

CONCLUDING REPORT

in a mediation concerning a dispute related to a hydropower project at Namakhvani, Rioni River, Georgia

between

The Government of Georgia

and

Greens Movement of Georgia/Friends of the Earth Georgia, Green Alternative, Centre of Innovative Development of Enterprises, Fair Energy Politics Collective, Research-Intellectual Club “Dialogue of Generations” (RICDOG), Social Justice Center, Georgian Young Lawyers Association, Guardians of Rioni

The present report summarizes the process and the agreements made during the mediation. It is submitted six months after the start of the mediation, the originally envisaged timeframe. The report was drafted by the mediators and is without prejudice to any positions of individual participants at the mediation.

1. Background

Namakhvani is a cascade hydropower project (HPP) located on the Rioni River in the west part of Georgia, several kilometres above the city of Kutaisi – Municipality of Tskaltubo and Municipality of Tsageri. The cascade consists of Upper Namakhvani (Namakhvani–Tvishi, 100 MW) and Lower Namakhvani (Namakhvani-Zhoneti, 333 MW) with a total installed capacity of 433 MW.

The project was first developed by JSC Namakhvani (a state-owned company). JSC Namakhvani received approval of the project design in 2015 and an Environmental Decision (permit) in 2019. Based on the results of a tender procedure for a Build-Own-Operate (BOO) contract, the Government of Georgia awarded the right to develop the project to Clean Energy Group Georgia LLC. On 21 April 2019, a BOO contract was signed between the Government and Clean Energy Group Georgia LLC. Clean Energy Group Georgia LLC was subsequently purchased by the Turkish ENKA group, and the company changed its name to Enka Renewables LLC. All permits issued were to be transferred to the new project developer.

Enka Renewables LLC decided to change the basic design of the cascade project relating to the Lower Namakhvani site. These changes triggered a new environmental impact assessment (EIA) of the revised project. The EIA report for the Lower Namakhvani project was made available for public consultations in November 2019. In January 2020, additional documents (studies and reports) were prepared and published. On 28 February 2020, the Ministry of Environmental Protection and Agriculture (MoEPA) issued a new Environmental Decision approving the EIA report and the revised Lower Namakhvani project.

In April 2020, the Ministry of Economy and Sustainable Development (MoESD) issued a Conditional Construction Permit for the Lower Namakhvani project, which was revised in September 2020. The amended Conditional Construction Permit allowed Enka Renewables LLC to commence preparatory works as well as with the construction of individual parts of the project, depending on the submission of full project documentation. In October 2020 construction works began. The works included the construction of a derivation channel, which is not yet terminated. Subsequently, Enka Renewables LLC was fined by the Tskaltubo Magistrate Court for a breach of the conditions set by Environmental Decision related to the ongoing construction. The judgment is final.

The project has been facing opposition and protests from civil society and the local communities, in particular, the local community identified as “Guardians of the Rioni Valley”. The protests onsite continued, and tensions between protestors and the police deployed to the valley were escalating. The police had installed an iron fence blocking the entrance to the valley, and removed the protestors from their camping site. Furthermore, 6 protestors associated with the Guardians of the Rioni Valley were detained by the Georgian police and put into custody on criminal charges. A large rally was scheduled to be organised in the centre of Tbilisi. A number of nation-wide civil society organisations supported the protest.

2. The Mediation

On 26 April 2021, Mr Dirk Buschle on behalf of the Energy Community Secretariat’s Dispute Resolution and Negotiation Centre was invited by the Minister for Economy and Sustainable Development to establish a dialogue and mediate the discussion concerning the Namakhvani HPP project between the Government, represented by the Ministry of Economy and Sustainable Development (MoESD) and the Ministry of Environmental Protection and Agriculture (MoEPA), and the civil society organisations protesting against the project (CSOs). Mr Buschle was joined by Ms Aleksandra Bujaroska (“the mediators”). The mediation was meant to open a channel for direct discussions in an atmosphere conducive for finding agreeable solutions and to create trust through exchange and cooperation rather than confrontation. The mediation process was welcomed by the international community, including the European Union.

The mediators held several virtual preparatory meetings with the representatives of the parties to understand their concerns and positions. In the course of May, over 10 preparatory (virtual) meetings were organized to prepare the main negotiation meeting. On these preparatory meetings, a number of environmental and contractual issues were raised and elaborated by the representatives of the CSOs and experts.

