

The complaint to Complaints Mechanism of the European Investment Bank

The facts of the complaint

1. The European Investment Bank approved Nenskra HPP project on 6 February 2018. Nenskra HPP is a 280 MW hydropower plant project on the River Nenskra and Nakra valleys of Mestia Municipality in Georgia. Nenskra HPP represents one of the 35 power plants, planned to be constructed in Zemo Svaneti. The project is being implemented by the State Partnership Fund and the Korean State company K-water.

2. Communication with the EIB

- The Nenskra hydropower plant in Georgia – briefing for the directors of the European Investment Bank, <https://bankwatch.org/publication/the-nenskra-hydropower-plant-in-georgia-briefing-for-the-directors-of-the-european-investment-bank>
- Comments on Nenskra Hydropower Project Supplementary Environmental & Social Studies, by JSC Nenskra hydro, by CEE Bankwatch Network, Green Alternative and Balkani, http://greenalt.org/wp-content/uploads/2017/07/comments-_Nenskra_hydro20171.pdf
- Failing local communities – the Land Assessment and Livelihoods Restoration Plan for the Nenskra dam; **September 11, 2017**; <https://bankwatch.org/publication/failing-local-communities-the-land-assessment-and-livelihoods-restoration-plan-for-the-nenskra-dam>
- Six reasons for not financing the Nenskra hydropower project in Georgia; **December 5, 2017**; It was sent to Executive Directors of EBRD, <https://bankwatch.org/publication/six-reasons-for-not-financing-the-nenskra-hydropower-project-in-georgia>
- Comments on the Nenskra supplementary environmental and social studies together with the annexes related to Bern convention were sent to Management and Executive Directors of the IFIs; **January 15, 2018**; <https://bankwatch.org/publication/comments-on-the-nenskra-supplementary-environmental-and-social-studies>
- Issue paper for the EBRD annual meeting; **May 4, 2018**

Locals communities communication with Bank

- The members of the impacted community have shared concerns Nenskra HPP, April 2016, http://greenalt.org/other_sources/mestia-municipality-chuberi-community-collective-statement-regarding-the-nenskra-hydropower-plant/
- The members of the impacted community have shared concerns related with their status as indigenous people with the EIB in June 2017. http://greenalt.org/wp-content/uploads/2017/07/Collective_letter_2017.pdf
- Local communities letter to IFIs, December 2017, http://greenalt.org/wp-content/uploads/2017/12/Svan_letter_against_Nenskra_December_2017.pdf
- _____ Community member, _____ raised concerns with EIB Board and staff regarding the Nenskra project, in 5-6 February 2018,

Svan Lalkhor approach to IFIs

Lalkhor Declaration to all IFIs on recognition of Indigenous people ; **March 14, 2018**;
www.goo.gl/AJkrkW

A. EIB response to Association Green Alternative, October 2017, SG/CR/CS/2017-1181/GG/hd

3. Environmental and Social Impact Assessment was published on the Bank's website in December 2017

4. On 23 April 2018 the Bank disclosed to CEE Bankwatch Network a number of documents, including the "Summary of EIB's assessment on the applicability of Standard 7 in the context of the Nenskra Project".

5. This complaint is supported by CEE Bankwatch Network as a co-complainant.

6. In March 2018 the Asian Development Bank published a Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia)

In our opinion the Bank has failed to comply with the Standard 7 by not respecting the status of Svans as indigenous peoples; the Bank failed to comply with its environmental and social standards by ignoring the Project significant impacts on Svans as indigenous people, on culture, health and general well-being of the impacted community, by ignoring the lack of proper public consultations and mitigation measures as well as by approving the project for which meaningful alternatives have not been studied.

7. Svans are the ethnic group in Georgia, approximately 1% of Georgian population, with own distinct cultural and religious traditions, unique language and law, which runs in communities and the region, they recognize ancestors rules and customs on land ownership, carry on the traditional activity (agricultural, livestock, wood processing, crafting and etc.). Svan complainants represent the indigenous population which lives in the Samegrelo-Zemo Svaneti Region. Therefore, we believe the Government of Georgia should agree with Svans about the projects that are planned to be constructed on the land they live. Georgian government plans to develop another 34 HPPs in the region, including five large reservoirs and dam projects. These developments, including Nenskra HPP threaten our culture, traditions and livelihood.

8. According to the Bank's procedures the project team should determine, in consultation with the promoter, the approach to be adopted to appropriately manage the potential adverse impacts resulting from project on vulnerable groups, including on indigenous populations and minorities. The procedure requires particular attention be given to vulnerable groups' cultural rights to maintain control over ancestral territory and to secure access to culturally appropriate sustainable livelihoods. A focus on indigenous groups is considered of particular importance in the wider EU policies supporting social inclusion, nondiscrimination and the rights of indigenous peoples expressed in the UN Human Rights Conventions.

