SDG 14 (conserve oceans, seas and marine resources), SDG 15 (protect terrestrial ecosystems, biodiversity and land) directly relate to protecting environment. Other SDGs contain targets that relate to environmental protection. Examples of the latter are: SDG target 11.6 that calls for reducing the adverse per capita environmental impact of cities; SDG target 8.4 that promotes decoupling economic growth from environmental degradation. These goals and targets tie together with the human-centered approach of the 2030 Agenda and its adoption of international human rights as a foundational principle.

Before the historic 2021 UN resolution there was not a standalone human right to healthy environment in international human rights law for many years. However, it should be noted that international and regional human rights bodies have addressed the links between environmental impacts and human rights through the interpretation of various human rights and freedoms under respective instruments. For instance, the European Court of Human Rights (ECHR) has extrapolated the links between environmental impacts and substantive or procedural human rights protected by the European Convention of Human Rights, such as the right to life, the

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<sup>3</sup> Charter of Fundamental Rights of the European Union, European Union, 26 October 2012, Article 37

<sup>4</sup> The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention). Also see the Escazú Agreement <https://www.cepal.org/en/escazuagreement> More info here too: <https://environment-rights.org/the-escazu-agreement/>

<sup>5</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, Preamble

right to liberty and security, the right to a fair trial, the right to respect for private and family life and home, freedom of expression, freedom of assembly and association, and protection of property.<sup>6</sup>

This trend is referred to as “greening” of existing human rights by the UN Special Rapporteur on human rights and the environment.<sup>7</sup> The recognition of access to a clean, healthy, and sustainable environment by the UN as a fundamental right was preceded by long processes. Along with the development discussed above, it should be noted that in a report in 2018 the UN Special Rapporteur has identified 155 countries with “a binding legal obligation to respect, protect and fulfil the right to a healthy environment” on a national level, and called for the UN to formally recognize the right.<sup>8</sup> In an effort to compile the links between human rights and the environment, the former UN Special Rapporteur John Knox produced the Framework Principles on Human Rights and the Environment in 2018, a set of 16 principles that build on the recognition of the human right to a healthy environment and bring together its various components.<sup>9</sup> Principle 8 states that “[t]o avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights” as a measure for avoiding actions with environmental impacts that interfere with full enjoyment of human rights.<sup>10</sup>

The list below shows how environmental impacts affect human rights:

- **The right to life.** According to the UN Human Rights Committee (HRC), “implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>11</sup>
- **The right to the highest attainable standard of health** includes the state obligation to guarantee “the improvement of all aspects of environmental and industrial hygiene.” This entails “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”<sup>12</sup>
- **The right to food** is only guaranteed if it is free from adverse substances which is directly linked to environmental hygiene.<sup>13</sup>

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<sup>6</sup> Council of Europe, European Court of Human Rights, factsheet on Environment and the European Convention on Human Rights, updated in 2020. Available at: [https://www.echr.coe.int/Documents/FS\\_Environment\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf)

<sup>7</sup> Report of the Independent Expert on the environment and human rights A/HRC/73/188, para. 13

<sup>8</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188, 19 July 2018, Para. 30 (Report A/HRC/73/188)

<sup>9</sup> Framework Principles on Human Rights and the Environment, 2018

<sup>10</sup> Also see [ILO Convention No. 169](#), Article 7(3)

<sup>11</sup> UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, para. 62 (CCPR General comment no. 36). Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Human Rights Council, 24 December 2012, A/HRC/22/43, para. 34 (Report of the Independent Expert on the environment and human rights A/HRC/22/43)

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, Para. 15 (CESCR General comment no. 14). Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Human Rights Council, 24 December 2012, A/HRC/22/43, para. 34 (Report of the Independent Expert on the environment and human rights A/HRC/22/43)

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, para. 10 (CESCR General comment no. 12). Report of the Independent Expert on the issue of human rights

- **The right to an adequate standard of living** can be affected where environmental impacts on biodiversity threaten the livelihoods of communities or individuals depending. It links to several other relevant rights, including the right to food and housing.
- **Full realisation of the right to water** is also highly susceptible to adverse environmental impacts which can deteriorate its availability, accessibility, or quality.<sup>14</sup>
- International human rights law recognises that **certain rightsholder groups**, such as indigenous peoples,<sup>15</sup> women<sup>16</sup> and children,<sup>17</sup> are particularly vulnerable to adverse environmental impacts.
- **The fulfilment of cultural rights as well as the right to self-determination** can be dependent on the land, territory, and resources, as in the case of indigenous peoples.<sup>18</sup> Consequently, they are closely linked to the environment and can be threatened by negative environmental impacts.
- **Civil and political rights**, particularly those of environmental human rights defenders, who remain highly vulnerable and under attack across the globe.<sup>19</sup>

### 3. The impacts of business on the environment and human rights

Some of the greatest environmental impacts are the result of business activities. The Carbon Majors Report 2017 identifies that 100 active fossil fuel producers including ExxonMobil, Shell, BHP Billiton, and Gazprom are linked to 71% of industrial greenhouse gas emissions since 1988.<sup>20</sup> Business activities and projects produce or contribute to major negative environmental impacts, such as pollution, deforestation, and carbon emissions.<sup>21</sup> Negative environmental impacts can cause and/ or contribute to negative human rights impacts, including:

- Large agricultural projects that divert or deplete water sources might impact the access to water for local communities and, hence, threaten the right to water and food;<sup>22</sup>

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obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Human Rights Council, 24 December 2012, A/HRC/22/43, para. 34 (Report of the Independent Expert on the environment and human rights A/HRC/22/43)

<sup>14</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para 12 (CESCR General comment no. 15)- Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Human Rights Council, 24 December 2012, A/HRC/22/43, para. 34 (Report of the Independent Expert on the environment and human rights A/HRC/22/43)

<sup>15</sup> International Labour Organization, *Indigenous and Tribal Peoples Convention*, 1989 (No. 169), Articles 7(3) and 7(4); The United Nations Declaration on the Rights of Indigenous Peoples, Article 29(1)

<sup>16</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change*, 7 February 2018 CEDAW/C/GC/37

<sup>17</sup> Convention on the Rights of the Child, Article 24(2)

<sup>18</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21, paras 15 and 36 (CESCR General comment no. 21)

<sup>19</sup> UN Environmental Programme, Who are environmental defenders, <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/who>.

<sup>20</sup> <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcdd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1499691240>

<sup>21</sup> For instance, Corporate Accountability Institute's data links the third of all carbon emissions since 1965 to top 20 fossil fuel companies. Available at: <https://climateaccountability.org/carbonmajors.html>

<sup>22</sup> Business & Human Rights Resource Centre, Food Companies Fail To Address Water Risks in Peru, 2018. available at: <https://www.business-humanrights.org/en/latest-news/food-companies-fail-to-address-water-risks-in-peru/>

- Extractive projects tend to threaten the quality of water and air, biodiversity and ecosystems in general, and, this way, could impact rights of communities (e.g. the right to earn a livelihood, the right to food, including the rights of indigenous people);<sup>23</sup>
- Hydro projects can cause geological damage that could result in landslides and fatal accidents.<sup>24</sup>

The UNGPs highlight that businesses should conduct human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human right.<sup>25</sup> There are numerous ways to conduct human rights due diligence. In recent years human rights impact assessments (HRIA) have emerged as an important methodology to assess potential human rights impacts.<sup>26</sup> The DIHR has developed a [Human rights impact assessment guidance and toolbox](#) to analyze the effects that business activities have on rights-holders such as workers, local community members, consumers and others.

The assessment of potential human rights impacts does not have to be a stand-alone process – human rights can also be integrated in other impact assessment systems, such as Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), Environmental and Social Impact Assessment (ESIA), or Environmental, Social and Health Impact Assessment (ESHIA), but should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.<sup>27</sup> Environmental Impact Assessments still represent the most common type of assessment to ensure that businesses assess the environmental impacts of a potential project, and therefore can be a strategic process to assess potential negative impacts on human rights. While there are some parallels between EIAs and the assessment of human rights<sup>28</sup> there are also some areas of human rights impacts which are not, in practice, always included in the scope of EIAs or which, if included in scope, may warrant further attention in practice. Examples include:

- labour issues with contractors, and within the goods and services supply chain for the project.
- post-conflict or conflict-sensitive areas.
- security activities related to operations.
- gender analysis, Indigenous Peoples and focus on vulnerable individuals and groups (see pages 27–29 for further details).
- community impacts related to business relationships or activities (e.g., partners, government actors or joint ventures operations).