The environmental concerns raised can be clustered as follows:

- Concerns related to the dam safety (seismic conditions of the site and project, risk of major accidents/disasters);
- Concerns related to the cumulative impact of environmental flow and sediment of HPP Namakhvani and other HPP in Rioni Valley;
- Concerns related to the impact on biodiversity, in particular to the critically endangered species of the ship sturgeon *Acipenser nudiiventris*;¹
- Concerns related to the alignment of the EIA report and procedure with the Environmental Assessment Code of Georgia and with Directive 2011/92/EU.

¹ [IUCN list: https://www.iucnredlist.org/species/225/13038215](https://www.iucnredlist.org/species/225/13038215).

Concerns related to the contractual and procurement aspects of the project, namely the BOO Agreement and the procurement procedure can be clustered as follows:

- Concerns related to the procurement procedure and the selection of the developer;
- Concerns related to the contractual framework of the BOO Agreement in general;
- Concerns related to the State aid compliance of the BOO Agreement.

The CSOs most imminent demands were a strict construction moratorium until all concerns were eliminated and improvement of the situation in the Rioni gorge.

The main mediation meeting took place physically on 12 June 2021 in Natakhrari, Georgia. Representatives of all civil society organisations as well as the deputy ministers representing MoESD and MoEPA were present and participated in the discussion and negotiation. Besides, representatives from the State Ombudsman Office, the World Experience for Georgia (WEG) and the Georgian Renewables Energy Development Association (GREDA) were present in an observing capacity. The project developer, Enka Renewables, refused to participate in this meeting.² Their representative was informed about the meeting and subsequent developments, but insisted to be not part of the mediation process under any circumstances.

The agreements made at the meeting were regrouped in three different workstreams as follows:

Stream 1 “Situation in the Rioni Gorge”

- The Police will replace the existing barrier and ensure access to the main road;
- The Police will organize and accompany a site visit to the construction site by the Guardians of the Rioni and allow documentation;
- The Guardians of the Rioni will continue peaceful protest without blocking access to the construction site;
- The Public Prosecutor will review and publish a report on the detainment cases.

Stream 2 “The Project”

- The Ministry of Economy will make the inspection report concerning compliance with the construction permit public;
- The Ministry of Environment will carry out an inspection concerning compliance with the environmental permit and make it public;
- The Energy Community Secretariat will draft, and circulate to all, terms of reference for an independent review of the environmental impact assessment;
- Green Alternative will draft, and circulate to all, terms of reference for an independent review of the commercial terms of the contract.

Stream 3 “National Energy Policy”

² Enka Renewables issued the following statement on their official Facebook page on the date of the meeting: *“Information is spread in social media as if the company ENKA disassembled the equipment and stopped working, which is not true. The company does not intend to stop the important project for the country - Namakhvani HPP, refuse investment commitments and leave the country. Also, the company is ready to provide the necessary information regarding the project to all stakeholders interested in the process.”*

- The Ministry of Economy will draft, and circulate to all, the chapter on energy security for Georgia's National Energy and Climate Plan.

3. Results achieved

Since the Natakhari meeting, the mediation focused on facilitating the implementation of the agreements made. This part of the mediation process was performed by regular virtual meetings among all participants aimed at de-blocking implementation obstacles and taking stock of the progress. The mediators summarized the results of these virtual meetings after each call. That process yielded concrete results in implementing the agreements made at the meeting in Natakhari.

a. Stream 1 "Situation in the Rioni Gorge"

Status: closed in July 2021

Given the tensions between local protesters and the police at the time the mediation started, de-escalating the situation in the Rioni valley was in focus in the first phase.

A number of virtual meetings with all participants working together within this stream, prepared the ground for the police removing the iron fence blocking the entry into the Namakhvani valley by the Georgian police and access to the valley was facilitated. The police continued to be present in order to guarantee stability and security onsite. With the assistance of the State Representative (Governor) of the Imereti region, Mr Zviad Shalamberidze, who participated in the mediation meetings, the Georgian Government offered 13 potential plots to be used by the protesters to practice their right of protest, including setting a "protest tent". The Governor presented and visited all potential sites together with the representatives of the Guardians of the Rioni River. Aspects of physical security played an important role in a narrow valley and the possibility of rockfall or flooding from the Rioni river. One of the plots offered was just across the previous protest site and had been prepared as a campsite. The Government guaranteed that the protesters can remain on the plot without disturbance for 4-6 months. Yet the representatives of the Guardians of Rioni decided to not move into the valley and to keep the same protest setup at the entry to the valley.