9. The Bank has failed to properly categorise Svans, the impacted community as indigenous peoples and in consequence has failed to ensure our rights to right to determine our development, including the right to taking part in decision-making on project on traditional land and failed to ensure that the adverse impacts of the Nenskra project on community is avoided or properly mitigated.

10. The European Union and the EIB protect and promote the rights of indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is the guiding document of reference for the EIB.¹ The EIB's defining criteria also refer to ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. When financing projects outside the EU, EIB's operations are considered the EU's external action. In 2016 the High Representative of the Union for Foreign Affairs and Security Policy adopted a staff working document "Implementing the External Policy on Indigenous Peoples" which reiterates that "the EU's external action on supporting indigenous peoples is guided by a number of principles, mainly set out in the 1998 European Commission Working Document on support for indigenous peoples in development cooperation and the corresponding 1998 Council Resolution, as well as in the Council Conclusions on indigenous peoples in 2002. These principles, to be applied in EU strategies and financing instruments including through mainstreaming, include the following:

- the indigenous peoples' right to their "self-development", including the right to object to projects, in particular in their traditional areas, and the right to obtain compensation where projects negatively affect their livelihoods;
- the full and effective participation of indigenous peoples at all stages of the project cycle (in development cooperation) and the importance of building the capacities of organisations representing indigenous peoples;
- the inclusion of the concerns of indigenous peoples into the political dialogues with partner countries."²

The document also provides further guidance on the identification of indigenous peoples by invoking the two UN based definitions³:

"Indigenous communities, peoples and nations are those which, having a **historical continuity** with pre-invasion and pre-colonial societies that **developed on their territories**, consider themselves **distinct** from other sectors of the societies now prevailing on those territories, or parts of them. They form at present **non-dominant** sectors of society and are determined to **preserve, develop and transmit** to future generations their ancestral territories, and their **ethnic identity**, as the basis of their **continued existence** as peoples, in accordance with their own cultural patterns, social institutions and legal system."

"Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions" and „Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention [ILO Convention 169] apply."

11. EIB's procedure also provides guidance on defining "Indigenous peoples" who are defined as a distinct social and cultural group, possessing some or all of the following characteristics in varying degrees:

¹ Environmental and Social Practices Handbook, 2013

² Implementing the External Policy on Indigenous Peoples, Staff Working Document, European Commission, 17.10. 2016

³ Ibidem, Annex 1, page 20

- Self-identification as indigenous;
- A shared experience of oppression or colonization;
- Historical continuity within a given region prior to colonization or annexation;

Collective entitlement and/or attachment to ancestral lands, territories and natural resources in their habitats and use thereof;

- An indigenous language, often different from the national or regional language;
- Distinct social, economic and political systems;
- Activity in non-dominant sectors of society;
- Distinct languages, spiritual traditions, culture, beliefs and knowledge;
- Land/natural resources-dependent means of existence; primarily self-sufficient production; and
- A shared wish to maintain and develop a distinctive shared identity, spirituality as well as social economic, cultural and political institutions

12. United Nations “Guidelines on Indigenous Peoples’ issues” were published in 2009 in order to mainstream and integrate indigenous peoples’ issues in processes for operational activities and programmes at the country level. The guidelines refer, among others, to “The concept of Indigenous Peoples” a background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues. It is noted in the United Nations publications that there is no universal definition of “indigenous peoples” however indigenous peoples possess certain characteristics and their self-identification as indigenous shall be regarded as a fundamental criterion for determining whether the provisions of the relevant conventions apply to the group. These publications are also sources of the examples of working definitions of indigenous peoples and their characteristics developed during the international studies in the framework of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169.

13. Environmental and Social Impact Assessment includes an assessment of whether the “Indigenous Peoples” policies of the potential financial institutions apply to this Project. This assessment was done on the basis of the definitions of Indigenous Peoples used in the EBRD and the ADB policies, against the following five criteria: self-identification; collective attachment to land; existence of customary cultural, economic, social, or political institutions; existence of a distinct language and descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations. The ESIA conclusion was done in accordance with the EBRD’s Standard 7 requiring that “Indigenous peoples” must possess all of the above first four characteristics (similar to the ADB policies above) in varying degrees and the fifth characteristic to some degree. The ESIA concluded that Svans possess three characteristics to some degree which has not been specified further. In this context, although the EBRD and EIB’s definitions of “indigenous peoples” are similar in substance, they differ in regards to a degree the impacted group must meet the relevant criteria to be categorized as “indigenous peoples”.

14. The Bank conducts its own assessment of the applicability of Standard 7, however it failed to disclose the expertise or a study it obtained from the “highly qualified Georgian anthropologists”. During the meeting of CEE Bankwatch Network delegation and _____ with the EIB’s project team on 6th February 2018, the bank’s staff assured us that

it did not rely solely on the ESIA and its expert for the assessment of the indigenous peoples issue but it commissioned an independent analysis. We found no evidence of such an independent opinion.