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<sup>23</sup> Luke Holohan, “Blood Coal”: Human Rights Row Haunting Colombia’s Cerrejón Mine, Insideover, 29 August 2019. Available at: <https://www.insideover.com/environment/blood-coal-human-rights-row-haunting-colombias-cerrejon-mine.html>; Maximo Anderson and Aaron Vincent Elkaim, Belo Monte legacy: harm from Amazon dam didn’t end with construction (photo story), Mongabay, 26 February 2018. Available at: <https://news.mongabay.com/2018/02/belo-monte-legacy-harm-from-amazon-dam-didnt-end-with-construction/>

<sup>24</sup> Bankwatch Network, Second fatal landslide in Georgian Dariali valley, 22 August 2014. Available at: <https://bankwatch.org/blog/second-fatal-landslide-in-georgian-dariali-valley>

<sup>25</sup> Also see See para 22 here -

<https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

<sup>26</sup> Independent Expert on the effects of foreign debt on human rights, Guiding Principles for human rights impact assessments for economic reform policies, Human Rights Council, A/HRC/40/57, 19 December 2018

<sup>27</sup> Danish Institute for Human Rights and IPIECA, Integrating human rights into environmental, social and health impact assessments, 2013, (the Danish Institute for Human Rights and IPIECA, 2013) Available at: <https://www.humanrights.dk/publications/integrating-human-rights-environmental-social-health-impact-assessments>

<sup>28</sup> See Danish Institute for Human Rights and IPIECA, Integrating human rights into environmental, social and health impact assessments, 2013, p. 4 Available at: <https://www.humanrights.dk/publications/integrating-human-rights-environmental-social-health-impact-assessments>

- legacy human rights impacts associated with the activities of previous operators.
- cumulative impacts, involving human rights impacts of other companies operating in the same area; and project and in-migration impacts, such as overloading infrastructure and social services.<sup>29</sup>

#### 4. Realization of human rights within the development projects

In a special report published in 2021, the Public Defender of Georgia reviewed the challenges in Georgia regarding the environmental impact assessment system in detail.<sup>30</sup> In the same document, as well as in the annual parliamentary report of the Public Defender of Georgia, proposals and recommendations for solving problems are outlined.<sup>31</sup> In this document various economic projects implemented in Georgia during the last 10 years are discussed, which, considering their scale and/or the specifics of their activities, may have had an impact on human rights. The purpose of this review is a unified and systematic perception of projects that have been relevant for the country for many years, discussing whether different projects had an impact on human rights and to what extent.

The following chapter reviews past development projects in Georgia grouped thematically: **hydropower plants, transmission lines, roads, hotel complexes, landfills**. According to the observation of the Public Defender's Office, administrative agencies made decisions in the above cases in disregard, of socio-economic needs and legitimate interests of the citizens which in almost all cases led to mistrust in the decisions and, as a result, resistance from local population and activists. The State was forced to halt part of the projects, while some of the implemented projects were followed by negative developments, which proved that the protests were not baseless.

The challenges identified relating to the mentioned projects have several dimensions. Among them are **environmental, social, and economic** aspects. In addition, the close link between the environment and other human rights means that, as a rule, each project may be related to several rights simultaneously; First of all, the obligation of **providing information to citizens and ensuring their involvement in the decision-making process in the earliest stages**, which shall be an integral part of the right to environmental protection in accordance with the Constitution of Georgia, **was not adequately fulfilled in any of projects**;<sup>32</sup> In addition, the realization of this right is related to the protection of other aspects of the right to environmental protection, which implies the **right to live in a healthy environment, the right to enjoy the natural environment**;<sup>33</sup> The present examples

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<sup>29</sup> See Danish Institute for Human Rights and IPECA, Integrating human rights into environmental, social and health impact assessments, 2013, p. 4 Available at: <https://www.humanrights.dk/publications/integrating-human-rights-environmental-social-health-impact-assessments>

<sup>30</sup> See special report of the public defender, Available at: <https://www.ombudsman.ge/geo/akhali-ambebi/spetsialuri-angarishi-garemoze-zemokmedebis-shefasebis-sistema-politikis-kanonmdeblobisa-da-aghsrulebis-gamotsvevebi>.

<sup>31</sup> See annual report of the public defender, 2021, p.197, Available at: <https://www.ombudsman.ge/res/docs/2022040413242699860.pdf>.

<sup>32</sup> Constitution of Georgia, Article 29, paragraph 1.

<sup>33</sup> Ibid.



show once again that the right to environmental protection is closely linked to other rights, including the **fundamental rights to dignity,<sup>34</sup> life,<sup>35</sup> as well as property<sup>36</sup> and cultural heritage protection.<sup>37</sup>**

It should also be clarified that the Public Defender's Office, given its mandate, does not have the relevant expert knowledge required for analyzing professional documents related to Environmental Impact Assessment (EIA).

Provisions of possible violation of various rights within the projects reviewed in the document are based on assessments and analysis of residents, activists and/or professional groups and, accordingly, on reasonable risks of possible violation of legitimate interests.

Considering the above, one issue that almost all projects have in common is the deep public distrust in the thoroughness of the EIA procedures, the conclusions made and the EIA documents as a whole.

The document refers to various alleged violations of rights in the projects in question based on reasonable risks to the legitimate interests of citizens, as well as assessments and analyses made by the local population, activists and professional groups.

Many years of observation by the Office of the Public Defender has revealed the need for greater efforts by the State within the framework of each project, in order for citizens to have information about the planned projects, expected risks and extent of impact at the earliest stage, as well as to ensure their real and timely involvement in the processes and to consider their legal interests and rights as much as possible.

As for the legislative regulation, the regulations<sup>38</sup> in force **until 1 June 2017** did not provide for adequate guarantees for public participation in the decision-making process; The State had no obligation to inform the public or ensure participation in the decision-making process, and a number of obligations were delegated only to the operator; in addition, the list of activities subject to EIA did not comply to the activities provided for in the Aarhus Convention. After the adoption of the Georgian Environmental Assessment Code,<sup>39</sup> the new legislative regulation introduced, among other important issues, a fundamentally improved environmental impact assessment system and important mechanisms for ensuring public involvement in the decision-making process. At the same time, the activities subject to EIA changed radically. However, according to the Public Defender, **on the one hand, legislative regulation still needs to be refined in different directions,<sup>40</sup> and on the other hand, effective enforcement of the existing regulations is a major challenge.** This is especially important for large infrastructure projects, as they are associated with higher risks of human rights abuses.

## 5. Important projects

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<sup>34</sup> Constitution of Georgia, Article 9.

<sup>35</sup> Constitution of Georgia, Article 10.

<sup>36</sup> Constitution of Georgia, Article 19.

<sup>37</sup> Constitution of Georgia, Article 20.

<sup>38</sup> Laws of Georgia on Environmental Impact Permits, Licences and Permits.

<sup>39</sup> 1.06.2017; And from 01.01.2018, the Law of Georgia on Environmental Impact Permits was declared invalid.

<sup>40</sup> See e.g. <<https://www.ombudsman.ge/geo/spetsialuri-angarishebi/spetsialuri-angarishi-garemoze-zemokmedebis-shefasebis-sistema-politikis-kanonmdeblobisa-da-aghsrulebis-gamotsvevebi>>; <https://www.ombudsman.ge/res/docs/2022070612391254904.pdf>, from p 154.

## 5.1. Hydropower plants

According to the years of practice of concluding agreements on the construction, operation and ownership of hydropower plants (HPP), the investor and the Georgian Government used to sign a memorandum defining the capacity and other parameters of HPP before starting the EIA procedure and obtaining relevant permits, contrary to the essence and goals of EIA. Such preliminary agreements with the investor and a number of obligations undertaken by the State prior to the issuance of environmental and construction permits eventually made further legal procedures only a formality and usually guaranteed the smooth obtaining of all the necessary permits.

For many years, a number of memoranda of understanding were signed between the Georgian Government and investors regarding the construction of hydropower plants of various scales. It is noteworthy, however, that despite the number of such contracts, the number of projects that were ultimately implemented and put into operation is not high. For example, from 2008 to 2019, 187 memoranda of understanding<sup>41</sup> were signed with investors, although a total of 26 hydropower plants were put into operation in the same period; various procedures<sup>42</sup> were launched in relation to other projects, while 32 memoranda were cancelled. The reason for the cancellation was mainly the non-fulfillment of obligations by companies; The companies failed to provide the carry out techno-economic feasibility studies within the timeframe set out in the memorandum, while some failed to provide the necessary funding to complete the project. At the same time, the main reason for the delay in the development of some of the projects was the difficulties related to the achievement of an agreement with the local population in relation to social issues.

Nearly all the constructions of hydropower plants planned over the years have been associated with significant environmental and social damage risks. Most of the projects are (were) planned in the mountainous regions and pristine ecosystems, further exacerbating potential adverse impacts, and increasing protest among the local population. The examples discussed show that one of the main reasons for citizens' protest and distrust are the legitimate questions relating to the thoroughness of the EIA procedure, validity of conclusions, and, ultimately, the quality of EIA documents.

This chapter will review the projects that have been halted or implemented but strongly opposed by the public due to various aspects.

### Khudoni HPP

The Khudoni HPP project is one of the most large-scale projects, which was halted because of a long and steady protest of citizens. The project was planned<sup>43</sup> to be implemented in Svaneti, one of the most mountainous and oldest regions of Georgia (on the River Enguri in the Khaishi community, Mestia municipality).<sup>44</sup> Attempts to build the plant were first made during the Soviet era, but the project was halted as a result of protests then.

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<sup>41</sup> See the Public Defender's 2018 Parliamentary Report, p: 178, <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>>.

<sup>42</sup> As of February 2019, there were 23 projects at the stage of construction, 25 projects were at the stage of construction and licensing, and 69 projects were at the stage of techno-economic feasibility study.

<sup>43</sup> After discussions on the construction of Khudoni HPP during the Soviet Union, the discussion of this issue was actively renewed in 2007, and in the same year a memorandum was signed between the State and the investor, while in 2011, an agreement was signed between the Government and the investor on the implementation of the project.

<sup>44</sup> Western Georgia, Samegrelo-Zemo Svaneti region.

a memorandum of understanding was signed between the investor and the Government of Georgia on the construction of a 702 MW hydropower plant. Under the agreement reached with the investor, the Government was obliged to assist the company implementing the project in obtaining the relevant licences and permits, including by giving the company additional time for fulfilling its obligations. The contract did not regulate the possibility of the company's failure to obtain the permits established by the legislation of Georgia despite the fulfillment of obligations by the parties. On the contrary, in such a case, the contract obliged the Government to give the company timeframe to ensure that the investor could obtain the necessary permits by all means.

Amid persistent and long resistance of the local population and harsh criticism expressed by specialists and professional groups, due to the expected severe environmental and social impacts, the Government was forced to apply to the Netherlands Commission on Environmental Assessment (NCEA) in 2013, which identified a number of problems relating to the project based on the documentation assessing the construction and operation of the Khudoni HPP. Among the problems were: the lack of state energy policy, water resources plan in the Enguri basin; the construction of the Khudoni HPP would result in the flooding of up to 500 hectares of land, which included both populated areas and forests; Experts also drew attention to the fact that people living in the Khudoni HPP flood zone did not have information on how they would receive compensation, where they would be resettled, etc. Due to the lack of information, they distrusted the Government and the investor. In addition, it was necessary to provide compensation to the population that would be indirectly affected by the construction of the HPP, the health of which would be deteriorated due to the changed climatic conditions, etc. Geological hazards, risks of isolation of the project area from the environment and seismic dangers were also named as problematic. Prior to the above conclusion, there had been a number of questions among Georgian specialists regarding the reliability and substantiation of the conclusions made and procedures conducted.<sup>45</sup>

The project was halted, but the contract between the Government and the investor was not canceled. As it is known, legal procedures for the termination of the contract are now conducted with the help of an international consultant, however, the population still has fears that the implementation of this project may again be put on the agenda.

**Considering the above-mentioned circumstances, it can be concluded that apart from the problem of public awareness and involvement, the case contained risks of violation of the right to live in a safe environment, the right to enjoy the natural environment and the right to property.**

### Namakhvani HPP

Another project that drew particular public attention in 2020-2021 is currently suspended. Namakhvani HPP Cascade Project is one of the largest hydropower projects in Georgia, which aimed to construct two HPPs on the River Rioni in the Tskaltubo and Tsageri municipalities.

Geological and seismic risks, landslide hazards, expected microclimate changes are the main reasons for the protest of the population, specialists and civil society. They question the thoroughness of examination of all aspects of environmental impact, as well as the economic-energetic viability of the project; The civil sector and

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<sup>45</sup> E.g., <[https://greenalt.org/app/uploads/2013/09/Comments\\_on\\_Khudoni\\_HPP\\_6-September\\_2013.pdf](https://greenalt.org/app/uploads/2013/09/Comments_on_Khudoni_HPP_6-September_2013.pdf)>.

specialists sharply criticize the terms of the contract signed between the State and the investor, and refer to the expected severe fiscal risks for the country and other problematic areas. One of the main concerns of the population is related to property. State lands needed for the project, namely 576 hectares of area in the Rioni Gorge, had been transferred to the company by the Georgian Government a few months before the relevant permits were issued. This fact, like past practices, made the permitting procedure just a formality.

The State issued an environmental decision and instructed the company to submit full environmental protection documents later. Currently, based on a civil society appeal, a legal dispute is ongoing over the legality of the environmental decision issued in relation to the mentioned project.

The public hearing of the project's EIA report was also problematic. Representatives of the civil sector participating in the process pointed out that violations had been observed both in the process of organization of the public hearing and during the hearing itself. The Ministry conducted the public hearing in an administrative unit, which was approximately 50 kilometers away from the villages under impact. Transportation required at least 2-3 hours. At the same time, public transport was restricted. In addition, according to the reports, artificial barriers were created for those interested in attending the hearing, attendees were prevented from asking questions, and questions relating to the socio-economic and environmental impact of the project were not answered.

The population has been actively and continuously protesting against the HPP project. As a result of long and continuous protests and after 130 days and nights spent in tents, officials met with local activists on the instruction of the Prime Minister of Georgia. Members of the Government were also heard in the parliamentary committee format. However, all of this has not been followed by a continuous, results-oriented, in-depth or comprehensive dialogue between the Government and stakeholders.

**Thus, a number of problems identified in this case includes the lack of provision of information to the population and their real involvement in the earliest stages, accessibility/publicity of information, questions relating to the procedures conducted and conclusions made, property rights and ecological impact.** The EU Energy Union engaged in the severe crisis as a mediator.<sup>46</sup>

In September 2021, Enka Renewables announced the termination of the contract with the Government of Georgia, explaining the above by the violation of the terms of the contract and force majeure. The contract has not been legally terminated yet, however, according to the representatives of the State, both continuation of the project and withdrawal from the contract are being considered equally, thus, the fate of the project is still unclear. The population continues to protest in the tents set up in the gorge.

### Nenskra HPP

Another project - Nenskra HPP, planned to be carried out in Svaneti, is halted currently. The construction permit was issued in 2015, however, as the media reported, the investor had started the preparatory works

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<sup>46</sup> See: <<https://socialjustice.org.ge/ka/products/sotsialuri-samartlianobis-tsentr-namakhvani-hesis-mediatsiis-protseisis-dasrulebas-ekhmianeba-da-damoukidebeli-shefasebebis-sheusruleblobas-akritikebs>>.

before the issuance of the construction permit and approval of the environmental assessment. Formal administrative proceedings and public involvement were the main problems in this case too.

The local population and stakeholders had questions regarding the environmental impact report. In particular, they had questions about the scale of environmental impact in case of the implementation of the project, the conclusions made, the thoroughness of the examinations conducted or the assessment of the risks of development of hazardous geodynamic processes; biological environment assessment; analysis of the project costs and long-term benefits for the country, which in turn is related to the expediency of the implementation of the project. In addition, as specialists pointed out, significant parts of the EIA were identical to the EIA of other HPPs, which made the credibility of the document even more questionable. The section of the EIA that dealt with the issue of access to local resources is also worth noting. According to the document, the population would forever lose access to state-owned lands (approximately 3.7-3.8 km<sup>2</sup>) that were used by the population for grazing cattle, collecting firewood, etc. The mentioned impacts on population are assessed in the EIA as small negative impacts. However, the document does not clarify the relevant objective criteria. One of the main reasons for the concern and dissatisfaction of the local population was the loss of access to these very lands.

Finally, the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB) considered the Nenskra hydropower project to be non-compliant with the EBRD's environmental and social policies in several areas (2020):<sup>47</sup> Indigenous peoples' rights, protection of cultural heritage, examination of alternatives, gender issues, information transparency and the competence of representatives of the company implementing the Nenskra HPP project. The decision was made as a result of a two-year examination within the framework of the banks' complaint mechanisms<sup>48</sup> and the relevant recommendations were issued. At the same time, on the basis of the appeal of the non-governmental sector on behalf of the local population, a dispute is ongoing in the court of Georgia regarding the legality of the screening decision on the exemption of the changes made in the project from EIA.

**Thus, public awareness and involvement at the earliest stages, access to information, property rights, protection of the environment and cultural heritage were important issues in the given case.**

### Khadori 3 HPP

In another case, this time in eastern Georgia, as a result of steady protests by locals in the Pankisi Gorge, the State was forced to suspend the implementation of the Khadori 3 HPP project.

In recent years, two hydropower plants were built in the Pankisi Gorge. As locals say, the hydropower plants caused irreparable damage to the ecosystem of the gorge and therefore the construction of additional hydropower plants is unacceptable. In addition, some of the citizens say that they learned about the project

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<sup>47</sup> See:

[file:///C:/Users/natabegashvili.OMBUDSMAN.000/Downloads/1.%20PCM%20Compliance%20Review%20Report%20Report%20Nenskra%20HPP%20FINAL%207July2020%20\(1\).pdf](file:///C:/Users/natabegashvili.OMBUDSMAN.000/Downloads/1.%20PCM%20Compliance%20Review%20Report%20Report%20Nenskra%20HPP%20FINAL%207July2020%20(1).pdf).

<sup>48</sup> In May 2018, residents of the Chuberi community and non-governmental organizations - CEE Bankwatch Network and Green Alternative appealed against the construction of the Nenskra HPP, by using European banks' complaint mechanism.

after it was launched and that they did not have the opportunity to receive information about the HPP construction through various public channels, which prevented them from participating in public discussions.

Georgian experts also talked about significant deficiencies in the EIA<sup>49</sup>. According to the document, inter alia, as a result of the construction, 90% of the River Alazani would fall within pipelines, which would have a significant impact on the social and ecological environment around the River Alazani, although the EIA report did not elaborate on the method of measurement of this environmental cost; The construction of the HPP was planned several tens of meters away from the water supply filtrates of two villages (the main source of rural drinking water supply), although the EIA report did not mention this at all and therefore did not reflect any preventive measures to protect the population from drinking water supply risks. The EIA report did not contain information on the technological alternatives to the planned activity; neither did it provide a detailed examination of the most important issues, as evidenced by the records in the report itself, as well as the environmental examination report, which provided for the obligation of conducting various examinations six months after the issuance of the environmental examination report; A significant portion of the risk assessment/description in the EIA report was copied directly from the EIA report prepared for the construction of other hydropower plants; The EIA did not include any information about the cumulative impacts of the planned HPP and the HPPs already existing in the gorge.