While the ESIA does not assess Svans against the EIB's specific requirements for "indigenous peoples", the EIB's assessment is also inconsistent with the ESIA assessment as well as it also fails to analyze the applicability of Standard 7 against the Bank's own applicability criteria and in the framework of applicable United Nations Declaration and on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169 and the EU's policies specified above.

The EIB's "Summary of EIB's assessment on the applicability of Standard 7 in the context of the Nenskra Project" refers to the opinion of "highly qualified Georgian anthropologists" and social expert of International Panel of Experts (IPOE). The ESIA assessment of indigenous peoples issue was also conducted by the consultant, an anthropologist from the Institute of History and Ethnology of Iv. Javakishvili State University of Tbilisi, who was engaged by the Project to study the Svan's ethnic identity, language, history, customs, traditions, way of living, and livelihoods.⁴

The report of ADB's Compliance Review Panel revealed that all positions in respect of applicability of the Indigenous Peoples policy are based on this (ESIA) expert's views and that the social expert involved in the IPOE also referred to this expert's opinion in the telephone discussion with the CRP⁵. Further the CRP notes there is body of opinion by an academic research that contradicts an assessment done by this ESIA expert in regards some of the characteristics of Svans and therefore the staff of Asian Development Bank should consult not only with a local scholar but also with a qualified social science expert and an indigenous peoples representative organization.

We are deeply concerned that the EIB did not seek an opinion of an independent, external to ESIA, qualified social expert before it had conducted its own assessment as presented in the "Summary (...)" and that all assessments in regards the issue of indigenous peoples come from just one, local academic whereas the EIB's procedure requires the Bank seeks "the technical judgement of qualified social scientists."⁶ It would be advisable that the bank seek an opinion preferably from external expert due to the political nature of Svans as indigenous peoples and their distinct language.

15. Self-identification of Svans

Svans are the ethnic group of Georgians. Svans have own and distinct cultural and religious traditions, unique language and law, which run in communities and the region. Svans recognize ancestors rules and customs on land ownership. They carry on the traditional activity (agricultural, livestock, wood processing, crafting and etc.).

⁴ ESIA, page 24

⁵ Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia), page 7, <https://bit.ly/2IFLpce>

⁶ Environmental and Social Practices Handbook, 2013, page 65

According to ESIA Svans do identify themselves as Svan and are identified as such by others, and have kept specific ancient traditions and ethnographic features. Their specific cultural identity is recognised by themselves and by others.⁷

The ESIA also recognised that there are others distinct ethnic sub-groups of Georgians (apart from Svans) such as Mingrelians and Lazes, and ethnographical groups such as Imeretians, Tushs, Khevsurians, and Kakhetians⁸, however it failed to assess whether these ethnic sub- groups identify themselves as Mingrelians and Lazes or only as Georgians.

The ESIA makes a reference to the current scientific consensus based on available historical and anthropological studies that Svans are considered as an ethnic sub-group within the broader Kartvelian (Georgian) ethnos.⁹

The EIB's procedure recognizes that indigenous people may sometimes not be recognised by their own national context and therefore attention should be paid to evidence of self- identification as indigenous people, to the activity of indigenous people's representative organisations and institutions, to relevant international or regional intelligence, and to shared IFI knowledge and practice.

Self - identification criteria has been fully met although Svans are not being recognized by the state as Svans, ethnic minority, indigenous people or ethnic subgroup.

16. Collective entitlement and/or attachment to ancestral lands, territories and natural resources in their habitats

The ESIA informs that the Project is located in the Svaneti historical region (namely in Upper Svaneti, i.e. the upper valley of the Enguri River and tributaries), which is populated by the Svan People. Svaneti is the historic land of the Svan people. ¹⁰

Svans are descended from the populations of Svans which inhabited the region over the past centuries. Svans preserve historical continuity with the ancestral territory, culture and language. The ESIA concludes that the land tenure in the Mestia Municipality District is the product of the local history. Legal and formalized land tenure is recent, and customary land tenure prevails in most areas, including forest lands.¹¹

It also refers to the 2011 report prepared by several NGOs¹², including CEE Bankwatch Network member Green Alternative, which explains that for centuries in Mestia, the local population has owned property by inheritance and disposed land plots as distributed (or re-