Even though permission for the construction of Khadori 3 had already been issued, the company had to suspend the construction due to resistance from locals. In 2019, a vehicle of the investor company showed up in the gorge to renew the construction of Khadori 3 HPP. The above was met by protests, as a result of which, the Ministry of Internal Affairs mobilized a large-scale police force in the Pankisi Gorge, including the riot police, which used tear gas, rubber bullets and batons against the protesters.

**Public awareness-involvement, environmental protection, access to drinking water and the right to live in a safe environment were identified as problematic issues in this case too.**

#### Kamara HPP

Another project could not be implemented in the Kazbegi municipality, where the local population opposed the construction of the Kamara HPP project, which was planned to be carried out in 2021.

Local specialists<sup>50</sup> made sharp critical evaluations in relation to this project, which were submitted to the relevant agency at the stage of the consideration of the scoping report. Remarks concerned the quality of the report. According to the specialists, the information presented in different parts of the document was contradictory and therefore it was impossible for the decision-maker and stakeholder to receive information about the real impact and to be assured that the project would not irreversibly affect the natural and social environment. Some of the information/chapters required by law were not available at all, or the information provided did not correspond to the reality or, moreover, did not correspond to the title; the quality of the parts of the document relating to biodiversity, habitats and species protected by the Berne Convention, protected

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<sup>49</sup> See: <[https://socialjustice.org.ge/uploads/products/covers/%E1%83%92%E1%83%96%E1%83%A8-%E1%83%A1-%E1%83%AE%E1%83%90%E1%83%A0%E1%83%95%E1%83%94%E1%83%96%E1%83%94%E1%83%91%E1%83%98%E1%83%A1-%E1%83%A8%E1%83%94%E1%83%A4%E1%83%90%E1%83%A1%E1%83%94%E1%83%91%E1%83%90\\_1555845899.pdf](https://socialjustice.org.ge/uploads/products/covers/%E1%83%92%E1%83%96%E1%83%A8-%E1%83%A1-%E1%83%AE%E1%83%90%E1%83%A0%E1%83%95%E1%83%94%E1%83%96%E1%83%94%E1%83%91%E1%83%98%E1%83%A1-%E1%83%A8%E1%83%94%E1%83%A4%E1%83%90%E1%83%A1%E1%83%94%E1%83%91%E1%83%90_1555845899.pdf)>.

<sup>50</sup> See: <[https://greenalt.org/app/uploads/2021/02/GA\\_comments\\_Kamara-HPP\\_Scoping\\_25\\_02\\_2020.pdf](https://greenalt.org/app/uploads/2021/02/GA_comments_Kamara-HPP_Scoping_25_02_2020.pdf)>.

areas, and emerald sites was the lowest. Information about alternatives to the planned activities was virtually not available or contained many shortcomings.

A significant part of those attending the public hearing expressed their negative position regarding the construction of the Kamara HPP. As soon as the public hearing started, some of the residents of the Kazbegi municipality protested against the construction operation of the planned project and left the online public hearing in protest. At the same time, during administrative proceedings, residents of the village of Khurtisi, Kazbegi municipality, submitted a statement alleging that the project was not supported by "almost 100%" of the population.

The Ministry of Environmental Protection decided to terminate the administrative proceedings<sup>51</sup> in connection with the project and explained to the applicant that the implementation of the project in the given form and according to the data reflected in the scoping report would most likely have a significant impact on biodiversity, unique complexes and natural landscape. The company was required to provide a modified version of the project and/or solidly substantiated information based on appropriate multidisciplinary studies, arguments on the degree of expected impacts on biodiversity and natural ecological complexes, as well as information about mitigation, prevention and compensation measures.

#### Oni HPP Cascade

Public protest was triggered by another project, Oni HPPs Cascade as well, which was planned to be built in Zemo Racha. The local population and activists oppose the project because of the expected severe interference and threats to the ecosystem. According to them, since the area is landslide-prone and seismically active, the project will increase the risk of natural disasters. They say that thousands of trees are planned to be cut down and the construction of tunnels is planned by the drilling-blasting method, which may activate geodynamic processes. In addition, there is a high risk of the loss of mineral water sources and negative impact on tourism, etc.<sup>52</sup>

The State subjected the project to the old legislation, which provided for a very low standard of the obligation of informing citizens and ensuring their involvement. Georgian specialists<sup>53</sup> refer to significant shortcomings and imperfections in the EIA report in various directions. According to them, the report does not provide information on the project costs or benefits, does not describe technological alternatives, does not discuss cumulative impacts of the project and other planned infrastructure and energy projects. Characteristics of the project and impacts on environmental components are described in detail for only one alternative, geological examinations are imperfect, etc.

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<sup>51</sup> See:

[file:///C:/Users/natabegashvili.OMBUDSMAN.000/Downloads/N%202488\\_01%20%E1%83%AC%E1%83%94%E1%83%A0%E1%83%98%E1%83%9A%E1%83%98.pdf](file:///C:/Users/natabegashvili.OMBUDSMAN.000/Downloads/N%202488_01%20%E1%83%AC%E1%83%94%E1%83%A0%E1%83%98%E1%83%9A%E1%83%98.pdf).

<sup>52</sup> See: <https://www.mtisambebi.ge/news/ecology/item/1137-ybvela-kanonieri-gzit-vezdebit,-onis-besebis-kaskadi-ar-ashendes-rachis-atemo-organizazia>.

<sup>53</sup> See: [https://greenalt.org/app/uploads/2021/04/GA\\_commts\\_Rustavi\\_Azoti\\_EIA-1.pdf](https://greenalt.org/app/uploads/2021/04/GA_commts_Rustavi_Azoti_EIA-1.pdf), <https://www.mtisambebi.ge/news/ecology/item/1147-rachas-besebis-kaskadi-ki-ara,-didi-erovnuli-parki-esachiroeba-wwf-is-kavkasiis-opisi>.

The decision made by the Ministry was appealed by the civil sector to the court, including on the grounds that the norms of national and international laws relating to provision of information and public participation were grossly disregarded.

**Thus, problems in the above case include public involvement, violation of the right to property and the right to live in a safe environment.**

### Shuakhevi HPPs Cascade

Another large-scale hydropower project is a three-stage cascade of Shuakhevi HPPs, which was planned and implemented in the highland villages of the Autonomous Republic of Adjara, although the project had been suspended for several years.

Like other HPPs, a memorandum of understanding was signed between the Government of Georgia and the investor (2011). As in the case of Khudoni HPP, according to the regulations in force at that time, the permitting procedure was of a formal nature. In addition, it is noteworthy that the memorandum with the investor was considered a trade secret. Consequently, the public had no information about important circumstances related to the project, be it electricity tariffs or the economic benefits of the project in general.

A significant part of the local population protested against the project in different villages. They protested against the expected geological risks, a possible violation of their property rights and risks related to their access to water. The main demand of the population was to study geological risks in the villages and to give them official guarantees that adequate compensation would be provided to them in case of such a need. Locals were concerned about the risk of landslides due to drilling and blasting works. They said that after the explosion, their houses cracked and became unsafe to live in; in some places, stones began to fall down, crops decreased, people are constantly in danger of landslides, water has disappeared, including drinking water.

According to Georgian experts,<sup>54</sup> the economic justification of the project and examination of alternatives were incomplete, some issues were not properly/fully explored, for example, when presenting the EIA report, the company had not completed the examination of important issues such as geological risk assessment, deforestation issues, studies related to mammals, mitigation measures, etc. According to them, the calculation of the ecological costs of the river at the deviation sections was unconvincing and contradictory, and the proposed mitigation and eco-compensatory measures were insufficient. Social issues were vague as well (forced resettlement, full compensation for property, protection of the interests of private fishery owners). It was unclear whether the investor company would take responsibility if negative geological processes developed in the project impact area; The EIA report did not include a detailed geological examination; examinations were insufficiently and inconsistently conducted, including with respect to a tunnel.

In 2017, the 37-kilometer tunnel of Shuakhevi HPP, two months after being opened, collapsed in several places. As a result, the HPP was closed for two years. One of the concerns of the population and experts regarding the project had been these very geological threats.

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<sup>54</sup> See: <<https://greenalt.org/app/uploads/2013/07/reziume.pdf>,  
[https://greenalt.org/app/uploads/2013/07/Shuakhevi\\_HPP\\_on\\_Adjaristskali\\_GA\\_comments.pdf](https://greenalt.org/app/uploads/2013/07/Shuakhevi_HPP_on_Adjaristskali_GA_comments.pdf)>.



A few years later, the facility was reopened and water started leaking from the tunnels in the villages of the Shuakhevi municipality. Soil became waterlogged near the tunnel, a few hundred meters from the populated area. Experts link the water leakage to the malfunction of the Shuakhevi HPP tunnels and fear that this may endanger the lives of the population.<sup>55</sup> According to the locals, water was not leaking when the HPP was halted due to the collapse of the tunnel.

According to the available information, since 2014, a civil dispute has been ongoing in the common courts on the basis of a civil sector lawsuit relating to the project. However, the court rejected the party's motion to suspend the construction. Thus, the project was implemented so that the court dispute regarding the legality of the construction was still pending, and, consequently, the civil sector (plaintiff) points to the dire consequences of the protracted dispute.<sup>56</sup>

**Problems identified in the present case include improper fulfillment of the obligation of informing citizens and ensuring their participation, alleged violation of the right to live in a safe and harmless environment, access to drinking water and property rights.**

### Dariali HPP

One of the notable projects is the Dariali HPP, which has already been implemented in highland Georgia, namely in Kazbegi,<sup>57</sup> on the River Tergi.