⁷ ESIA, page 25

⁸ ESIA, page 219

⁹ ESIA, page 22

¹⁰ ESIA, page 22

¹¹ ESIA, page 21

¹² Problems Related to the Protection of Property Rights in Georgia – The Case of Village Mestia, Green Alternative, Georgian Young Lawyers Association, Georgian Regional Media Association, Transparency International Georgia and Open Society Georgia Foundation, 4 July 2011
<http://greenalt.org/news/report-presentation-problems-related-to-the-protection-of-property-rights-in-georgia-the-case-of-village-mestia/>

distributed) based on agreements between ancestors. It also states that most land plots have in fact never been legally registered in the high mountainous regions of Georgia, such as Svaneti. ESIA further explains that customary land tenure is well recognized in the local communities. Within the settlements, individual land plots are well demarcated, and almost always fenced. Outside the settlements, in the forested areas, customary ownership is also most of the time well defined. Specific areas are owned by groups of families sharing the same ancestry and customary right of use of these areas are inherited. Ownership and right of use of pasture areas is defined by customary rights. These customary rights for pasture areas are not recognized by the Georgian legal system. It is complicated to register the land, as one has to prove claimed ownership, most of the time without any existing document. Some people succeeded to officially register some residential land plots as their private land, but this is still categorized as Agricultural Land.¹³

Collective entitlement and/or attachment to ancestral lands criteria has been fully met by Svans.

17. An indigenous language

ESIA found that this characteristic fully applies to Svans who are bilingual: they speak both their own, unwritten Svan language, as well as Georgian. The EIB's "Summary..." concludes that "The Svan dialect belongs to a family of Georgian languages and is closely linked to the modern Georgian language". This conclusion stands in an evident contradiction to ESIA findings and international linguistic studies.

The ESIA concludes that Svan qualifies as a separate language and is different from Georgian and studies by linguists indicate that Svan, Megrelian and Laz all belong to the same Kartvelian group of languages, Svan is believed to have differentiated as a separate language in the 2nd millennium BC.¹⁴ According to the online edition of *Ethnologue: Languages of the World* classifies Svan's status as shifting, which means that 'the child-bearing generation can use the language among themselves, but it is not being transmitted to children.'¹⁵

The available literature is not coherent assessing the number of people who uses Svan. *Ethnologue: Languages of the World* provides it is spoken by 14-15 thousands of the ethnic population. Other studies double that number: although Svan, spoken by approximately 30 thousands peoples in Georgia, belong to the same (Kartvelian) subgroup of languages as Georgian but is sufficiently distinct from Georgian as not to be mutually comprehensible.¹⁶ This study also concluded that "as for Megrelian, Svan and Laz, using purely objective criteria it is hard to argue that they are mere dialects of Georgian since they are not mutually comprehensible with Georgian"¹⁷.

It should be mentioned that the well known Georgian linguists as N.Mari, A.Chikobava, A.Shanidze, founders of Georgian linguistic school, identified Svan as language among the

¹³ ESIA, page 22

¹⁴ ESIA, page 26

¹⁵ <https://www.ethnologue.com/language/sva>

¹⁶ Jonathan Weathley, Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Page 12, https://www.files.ethz.ch/isn/102089/working_paper_42_en.pdf

¹⁷ Ibidem, page 16

Iberian (Kartvelian) language family, along with Georgian, Zan and Laz languages. The Tbilisi State University Arnold Chikobava Institute of linguistics, Kartverlian Languages Department, studies and researches Svan-Zan Languages and its dialects.¹⁸ Also foreign linguists recognized Svan as a separate language which “*is no closer to Georgian than Icelandic is to Modern English.*”¹⁹ The first opposite opinion was introduced only in 21st century by group of scientists (T.Futkaradze, Gvanzeladze, M.Tabidze and etc), that claim that Megrelian-Zan and Svan are not languages but dialects and accused the opponents that they were serving the Russian special forces.²⁰ ²¹The politization of debates, coincided with the issue of signature and ratification of the European Regional or Minority Languages Charter. European Centre for Minorities Issues found that preserving regional languages in Georgia, such as Megrelian, Svan and Laz is politically contentious because to grant them recognition as distinct languages would be seen as a threat to the coherence of the Georgian nation.²²

18. Distinct social, economic and political systems

According to the ADB’s CRP’s Report there is a body of academic research which presents Svan legal system with binding values for the Svan community which exists in parallel to Georgian national legal norms and processes and there are also continued traditions which prevail only in the Svan community and can be classified as cultural and social institutions.²³

For example, “Local Legal Conceptions in Svan Villages in the Lowlands” a study based on the research conducted by the Georgian–German research team found out that *despite a strong administration and working law enforcement agencies, traditional law continues to be an important frame of reference for the Svans.*²⁴ The study describes the current practices of Svans, based on their traditions and beliefs, which substitute national legal system and which are not limited only to resolutions in instances of crime or conflicts, but also deal with such issues as problems with infrastructure. It also captures the four dimensions of the traditional Svan law which makes it distinct from the Georgian legal system.

The CRP’s report noted that there is body of scientific opinion which presents Svan legal traditions and cultural practices as distinctly different from other Georgian groups, and as distinct from the mediation processes exercised through elders in other Georgian mountain valleys. This characteristic also applies to Svans.