The Dariali HPP was put into operation in 2017. However, before that, during construction, the catastrophic flood in the Dariali Gorge in 2014 claimed the lives of 5 people. In the same year, mudslide swept a place where rocky-icy mass had collapsed earlier. As a result of the flooding, 350-400 thousand cubic meters of land broke off, damaging one section of the Georgian-Russian highway, major gas pipeline and the Larsi HPP. In addition, the Larsi customs checkpoint and the Dariali HPP tunnel were flooded. Two workers employed at the Larsi HPP were found dead in the tunnel.

Georgian specialists and locals were pointing out<sup>58</sup> that environmental issues were neglected in the process of issuing construction permits and drawing up ecological examination reports on the Dariali HPP, as well as the Larsi HPP. The risks threatening biodiversity, natural and social environment, as well energy facilities and people employed there, as a result of adverse geological processes, were not properly explored or taken into account.

In 2017, the Project Complaints Mechanism (PCM) of the European Bank for Reconstruction and Development (EBRD) granted the complaint filed by NGOs<sup>59</sup> against the Dariali HPP project. The EBRD Board of Directors approved a report prepared by PCM, according to which, the European Bank for Reconstruction and

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<sup>55</sup> See: <<https://greenalt.org/shuakhevi-hesis-operireba-kharvezebit-daitsko-vin-agebs-pasukhs-mosakhleobistvis-mikenebul-zianze/>>.

<sup>56</sup> See: <<https://gyla.ge/files/2020/%E1%83%B0%E1%83%94%E1%83%A1%E1%83%94%E1%83%91%E1%83%98.pdf>>, p.4.

<sup>57</sup> In eastern Georgia, Mtskheta-Mtianeti region.

<sup>58</sup> Click on the link:

<[http://old.greenalt.org/webmill/data/file/GA\\_Stepantsmida\\_comments\\_on\\_Brolistskali\\_HP\\_%20draft\\_EIA\\_24\\_December\\_2012.pdf](http://old.greenalt.org/webmill/data/file/GA_Stepantsmida_comments_on_Brolistskali_HP_%20draft_EIA_24_December_2012.pdf)>,  
<[http://old.greenalt.org/webmill/data/file/GA\\_comments\\_on\\_Dariali\\_HPP\\_draft\\_ESIA.pdf](http://old.greenalt.org/webmill/data/file/GA_comments_on_Dariali_HPP_draft_ESIA.pdf)>,  
[http://old.greenalt.org/webmill/data/file/POSITION\\_DARIALI.pdf](http://old.greenalt.org/webmill/data/file/POSITION_DARIALI.pdf)>.

<sup>59</sup> Complaints of Green Alternative and the local Stepantsminda non-governmental organization; See: <<https://greenalt.org/mtsvane-alternativas-sachivari-dariali-hesis-proektan-mimartebashi-dakmakopilda/>>.

Development violated its own environmental and social policy requirements when it decided to finance the Dariali HPP. According to the PCM report, the Bank did not properly assess the project-related geodynamic risks in the Dariali HPP Environmental and Social Impact Assessment (ESIA) report. The PCM report reads that the project documentation assessed only the risks created by the implementation of the project, but it did not address hazards such as landslides or avalanches that could pose a threat to the Dariali HPP infrastructure, as well as people working and present in the project area. Consequently, by making a positive decision on financing the project, the Bank violated its own environmental and social policies.

### Kirnati HPP

Another project, Kirnati HPP in the Khelvachauri municipality, was followed by a protest in the Autonomous Republic of Adjara.

As a result of the implementation of the Kirnati HPP project, agricultural lands, homestead lands, various buildings, as well as municipal-owned areas became part of the flood zone.

In 2019, a river overflowed into the road and flooded a cemetery in one of the villages<sup>60</sup> of the Khelvachauri municipality. Another flooding occurred when Chorokhi was blocked without warning the population, as a result of which, the river first overflowed onto the road and then flooded yards. The population held a protest rally and blocked the Kirnati HPP entrance. Locals protested again in 2014, demanding detailed information about planned activities and involvement in the process.

Even though negotiations were held between the company and locals relating to compensation, no agreement could be reached with all of them. Finally, in 2020-2021, part of the property was expropriated by the order of the Minister of Economy of Georgia.

It should be noted that the criticism<sup>61</sup> expressed by Georgian specialists before the implementation of the project concerned the quality of the EIA, the examination conducted and the benefits of the project, as well as the fact that the project implementer considered only those who were living in the project area as affected persons, but ignored those whose access to vital resources, was restricted. According to the report, compensation measures for the loss of property and land would be determined on an individual basis, in accordance with local market values, contrary to the United Nations International Covenant on Economic, Social and Cultural Rights, which Georgia joined in 1994 and which states that when resettling population and purchasing assets under the impact of the project, the main principle shall be to offer relevant compensation to the population, which shall be calculated according to the market value of the asset, plus the resettlement and related costs. Construction started so that the investor had not prepared a resettlement action plan, etc.

**Thus, the right to live in a safe environment and property rights were problematic in this case as well.**

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<sup>60</sup> The village of Maradidi.

<sup>61</sup> See: <[https://greenalt.org/app/uploads/2013/06/shenishvnebi\\_kirnati\\_hesze.pdf](https://greenalt.org/app/uploads/2013/06/shenishvnebi_kirnati_hesze.pdf)>.

## Mestiachala HPP

Construction of the Mestiachala HPP in Svaneti, which started in 2017, was also carried out amidst protests. The population was actively protesting against the construction of the HPP. They even blocked a road for the construction vehicles. However, the construction of the HPP was resumed with the help of the riot police.

According to the analyses made by Georgian specialists,<sup>62</sup> the EIA report on Mestiachala HPP was copied from the EIA document of another HPP and did not actually reflect the dangers that could follow the construction of the HPP, no detailed examinations were conducted in different directions. Even though the project area was an active geodynamic zone, no relevant mitigation measures were considered, the document contained contradictory information, etc.

### 5.2. Transmission lines

Apart from hydropower plants, transmission line projects are also closely linked to human rights. This issue becomes even more important as the strengthening of the energy infrastructure network and interconnection systems, and construction/reconstruction of transmission lines are one of the priority directions in the country. Citizens basically apply to the Public Defender's Office relating to the **realization of their rights to property and environmental protection** during the implementation of transmission line projects. At the same time, one of the main concerns of citizens regarding the transmission lines is the electromagnetic field and hence the risks to health, which is related to the **right to live in a healthy environment**. Citizens are usually not fully informed about potential risks, or the results of examinations conducted, they do not trust the EIA findings and fear that the functioning of the transmission lines will affect their health and lives in the long run.

In the cases reviewed, the Public Defender of Georgia concluded that the legitimate interests of citizens had been ignored by the decisions of the administrative bodies.

### Dariali 110 power transmission line

By the decision made by the state, the reconstruction project of the Dariali 110 transmission line, which is located in the Kazbegi municipality, was exempted from EIA (2016).

According to the regulations in force at that time, it was possible to exempt a project from EIA if there were state interests in starting a project and making a decision in a timely manner. According to the official explanation of JSC Georgian State Electric System, it was planned to put the Dariali HPP into operation and the construction of the transmission line was related to the inclusion of electricity generated by the HPP into the Georgian power system, while the public discussion of the EIA report required long time. The Public

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<sup>62</sup> See: <[https://greenalt.org/app/uploads/2018/10/mestiachala\\_Comment.pdf](https://greenalt.org/app/uploads/2018/10/mestiachala_Comment.pdf)>.

Defender considers that, for the purposes of the law, the mentioned argument alone cannot justify the urgent, general state need for the exemption of the project from EIA.<sup>63</sup>

Procedurally, the EIA review procedure was the only stage of decision-making, during which the public was allowed to participate in the process by getting information and expressing views. In the present case, since the four poles of the transmission line were located in the village of Tsdo, there was a great deal of public interest towards the construction of the transmission line. Locals were pointing to a reasonable alternative area (away from the village, right or left bank of the River Tergi), where the project could be implemented without hindering the development and settlement of the highland village. The population also talked about the loss of traditionally owned lands and the social problems caused by it.

**In the present case, the rights of citizens to be informed and to be engaged in the decision-making process were completely ignored, and the realization of their property rights was at stake.**

#### Ksani-Stepantsminda transmission line

The Public Defender's Office was applied by citizens about another transmission line project (Ksani-Stepantsminda), which was also implemented in the Kazbegi municipality.

Within the framework of the project, three towers were placed in one of the villages (Sno), as a result of which, the plots of land of some of the locals became part of the buffer zone. The current regulations establish protection zones for linear structures of electric networks, in particular, 30 meters for 500 kV transmission lines, which means that the land and airspace along the transmission line should be bordered by vertical planes, the distance of which from the line should be 30 meters.

On the one hand, the legislation does not provide for the minimum distance to the nearest inhabitant that must be observed during the construction of transmission lines, and on the other hand, a buffer zone is established for the protection of the transmission line. Owners of property in such a zone are prohibited from a number of activities. At the same time, the owner of the electricity network has the right to carry out various activities in order to ensure the service and safety of the transmission line in its protection zone.<sup>64</sup> Consequently, such a reality has a negative impact on the rights of owners of plots of land in the buffer zone. Thus, in view of the above, a comprehensive and objective study of circumstances when planning the route of the placement of towers was of even greater importance; in particular, whether there was a possibility of selecting an alternative location for the towers and whether the chosen route was an extreme solution. It was necessary to ensure the active and real involvement of local residents in the decision-making process in order to maximize consideration of their views and needs.

In the present case, it could not be established that the mentioned circumstances were thoroughly examined or assessed during decision-making. According to the State, due to the difficult terrain of the existing section, the implementers did not consider any alternative places for the towers. However, there was no substantiated reasoning or evidence in this regard. Consequently, it was impossible to conclude that there was objectively

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<sup>63</sup> This case was reflected by the Public Defender in the 2016 Parliamentary Report, p: 531; <<https://drive.google.com/file/d/11H2Ywr72aNiTwurAjO3Q8fNiqCqj1JvW/view>>.

<sup>64</sup> See <https://matsne.gov.ge/ka/document/view/2156434?publication=4>, Article 4.

no alternative route other than the selected plots of land and places of towers, which would have ensured the protection of both the environment and the interests of population. (Locals talked about such a possibility at the meeting with Public Defender's representatives; in contrast, the Public Defender's Office could not obtain in-depth or substantiated explanations with relevant arguments from the company).

It was also problematic that the company had not conducted any negotiations with owners of plots of land for months.

In addition, there were several circumstances indicating the risks of increased negative impact on the interests of local residents in the future. In particular, according to the company, there is no risk that the results of electromagnetic field measurements will be above the norm after the line is put into operation. However, the project's EIA document does not rule out such a possibility.<sup>65</sup> Thus, it was legitimate for locals to fear that the results of electromagnetic field measurements in the future might raise the issue of their resettlement as one of the alternative outcomes. As a result, the degree of negative impact on the interests of the local population may increase in the future.

The State also did not take into account the increasing tourism potential of the municipality, the aspiration of the local population to develop their property and village and to improve their difficult social situation.

**Thus, the problems in this case include the obligation of informing citizens and ensuring their involvement, as well as the socio-economic needs and property rights of the local population.**

#### Several other projects

In addition to the above, the Public Defender's Office studied several complaints of citizens regarding the construction of transmission lines in Adjara (Keda municipality, Khelvachauri municipality). In both cases, citizens expressed concern about the expected negative impact on their health and the lack of information about the above, neglect of their social needs, as well as their property rights, provision of decent compensation and procedural issues relating to expropriation. The Office is also examining one of the transmission line projects being implemented in the Samegrelo-Zemo Svaneti region. In addition to the problems indicated in the previous cases, citizens, in this case, complain about the drastic worsening of their living environment as a result of the unbearable noise caused by the operation of the transmission line.

### 5.3. Roads

#### International roads

Another major infrastructural direction of Georgia is the development of road infrastructure and construction-reconstruction of roads of international/national importance.

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<sup>65</sup> According to the EIA, in the first year of operation of the transmission line, electromagnetic field will be measured in all houses within a radius of 100 meters from the line, if the intensity in any part of the house exceeds 0.5 KV/M, Energotrans Ltd will provide a wave shield that will reduce the energy level to the permissible norm, relocate the line or resettle the affected population.

Roads play a major role in transporting freight and passengers in Georgia. In order to increase the country's competitiveness, it was considered important to improve and develop the network of roads of international and national importance, including rehabilitating the road surface and constructing new bridges and tunnels.<sup>66</sup> Activities to be carried out include the development of E60 and E70 international transport corridors and other expressways by modernizing international roads; as well as improvement and development of the existing network of roads of national importance; construction and rehabilitation of bridges.<sup>67</sup>

Thus, in recent years, several road infrastructure projects have been actively implemented, which, given their scale and peculiarity, are linked to the rights of people living in the nearby settlements. Citizens apply to the Public Defender's Office relating to the realization of their **right to live in a safe, harmless environment, right to environmental protection, right to property and protection of cultural heritage**. For example, at different stages, the Office has examined cases relating to:

- Khevi-Ubisa-Shorapani-Argveta highway project of international importance (E-60);
- Grigoleti-Kobuleti bypass project of international importance (E70);
- North-South corridor, Kvasheti-Kobi section project.

In the mentioned cases, applicants applied to us individually and collectively. They are mainly concerned about the risks that their houses may be damaged by construction-operation, as well as geological hazards, expected negative impact on their agricultural activities, expected noise, air pollution and thus the worsening of their living environment, violation of their right to live in a safe environment and property rights. Fulfillment of the obligation of informing citizens and ensuring their participation, as well as protection of cultural heritage in some cases, are problematic in the above-mentioned cases. Citizens' complaints often concern the fact that despite the expected negative impacts, their property is not subject to compensation, or they do not agree with the offered compensation, or they think that their families were not subject to resettlement unfairly; As in the case of hydropower plants and other projects, there is a deep distrust in various procedures reflected and measures provided for in the EIA documents.

As a rule, in similar cases, with regard to compensation/resettlement issues, state agencies individually refer to the approaches and policies of international financial organizations that are funding the projects; As for other types of impacts, the State relies on various measures provided for in the EIA documents, including prevention/mitigation measures for air pollution and excessive noise.

Given that the Public Defender's Office does not have the capacity to conduct environmental impact assessments within the scope of its mandate, the Office cannot itself assess the degree of expected impact on an

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<sup>66</sup> Georgia Regional Development Programme 2018-2021, p: 88, <<https://mrdi.gov.ge/pdf/5d148e85571f3.pdf/2018-2021%20%E1%83%AC%E1%83%9A%E1%83%94%E1%83%91%E1%83%98%E1%83%A1%20%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D%E1%83%A1%20%E1%83%A0%E1%83%94%E1%83%92%E1%83%98%E1%83%9D%E1%83%9C%E1%83%A3%E1%83%9A%E1%83%98%20%E1%83%92%E1%83%90%E1%83%9C%E1%83%95%E1%83%98%E1%83%97%E1%83%90%E1%83%A0%E1%83%94%E1%83%91%E1%83%98%E1%83%A1%20%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%92%E1%83%A0%E1%83%90%E1%83%9B%E1%83%90.pdf>>.

<sup>67</sup> Ibid.

individual property or the environment as a whole. If there is no specific alternative assessment report, establishing the violation of rights is difficult.

One of the above-mentioned projects, namely the **Kvesheti-Kobi road project**, is particularly harshly criticized by the public and professional circles. Citizens' concerns, along with individual property issues, are related to ecology and cultural heritage. The construction of a new section of the Kvesheti-Kobi Road was planned through the unique Khada Gorge. The construction also required digging tunnels and building bridges in Khada. The uniqueness of the Khada Gorge is determined by the fact that it combines pristine landscape, a large number of cultural monuments and unexplored archaeological treasures. The project is opposed by a large part of the local population, who have been holding rallies. Experts also refer to various problems and threats.<sup>68</sup> They estimate that the project will have a significant negative impact on the living conditions and will significantly worsen the quality of life and local development opportunities; Implementation of the project puts the Khada Gorge at risk of being destroyed.<sup>69</sup>

According to the report<sup>70</sup> published by ICOMOS, International Council on Monuments and Sites, the list of the world's endangered monuments includes the cultural landscape of Khada Gorge, which is rich in important cultural and architectural heritage sites. The report discusses the need for a thorough study of the risks and consideration of alternative options for the implementation of the project. In the parliamentary report, the Public Defender recommends that the relevant state agencies study the problems related to the Khada Gorge and plan response measures within the scope of their competence.

### Road connecting Vake and Saburtalo

Aside from the above-mentioned projects, one of the road projects drew public attention a few years ago. The natural disaster in the center of Tbilisi (Vere Gorge) ended in casualties in 2015. Apart from the zoo in the city center, the disaster flooded and damaged the road connecting two districts (**Vake and Saburtalo**), causing significant damage to the local population, and destroying houses.

The road was built just a few years before the disaster, which was severely criticized by the general public and professional circles. There was no EIA document on this road project that also included several tunnels and a flyover. The reason for this was that according to the regulations<sup>71</sup> in force during the implementation of the project and subsequent rehabilitation period, only international and national roads were subject to EIA. The project under consideration did not belong to any of them. Thus, due to the legislative regulation, the issues that would have been addressed within the framework of EIA remained open. As a result of the absence of the EIA procedure, no public involvement was ensured in the process.

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<sup>68</sup> Click on the link: <<https://greenalt.org/ekspertebi-kvesheti-kobis-gzis-proektis-problemebis-shesakheb/>>.

<sup>69</sup> 158 families will lose 288 plots of land, of which 261 plots are agricultural. In total, the project will occupy 34 hectares of land. Click on the link: <<https://publika.ge/qvesheti-kobis-gzis-proegtit-158-ojaksi-dakargavs-288-miwis-nakvets-greenalt-is-angarishi/?fbclid=IwAR3pmhSHO1my-ue88jESCe65-aloYXFjkH8-mm9dTE5PKaZTKUHYamWeti0>>.

<sup>70</sup> ICOMOS, Heritage at Risk, World Report 2016-2019 on Monuments and Sites in Danger, click on the link: <[https://www.icomos.de/icomos/pdf/hr20\\_2016\\_2019.pdf](https://www.icomos.de/icomos/pdf/hr20_2016_2019.pdf)>.

<sup>71</sup> Law of Georgia on Environmental Impact Permits.

It is, of course, impossible to assert that different decisions would have been made on the project in the event of an EIA procedure and that the aforementioned dire consequences would have been prevented. However, the fact is that due to legislative regulations, questions relating to the safety of the project and its environmental impact remained unanswered, while the subsequent incident further intensified citizens' suspicions and questions.