19. Distinct languages, spiritual traditions, culture, beliefs and knowledge

¹⁸ <http://ice.ge/ofen/kartvelian-languages-department/>

¹⁹ <http://www.uni-jena.de/unijenamedia/Downloads/faculties/phil/kaukasiologie/Svan%5Bslightlyrevised%5D.pdf>

²⁰ <https://bit.ly/2LrhwKD>

²¹ <http://liberali.ge/articles/view/3738/ena-tu-dialeqti>

²² Jonathan Weathley, Georgia and the European Charter (...), page 6

²³ ADB Compliance Review Panel’s Report on Eligibility of the Compliance Review <https://bitly.com/>, page 7

²⁴ Local Legal Conceptions in Svan Villages in the Lowlands, Caucasus Analytical Digest No 42, 30 September 2012, <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-42-2-5.pdf>

The ADB's CRP's report concluded that based on the body of academic literature there are also continued traditions which prevail only in the Svan community and can be classified as cultural and social institutions.²⁵

ESIA also finds that in Svaneti, the Svan language is used by local people in everyday interaction between Svans, while Georgian is used for any official communications and interaction with non-Svan Georgians.²⁶ The study also finds that although the area was christianised around the 6th century, traditions, including complex codes of chivalry, date back from pre-Christian times and have been maintained since due to the physical isolation of the region. Further it also explains that traditional dancing and music (the distinctive Svan polyphony) are important features of the local traditional cultural heritage, which various popular folklore groups keep well alive.

ESIA also refers to the existing studies describing traditional unwritten customs which are present with regards to the Svan's "self-understanding of how things should be, how the extended family has to be organised, religious institutions and practices respected, and social life in the village organized."²⁷

There are no doubts that Svans represent a distinct culture, beliefs, social and legal system from the majority of modern and dominant Georgian society and the state legal system.

20. Land/natural resources-dependent means of existence; primarily self-sufficient production

ESIA study found that "the traditional Svan way of life, which was predominantly based on subsistence farming and livestock grazing, has changed in recent times, and household incomes also include salaries, as well as revenues from logging and lumbering activities, particularly in the Project area; However, the traditional way of life remains prevalent and Svans have a strong cultural attachment to their region."²⁸

Nevertheless, the UN guidelines on the identification of indigenous peoples, do not establish such criteria which would prevent indigenous people from seeking income from non-traditional activities, including undertaking paid work in the dominant sectors of economy. On the contrary, ILO Convention 169, which is the applicable framework for the EIB, seeks to ensure that indigenous peoples enjoy the general rights of citizenship, without discrimination and that the improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit.

21. A shared experience of oppression or colonization

The UN technical definitions indicate that indigenous peoples have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories or in case of indigenous peoples in independent countries they are regarded as indigenous *on account of*

²⁵ Compliance Review Panel's Report on Eligibility of the Compliance Review, <https://bitly.com/>, page 7

²⁶ ESIA, page 23

²⁷ ESIA, page 23

²⁸ ESIA, page 25

their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Georgia has been an independent country since 1991.

The EIB's summary rightly acknowledges that Svans have historical continuity and association to the Svaneti region. However, refusing them a status of indigenous peoples on the ground that they were not colonised or annexed by Georgia would be similar to refusing Maasai tribes a status of indigenous peoples on the ground that they were not colonized by Kenyans.

Directly before gaining independence, Georgia was a part of the Soviet Union, under the strict governance of Moscow. Under the Soviet rule *traditional law was considered a real challenge to the full power of the state. The Soviet authorities severely punished those who used traditional law: capital punishment was introduced as a penalty for murders committed in carrying out a blood feud.*²⁹ Nevertheless, thanks to the institution of "private crime", regional isolation and a general reluctance to the foreign domination, the traditional law prevailed.

Nowadays, Svans face the new forms of discrimination from the state and political scene. First, as it was acknowledged by ESIA, traditional land tenure is not respected by the State. This has some implications for the Project.

The CRP's report found that families losing access to these pastures thus only receive compensation for loss of income but not for loss of land. The project affected persons are considered displaced persons without recognizable claims to such land.³⁰ Second, Svan language is not recognized as a separate, regional language on the political grounds (as a threat to integrity of the state and nation): *As for Megrelian, Svan and Laz, using purely objective criteria it is hard to argue that they are mere dialects of Georgian since they are not mutually comprehensible with Georgian. Nevertheless, the fact that they are basically not written languages and are held in relatively low esteem means that subjective and political criteria mitigate against recognising them as regional languages.*³¹ Svans themselves consider their language as a separate to Georgian.