#### 5.4. Multifunctional complexes

Along with other infrastructure projects, large hotels/multifunctional complexes typically conflict with a number of human rights, given the scale of the work to be done. This chapter will discuss two major projects, one of them was planned in the capital and the other one in Batumi, the second most populous city in the country. In both cities, spatial arrangement represents a serious challenge as a result of many years of inconsistent and chaotic constructions. For many years, the protection of historical values, cultural heritage and ecological interests of these cities has not been a priority during decision-making by state agencies. Thus, it is vital to ensure that the development of Tbilisi and Batumi is planned so that these values are considered in the future.

**In both projects discussed below the main challenges are related to the provision of information to citizens and ensuring their involvement, as well as protection of cultural heritage, along with environmental issues.**

#### Panorama Tbilisi Project

In 2014-2015, state agencies made decisions on the implementation of the Panorama Tbilisi project. The project provides for the construction of multifunctional hotel complexes and a ropeway in the historical part of Tbilisi.

Even though the project aimed to construct multifunctional hotel complexes, the legislation in force at that time did not provide for the obligation to conduct EIA. Thus, at the level of both the central government and local self-government bodies, the provision of information to the public or the effective involvement of stakeholders in the decision-making process was not ensured. However, decisions related to such large-scale and, consequently, high-profile projects of the spatial arrangement of the city are inadmissible to be made without public involvement. Moreover, the project was to be implemented in an area of historical and cultural value and thus was closely linked to the protection of cultural heritage, along with environmental issues.

According to international experts,<sup>72</sup> the project posed a threat to the historic environment of the city. At the same time, the historical part of Tbilisi was on the preliminary list of UNESCO World Heritage Sites and the State had an obligation to protect its uniqueness before making a decision. According to Georgian specialists,<sup>73</sup> the project would irreversibly damage the historical landscape of Tbilisi and the entire historical city. According to them, in addition to damaging the cultural heritage, Panorama Tbilisi completely ignored the

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<sup>72</sup> ICOMOS, Heritage at Risk, World Report 2016-2019 on Monuments and Sites in Danger, click on the link: <[https://www.icomos.de/icomos/pdf/hr20\\_2016\\_2019.pdf](https://www.icomos.de/icomos/pdf/hr20_2016_2019.pdf)>.

<sup>73</sup> Appeal of up to 20 NGOs, click on the link: <<http://liberali.ge/news/view/21389/20ze-meti-arasamtavrobo-panorama-tbilisis-shesakheb-premiers-shekhvedras-stkhov>>.



interests of the population living in the surrounding areas and the detrimental impact of this large-scale construction on the social situation of the local community.

The project was followed by protests, during which, a number of people were detained on administrative charges. Eventually public protest could not influence the decisions of the state agencies. Necessary decisions were made for the implementation of the project. The project was launched and is still ongoing. Civil society appealed against the construction permits to the court. However, they pointed to the artificial delays in the court hearings, which caused dire consequences given that the construction had not been suspended during the court dispute. Finally, the court of first instance terminated proceedings on procedural grounds.

### Riviera Batumi Project

Batumi is the administrative center and maritime city of the Autonomous Republic of Adjara, which is a major international port on the southeastern shore of the Black Sea. Batumi has important industrial, cultural and tourist importance for Georgia.

Decisions on the implementation of the Batumi Riviera project were made in 2019. The project aims to arrange a yacht club and artificial lagoon, multi-apartment houses, hotels, multifunctional navigation-integrated complex, restaurants, convention center, casino, residential and public spaces in the center of Batumi and its historical part.

According to the case materials, in particular the cultural heritage examination document, the historical lighthouses of Batumi - Ferris Wheel and Alphabet Tower are located in the boulevard near the project area. The Batumi Theater, which has cultural heritage status, is about 100 meters away from the project area, which means that it is within the 150-meter visual protection zone of the monument. The second cultural heritage monument adjacent to the project area is the old Batumi lighthouse, which is about 40 meters away from the project area. Accordingly, part of the area falls into the physical protection zone of the monument, where any construction is prohibited. As for the visual protection zone, according to the document, "Since the project area has almost always been full of buildings, it was impossible to see or perceive the lighthouse from the city."

In case of implementation of the activities planned within the project, the urban planning of the city will change dramatically, which also implies changes in the forms of public life. Decisions related to such large-scale infrastructure projects should be taken only by upholding the principle of publicity and ensuring the effective involvement of the public.

Despite the scale of the project and the expected impact, it was not subject to the EIA procedure, as under the current Environmental Assessment Code, only an urban development project covering an area of more than 10 hectares is subject to a screening decision. Since the project area in the case under consideration did not exceed 10 hectares, the planned activity was not subject to the procedures established by the Code. It should be noted that the total area of the Batumi Riviera project is 90,700 square meters.

The project was protested by the local population, activists and civil society at rallies. They complained about the fact that such a large infrastructure project was planned without the EIA procedure and thus citizens' engagement was neglected. Among the main concerns relating to the project were safety and cultural heritage

protection. Some specialists stated that the morpho dynamics of the Black Sea coast near the Batumi Cape was quite problematic, massive construction of large buildings in the coastal zone was inadmissible and it was necessary to maintain the ecological sustainability of the coastal zone; according to them, large interventions threaten to provoke landslides, which can be developed during strong turbulence and earthquakes, and expensive construction with some part of the coast may be found in the depths of the canyon. These and other risks were discussed in various sources.

## 5.5. Landfills

Waste management is one of the most urgent challenges for Georgia. Illegally disposed household and hazardous waste and landfills arranged without proper standards have been polluting soil and water for many years. Uncontrolled landfills, along with the aesthetic problems, are a potential source of various diseases.

As a result, proper waste management and prevention of waste pollution are considered to be an important priority for the country.<sup>74</sup> In response to the challenges, the State seeks to plan and implement relevant policies/legislation, as well as to take concrete effective steps. Among them, one of the measures is to arrange landfills in accordance with international standards. In terms of overcoming environmental challenges and realizing the right of citizens to live in a safe environment, the above is a positive and progressive step. However, on the other hand, practice shows that the decision-making bodies need to take into account various legitimate interests of local residents.

In recent years, the Public Defender's Office has been informed of the complaints of citizens relating to several landfill projects. All projects were implemented/are being implemented in Western Georgia:

- In the village of Chognari, Terjola municipality;
- In the village of Tsetskhlauri, Kobuleti municipality;
- In the village of Tsatskhvi, Zugdidi municipality

Citizens' concerns are mostly related to the fact that their property is placed in the project buffer zone and they are subject to resettlement. In similar cases, the issues of property valuation and compensation are important. At the same time, there are cases when the property is not in the buffer zone, but citizens think that they should be resettled in the light of the expected impact; In addition to property rights, it is usually problematic for citizens to be properly informed at the earliest stages. They have questions about various aspects of the project, including whether the construction of the landfill will lead to deterioration in their living conditions, given the expected noise and odour; People in tourist areas are also concerned about the risks that a nearby landfill may worsen the tourism potential and thus they will lose a source of income.

According to the Public Defender, the regulation of the permissible distance between a landfill and an inhabited area is problematic. In particular, the regulation relating to the calculation of the permissible distance

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<sup>74</sup> Order No. 1124 of the Government of Georgia of May 22, 2018, on "Approval of the Third National Environmental Action Programme of Georgia".

between the boundary of a landfill and an inhabited area was vague, as it was not specified what was meant by the boundary of a landfill. This issue was directly related to the realization of citizens' right to property and the right to live in a healthy environment, so the Public Defender made a recommendation to the Government of Georgia to clarify the criteria relating to the buffer zone.

**Overall, as in other projects, the realization of the property rights and environmental issues were particularly problematic in this case too.**

## 6. Public participation in decision-making process - international approaches

There is consensus in the international framework governing EIAs that public participation is a vital element of the EIA process, whether referred to as 'public participation', 'involvement' and 'consultation' in national legislation.<sup>75</sup> Although much has been written about what constitutes elements of good public participation, states still use their wide discretion in defining the participatory element of an EIA process, and a lack of political will has led to uneven public participation requirements and implementation at best.<sup>76</sup>

At the European level, the EU EIA Directive stipulates that the public should be provided with information early in the EIA process,<sup>77</sup> requiring that the public be given the opportunity to comment and express opinions before "the decision on the request for development consent is taken."<sup>78</sup> It further emphasises the necessity for public participation in the collection of data and information, as well as the need to provide the public with the information gathered, the reasoning for conclusions and decisions, and the opportunity to resort to judicial remedy.<sup>79</sup> The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) has three pillars which cover: **Access to information**,<sup>80</sup> **Public participation in decision making**,<sup>81</sup> **Access to justice**.<sup>82</sup>

The Aarhus Convention protects these rights in "any activity [...] where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation."<sup>83</sup> Finally, the Espoo Convention, which specifically applies to EIAs in transboundary contexts, mandates "[...] an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities."<sup>84</sup>

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<sup>75</sup> UNEP, 2018, pg. 50

<sup>76</sup> For example, the UNEP Goals and Principles only make a broad reference to public participation, requiring that members of the public and interested groups are allowed an opportunity to comment on the EIA before a decision is made, UNEP, 2018, pg. 50

<sup>77</sup> Ibid, Articles 6(2) and 6(3)

<sup>78</sup> Ibid, Article 6(4)

<sup>79</sup> Ibid, Articles 4, 6, 9 and 11

<sup>80</sup> Rodenhoff, "The Aarhus convention and its implications for the 'Institutions' of the European Community" in Review of European Community and International Environmental Law. 11 (3): 343–357, 2003.