The Svan language protection activities reported discrimination from the local institutions when they were organizing the event in Svan: *'People are happy that more serious attention is being given to the local language. However, some years ago, when we did the library project, we experienced some repression. We were kicked out of promised premises for the kick-off seminar in Mestia since the working language was Svan in addition to Georgian and English. Local librarians were threatened that they would lose their jobs if they took part in a seminar where the working language was Svan in addition to Georgian and English. The local authorities also wanted to censor the Svan version of the project's website. But with the*

²⁹ Lavrenti Janiashvili, Traditional Law in Soviet Times, Caucasus Analytical Digest No. 42, 30 September 2012, page 5

³⁰ Compliance Review Panel's Report on Eligibility of the Compliance Review (...), page 23

³¹ Jonthan Weathley, Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Page 16

*change of the government, the attitude towards the regional and minority languages has fortunately changed for the better, in a more modern European way. Now, for instance, the local government in Mestia, alongside foreign embassies and other entities, is among the supporters of the Svan youth literature competition.*³²

Although a member of Council of Europe, Georgia has not ratified European Charter for Regional or Minority Languages until today. In 2013 draft Instrument of Ratification of Georgia concerning the European Charter for Regional or Minority Languages has been prepared and the implementation progress report was published last year.³³ The instrument and the report refer only to the languages of national minorities whereas regional languages remained out of scope of this action. None of the Georgian regional language is institutionally protected nowadays.

Also Svan religious traditions are at risks nowadays facing repressions from a dominant church in a country. With an increased influence of the Georgian Orthodox Church in Georgia, and especially in Svaneti, there were number of attempts (successful) to prohibit the traditions and religious rituals of Svans, like Lamproba, hlishi, women pray and etc.³⁴

22. Activity in non-dominant sectors of society

Svans are high mountains peoples. They represent merely 1% of the Georgian population which is estimated for over 3.9 million people. They carry on the traditional activity: agricultural, livestock, wood processing, crafting and others. CRP's report found that the majority of households hold livestock and livestock herding is considered a traditional activity of the Svan society with long established rights on pastures and forest for grazing of animals.³⁵ Majority of impacted population (ESIA does not provide the figure) cultivates variety of crops, including 84% of population growing vegetables of various sorts in their home gardens. The ESIA reported that 38% of impacted households have at least one member permanently employed in the public service or a private company.³⁶ Logging was also found by ESIA as the primary source of income for most families. The livelihood of Svans is based to a large extent of self - sufficient production of food and is only complemented by other limited sources of income.

23. Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia)

The Asian Development Bank Compliance Review Panel conducted an assessment of the applicability of the indigenous policy of the bank to the Project. The CRP found no evidence of incompliance only on the ground that according to CRP the *Svan community is neither economically nor socially marginalized because of their belonging to the Svan social and cultural group. While income levels in the Nenskra valley are below the national average and*

³² <http://dfwatch.net/support-and-resistance-for-svan-language-activism-38834>

³³ Applying the European Charter for Regional or Minority Languages in Georgia 2015-2017, <https://rm.coe.int/project-report-minority-languages-in-georgia-en/168072f1c4>

³⁴ <http://www.tabula.ge/ge/verbatim/99403-tevzadze-svanetshi-martlmadidebeli-eklesia-adgilobrivi-dgheobebs-krdzalavs>

³⁵ Compliance Review Panel's Report on Eligibility of the Compliance Review , <https://bitly.com/>), page 24

³⁶ ESIA, page 30

*thus many people are vulnerable, the income levels are not lower than in other mountain areas of Georgia. Their vulnerability is related to the limited income earning opportunities in the Nenskra and Nakra river valleys (...) Svans in Georgia do not display vulnerability which is related to their status as a distinct social and cultural group (...).*³⁷

As this complaint does not judge the relevance of this assessment in the context of the ADB's safeguards, the EIB's policies do not require indigenous peoples to be more economically vulnerable vis-à-vis other groups - indigenous or not in the country. Svans are high mountain people, who live in isolated territories in the rather difficult environment. This is their characteristic that distinguishes them from the general society. According to ESIA, 42% of the impacted populations are vulnerable, 22% are officially registered as being under the national poverty line which is twice above the national average.³⁸ Svans are economically vulnerable exactly because they are Svans – one percent of the Georgian population, geographically isolated and dependent on the surrounding environment with very limited opportunities for additional income. Nevertheless, the UN framework for the protection of indigenous peoples seek to promote indigenous peoples' rights, including the right to development which has been largely denied by colonial and modern states in the pursuit of economic growth.³⁹ The UN Declaration on Rights of Indigenous Peoples emphasizes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. They retain their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.⁴⁰

Therefore the fact that indigenous peoples undertake activities in the dominant sectors of the economy, society, including being active in politics and government, or even being better off than other groups in society, does not undermine their status as indigenous peoples, which is determined by the objective criteria demonstrating their distinct social, cultural, political and economic characteristics vis-à-vis general society which descended from the past.

24. The implications of not triggering safeguards protecting Svans as indigenous peoples

Public consultations

Where EIB operations encounter, affect or threaten the customary rights and interests of indigenous peoples, and where specific actions and outputs are required from promoters, particular attention to social due diligence is mandated. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is the guiding document of reference in this respect for the EIB. In all instances involving indigenous peoples, an Indigenous Peoples Development Plan must be prepared, abiding by the principle of free, prior and informed consent (FPIC) and accounting, amongst others, for the recognition awarded by the state to the indigenous groups or communities affected, the duty of the state to consult them, the safeguarding of both

³⁷ Compliance Review Panel's Report on Eligibility of the Compliance Review , <https://bitly.com/>. page 7

³⁸ ESIA, page V

³⁹ State of the World's Indigenous Peoples, 14.01.2010, United Nations

⁴⁰ Frequently Asked Questions, United Nations Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf

their tangible and intangible cultural heritage, their link to resources and territories, and considerations of benefit sharing arrangements with them. ⁴¹

The Svans have not been appropriately consulted through the process of the Project. Indigenous Peoples Development Plan was not developed and the consultations respecting the Free, Prior and Informed Consent were not conducted. In a result the project has increased tensions within and among Svan communities in the region. Numerous strikes have been organized since January, 2018 both in Svaneti and Tbilisi to protest the dam. Due to an incident between the company and locals in Chuberi, the Salini Impregilo, a construction company, was forced to halt construction and leave the area. The situation escalated so much, that on March 4, 2018 a general meeting of all Svan communities (Lalkhor) was called in Mestia, and issued a joint statement on the indigenous status of Svans and demanding not to implement any HPP or extractive projects without their free, prior informed consent.⁴² More than 3,000 signatures were collected in support of the declaration. It should be mentioned that according to recent census only 11, 000 people are living in Zemo Svaneti.

The UN ILO Convention 169 gives the rights to peoples to decide their development priorities through meaningful and effective consultation and participation of these peoples at all stages of the development process, and particularly when development models and priorities are discussed and decided. Consultations participation in decision-making for the Project should be conducted in a climate of mutual trust under the special measures by the state and not by the private company. General public hearing processes would not normally be sufficient. The Convention also seeks to ensure that indigenous peoples actively participate and propose measures, programmes and activities that shape their development. Participation should lead to concrete ownership of initiatives by indigenous peoples. ⁴³

In reality **on October 2, 2015** the Ministry of Economy of Georgia issued a permit to JSC Nenskra Hydro to construct the 280 MW Nenskra HPP project with the following technical parameters: 135 metre high and 870-metre-long rockfill dam with a reservoir area of around 400 hectares (182 mln cubic metres) on the Nenskra River and a 13-metre-high dam on the Nakra River in order to divert the Nakra River flow to the Nenskra Reservoir.

ESIA outline the consultations conducted for the Project which included:

- Meetings held with the local authorities in Chuberi and Naki villages on **5 September 2015** to inform them of the planned socioeconomic surveys and the supplementary E&S studies process;
- Public information meetings held in Chuberi village on **16 December 2015** and in Naki village on the **17 December 2015**. During these meetings the preliminary findings of the SIA and of the other Supplementary E&S studies were communicated to the local people;
- Several meetings with the people affected by the land acquisition conducted throughout **2016**;
- Opening and operation of the Project's public information centre in Chuberi village

⁴¹ Environmental and Social Practices Handbook, 2013, page 67

⁴² <https://bit.ly/2rwPyni>

⁴³ Procedures for consultations with indigenous peoples, ILO, page 3,

http://www.ilo.org/wcmsp5/groups/public/---dgreports/--gender/documents/publication/wcms_534668.pdf

- during the Spring-Summer 2017, followed by formal and informal meetings organized at villagers' request
- Meetings and consultations undertaken during the disclosure of the Supplementary E&S studies from March to August 2017, in the two valleys and in Tbilisi

The CRP Report also notes that before it became involved in the Project in early 2015, ESIA (2015) had been completed and the public disclosure meetings were conducted in accordance with Georgian requirements. The lender group found consultation processes conducted until then insufficient and asked the JSCNH to undertake more intensive and meaningful consultations while additional ESIA studies were being carried out. It also concluded that records do not provide evidence how inputs were sought from local residents on the preparation of the ESIA complementary studies. However the CRP is also of the view that consultations corresponding to supplementary ESIA studies met the requirements of the ADB policies however the very important consultations remain to be conducted, as substantive impact assessments and mitigation measures have not yet been defined.⁴⁴