<sup>81</sup> UNECE, Your right to a healthy environment: a simplified guide to the Aarhus convention on access to information, public participation in decision making and access to justice in environmental matters, 2006.

<sup>82</sup> Rodenhoff, "The Aarhus convention and its implications for the 'Institutions' of the European Community" in Review of European Community and International Environmental Law. 11 (3): p.358, 2003.

<sup>83</sup> Aarhus Convention, Article 6(1) in conjunction with Annex I

<sup>84</sup> Espoo Convention, Article 2(6)

From a human rights perspective, effective public participation is not only a procedural aspect of an EIA process, but a requirement of international human rights law. For example:

- Article 25 of the **International Covenant on Civil and Political Rights** provides for the right of citizens to take part in political affairs, and Article 19 guarantees the right to freedom of expression, including the right to seek information; and
- **UN treaty bodies** have issued numerous general comments that point to government responsibility to inform and hear the opinions of groups affected by political decisions, in particular with regard to their economic, social and cultural rights.

Furthermore, under international human rights law, certain groups have an explicit right to participation and consultation, including through:<sup>85</sup>

- **ILO Convention No. 169** and the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** which provides indigenous peoples with a right to be consulted in line with the principle of free, prior and informed consent.
- The **Convention on the Rights of the Child (CRC)** states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken, including within the family, the school, and the community.
- The **Convention on the Rights of Migrant Workers and Members of their Families (ICMW)** demands consultation with, and participation of, migrant workers and their families in decisions concerning the life and administration of local communities.
- The **Convention against the Elimination of All Forms of Discrimination against Women (CEDAW)** states that women's right to participate in the elaboration and implementation of development planning at all levels.<sup>86</sup> Consultation rights flowing from this provision have been elaborated in relation to specific human rights, for example in relation to the right to water,<sup>87</sup>

The responsibility for businesses to consult those affected by their activities has also increasingly been defined in soft law. For example:

- **UN Guiding Principles on Business and Human Rights, Principle 18** explicitly states that the process of identifying human rights impacts should involve 'meaningful consultation with potentially affected groups and other relevant stakeholders. In the associated commentary, it is specified that businesses should seek to understand the concerns of potentially affected stakeholders 'by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.'<sup>88</sup>

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<sup>85</sup> The Danish Institute for Human Rights, Human Rights Impact Assessment Guidance and Toolbox, 2020: [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox\\_Stakeholder%20Engagement\\_ENG\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox_Stakeholder%20Engagement_ENG_2020.pdf)

<sup>86</sup> CEDAW, Art. 14 (2a).

<sup>87</sup> For more details, see Danish Institute for Human Rights (2013), The Right to Public Participation: A Human Rights Law Update, Issue Paper, Copenhagen: DIHR

<sup>88</sup> UN Guiding Principle 18 and commentary.

- **The OECD Guidelines for Multinational Enterprises (2011)** state that multinational enterprises should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account during planning and decision-making, especially for projects or other activities that may significantly impact on local communities.<sup>89</sup>
- The **International Finance Corporation (IFC)** requires its clients to undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks and impacts. The extent and degree of engagement required by the consultation process is commensurate with the particular project's risks and adverse impacts.<sup>90</sup> IFC Performance Standard 7 on Indigenous Peoples requires not only avoiding or minimizing adverse impacts of projects on indigenous peoples but also to ensuring free, prior and informed consent of the affected communities.<sup>91</sup>

While the 2018 UNEP review of EIA legislation around the globe found that public participation requirements were being expanded in some states, it noted that these requirements were mostly limited to the scoping and review stage of an EIA. From a human rights perspective, participation requirements in EIA oftentimes fall short, or are limited to information meetings and public comment periods. Many countries include exceptions to public participation requirements, and there is a lack of accountability in cases where these requirements are not implemented in practice.<sup>92</sup> Much of the criticism voiced with respect to public participation in EIA processes is often linked to wider criticism about the political environment and distribution of powers in a state or region.<sup>93</sup> For example, few states legally mandate consultations with indigenous peoples<sup>94</sup> and where opportunities for their involvement in an EIA process exist, these are often limited to processes designed to determine whether a project should proceed, and do not encompass the operational phase.<sup>95</sup>

A human rights-based approach to participation requires engagement with rights-holders throughout the impact assessment process, as well as throughout the life of the business project or activities. It has implications for all stages of an EIA: First, it entails defining the “public” broadly, in accordance with the scope of human rights impacts, affected rights-holders and other relevant stakeholders.<sup>96</sup> The scoping stage should allow for stakeholders to influence the development of the plan for public participation and, regarding the technical parameters, for example in highlighting alternatives in relation to project design and implementation.<sup>97</sup> Perspectives of rights-holders themselves should be used for assessing the severity of impacts in the analysing impacts phase. In the impact mitigation and management phase, stakeholders should be involved in designing and implementing actions that effectively prevent, mitigate and remediate adverse impacts, as well as in

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<sup>89</sup> Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing, Part I, Chapter II General Policies, para A.14.

<sup>90</sup> International Finance Corporation (2012), *Performance Standards on Environmental and Social Sustainability*, Washington: IFC, Performance Standard 1.

<sup>91</sup> IFC Performance Standards, Standard 7.

<sup>92</sup> UN Environment Programme, *Assessing Environmental Impacts - A Global Review of Legislation*, 2018, pg. 2 (UNEP, 2018) available at: <https://www.unenvironment.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>

<sup>93</sup> UN Environment Programme, *Assessing Environmental Impacts - A Global Review of Legislation*, 2018, pg. 2 (UNEP, 2018) available at: <https://www.unenvironment.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>

<sup>94</sup> UN Environment Programme, *Assessing Environmental Impacts - A Global Review of Legislation*, 2018, pg. 2 (UNEP, 2018) available at: <https://www.unenvironment.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>

<sup>95</sup> O'Faircheallaigh C. Environmental agreements, EIA follow-up and aboriginal participation in environmental management: The Canadian experience. *Environmental Impact Assessment Review* 2007;27:319– 42.

<sup>96</sup> The Danish Institute for Human Rights and IPIECA, 2013,

<sup>97</sup>The Danish Institute for Human Rights and IPIECA, 2013, pg. 23

monitoring their implementation, potentially through participatory monitoring. Finally, stakeholders, especially rightsholders, should be informed about results in a meaningful and accessible way, and subsequently engaged in the evaluation process.<sup>98</sup>

The party responsible for conducting an EIA should assess and address any financial, social and cultural barriers that the rightsholder might face to participate, which could inhibit effective participation.<sup>99</sup> For example Ensuring rightsholders can attend meetings by organising them nearby and ensuring transport options are in place, or if the responsible party wishes to hold virtual meetings, ensuring that rightsholder have internet access and are familiar with communication software; Ensuring that women and children can express themselves openly, which in some locations could require focused measures, such as holding meetings at times which best suit them or organising meetings for particular groups of rights-holders only;

The EIA process should ensure that the engagement with rights-holders is free from discrimination and prioritises disadvantaged groups and individuals.<sup>100</sup>

An EIA carried out in a manner that does not include potentially affected groups or individuals (for example, indigenous people or financially disadvantaged), or does not provide for effective participation (for example, by providing information electronically where the population does not generally have access to electronic devices or electricity) can result in a violation of the right to participate, as articulated in the Aarhus Convention and other human rights instruments.

## 7. Conclusion

The projects discussed in this document have shown that one of the main challenges for many years in planning and implementing infrastructure projects is the awareness of the public about the projects at the early stage, real participation of citizens in the decision-making process and the realization of environmental protection and other basic human rights.

It is obvious that environmental impact assessment is not only a procedural aspect, and it is important to follow human rights related requirements in this process. As the review presented in the previous section shows, the legal standard implies participation in the processes of public above all. It is crucial to comprehensively identify the circle of persons with the right to participate and consult. It is also important the forms and quality of their participation throughout the process, as well as the content of the meetings and consultations. Also, the responsibilities of business should not be overlooked, including its willingness to understand the concerns of potentially affected parties and consult with them. The standards outlined in this document are important for identifying and analyzing expected impacts, as well as developing impact prevention, mitigation, and remedial measures.

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<sup>98</sup> The Danish Institute for Human Rights, Human Rights Impact Assessment Guidance and Toolbox – Stakeholder Engagement, 2020: [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox\\_Stakeholder%20Engagement\\_ENG\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox_Stakeholder%20Engagement_ENG_2020.pdf)

<sup>99</sup> UN Environment Programme, Assessing Environmental Impacts - A Global Review of Legislation, 2018, pg. 2 (UNEP, 2018) available at: <https://www.unenvironment.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>

<sup>100</sup> The Danish Institute for Human Rights, Human Rights Impact Assessment Guidance and Toolbox – Stakeholder Engagement, 2020: [https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox\\_Stakeholder%20Engagement\\_ENG\\_2020.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/document/HRIA%20Toolbox_Stakeholder%20Engagement_ENG_2020.pdf)

Considering the development of humanity's approaches and modern vision related to environmental protection issues, one of the priorities of policy, legislation or planning/implementation of a specific project should be the implementation of human rights-oriented approaches. We believe that considering the international standards reviewed above to ensure public participation and involvement, along with improvement and effective enforcement of national regulations, will assist to overcome the challenges discussed and outlined in this document and improve the quality of human rights realization in similar projects in the future.