None of these consultations can be viewed as meaningful, effective and timely as they were conducted either after the consent to the Project had been granted, or without application of the appropriate procedure or conducted by the private company – a project promoter JSCNH. The consultation process had not been conducted under the special measures allowing for the real participation of the impacted groups in the decision-making process. Moreover the consultation procedure does not even meet the requirements of Aarhus Convention which is binding for the EIB in regards an appropriate sequencing of consultations before issuing the final development consent. Public consultations did not allow for any form of participation in decision-making about the Project. In addition to consultations on ESIA, the CRP Report found that in regards the Environmental and Social Management Plan, it does not sufficiently detail outstanding mitigation measures and as these mitigation measures are not presented in the ESMP version disclosed to the public, affected households could also not participate in consultations on these measures.⁴⁵

We would like to draw your attention to the findings of the ADB CRP regarding the assessment for alternatives which were found confidential. Moreover the CRP noted that to proceed with the Nenskra HPP reflects a political preference, the location was given and was not subject to any alternatives assessment as the location choice is only driven.⁴⁶

Projects violates a customary right of Svans to lands

The ADB CRP's report found that Svans will be impacted by the economic resettlement from pasture land and the loss of eco-services from grazing in forests. It accounts that approximately 588 ha of permanent forestry and pasture land will be lost and that the exact forest land to be diverted for non-forest purpose and its ecosystem service value have not been identified and mapped with suitable management plans. The CRP further concluded that the ESIA categorizes the pasture land as land where groups of families have customary user rights but cannot acquire ownership rights as the land has already been registered in the name of the State. Families losing access to these pastures thus only receive compensation for loss

⁴⁴ CRP Report, page 26

⁴⁵ CRP Report, page 21

⁴⁶ CRP Report, page 8 and 9

of income but not for loss of land. The project affected persons are considered displaced persons without recognizable claims to such land.⁴⁷

The CRP did not find the land acquisition process for pasture areas fully prepared as: (i) the number of households affected remains uncertain; (ii) compensation for income lost from pasture use foregone, is adequately compensated by the supply of fodder for the period of seven years, but compensation for permanent loss of pastures, has not been yet been designed and agreed upon with the populations; (iii) comprehensive consultation processes still need to be conducted with the population on these issues.

The CRP rightly pointed that the issue of access to pastures is not trivial and must be carefully dealt with: *The user rights of pasture areas are also an emotionally charged issue in the Svan community. The majority of households hold livestock and livestock herding is considered a traditional activity of the Svan society with long established rights on pastures and forest for grazing of animals.*⁴⁸

Projects impacts. A threat to Svan culture and well-being of the community

The project may impact indigenous people in various ways. The EIB's procedure was established to help to identify some of the project impacts.⁴⁹ The ESIA has not assessed properly, and in some cases did not even identify, all the possible impacts of the project. For example the impact of influx of workers has not been identified and assessed by ESIA.

The ADB CRP was of the view that the Svan culture will be seriously threatened by this Project. It pointed that the population, with its culture, has already been seriously impacted by the Enguri Hydropower Plant-HPP when several Svan villages have been flooded, and risks being impacted by the Khudoni HPP already approved for the lower part of the valley. It further concludes that local residents and Svan culture will be very seriously impacted by the massive inflow of workers into the narrow valley during at least 5 years of construction period and to some extent by the economic resettlement from pasture land and the loss of eco-services from grazing in forests.⁵⁰ The majority of workers will arrive from across Georgia and some of them will stay to live in Nenskra, *which presently is populated by only 268 households and who presently live in a very cohesive Svan culture.*⁵¹ The CRP had no doubt that external workers will have different values and traditions clashing with the cohesive values and traditions of the Svans in a result of which it will fundamentally challenge the social cohesion and values of the impacted communities. These impacts are likely to be very significant while benefits for the local population will be short term.⁵² The CRP also notes that the influx of workers may cause sexual abuses and health problems and that proper mitigation measures have not been proposed.⁵³

The Project may also impact Svan language if it undermines cohesive values and traditions of the Svans. UNESCO acknowledges the Svan language as the definitely endangered language, spoken by about 3000 people in the Kvemo Kartli region. However, the ESIA does not address how it would impact the Svan language and its culture.

Conclusions

We believe that this complaint, which reveals the EIB's maladministration, including violation of the EIB's standards and the international law on human rights and indigenous people, justifies the following requests:

1. EIB should trigger Standard 7 by acknowledging Svan's status as indigenous peoples;
2. EIB should request from the Republic of Georgia conducting an appropriate alternative analysis for the Project which should be accompanied by an appropriate consultations based of the special measures in line with the international law protecting indigenous peoples in case the Project may still impact them;
3. Eventually, EIB should withdraw its commitment to this project, if the above cannot be conducted, as it stands in manifest violation of the EIB's applicable environmental and social standards.

The complaint signatories:

⁴⁷ CRP Report, page 23

⁴⁸ CRP Report, page 25

⁴⁹ EIB Handbook.... , page 125

⁵⁰ CRP Report, <https://bitly.com/> page 7

⁵¹ CRP Report, <https://bitly.com/> page 19

⁵² CRP Report, <https://bitly.com/> page 19