All protesters detained by the authorities were released (two out of them on bail) in accordance with the procedures. No new tensions with the police occurred and no further arrests were made.

By July 2021, the situation onsite was stabilized and remained overall calm. With this achievement, work on the first stream was completed. The mediators regularly reminded the protesters of their duty to continue their protests peacefully and unconditionally respect the laws of Georgia, which includes not blocking access by people and vehicles to the construction site. The mediators insisted in particular "that respect by protesters for the law is a ground rule and not up for negotiation or to be conditioned on prior actions. This includes any deliberate blocking of traffic on the road to and from the Namakhvani HPP construction site, as prohibited by the Law of Georgia on Assembly and Demonstrations." The mediators and participants to the meetings expected the Georgian police to maintain public order and respect the rights of all private persons and undertakings affected in the valley, but also to respect the proportionality principle in enforcing the law, so as to allow the exercise of human rights and to avoid escalation.

b. Stream 2 "The Project"

Status: agreements implemented, further activities on hold

The inspection report and its supplemented documents were disclosed by the MoESD within two weeks after the meeting in Natakhari. The MoEPA inspection was postponed due to COVID infection and mandatory quarantine of the employees of the inspection agency. The

on-site inspection took place at the end of July/beginning of August 2021. Due to the thorough investigation and the complexity of the project, the inspection report was not finalized at the time of the writing of this report (preliminary date given by MoEPA end of October 2021). MoEPA will disclose the outcome of the final report.

As regards the independent reviews of the environmental impact assessment and the commercial terms of the contract, it was common ground that such assessment would aim at verifying whether or not there are any serious and objective risks associated with the project (“red flags”), as the only legitimate reason to review existing contracts and permits within the mediation process. In particular, the mediators recalled “that the 12 June agreements do not allow for construction works to be obstructed, and that suspension of works can be discussed only after the two independent reviews under stream 2 result in so-called “red flags”, i.e. significant risks related to the continuation of the project”.

In July 2021, after a number of virtual meetings and extensive communication between the Parties, the Terms of Reference (ToR) for the environmental review of the project were defined and agreed upon. The funding of the environmental review was secured by the Georgian Government through the Georgian Energy Development Fund (GEDF). With regards to a potential environmental reviewer and its selection, the Parties jointly prepared a list of potential consultants based on the tasks defined in the ToR and developed several selection options that should secure a transparent and unbiased procurement process. Furthermore, a Joint Commission composed of an equal number of representatives of the Georgian Government and the CSOs was created, chaired by a representative of the Energy Community Secretariat. This Joint Commission concluded that in the selection process for the environmental reviewers the World Bank procurement rules and the Consultant’s Qualification-based Selection method (CQS) should be used. Based on this conclusion the procedure for issuing a special decree by the Georgian government was initiated through the MoESD. A draft Request for Expression of Interest was prepared and consulted with the GEDF. The selection of the environmental reviewer was put on hold after the unilateral termination of the contract by the developer of the project, Enka Renewables.

In July 2021 the ToR for the commercial review were also agreed. For the commercial review, the Energy Community Secretariat tasked its inhouse experts to produce a report based on the tasks defined in the agreed ToR. The finalization of the report was put on hold after the unilateral termination of the contract by the developer of the project, Enka Renewables.

The environmental and the commercial review are on hold until there is clarity about the future of the Namakhvani HPP project.

c. Stream 3 “National Energy Policy”

Status: agreements implemented, further activities ongoing outside the mediation

On 30 July 2021, the MoESD shared a draft of the Chapter on Energy Security, to be included in Georgia’s National Energy and Climate Plan (NECP). The first (virtual) meeting to discuss this draft and agree on the way forward took place on 17 September 2021. The participants agreed that the CSOs should be involved in the discussion on the future of Georgia’s energy supply and demand. This discussion will take place by including experts nominated by CSOs in the process of preparation of the entire NECP. Within this process, the CSOs will be particularly able to contribute to the data inputs for the NECP, as well as to the development of the potential supply, demand and import scenarios and mixes. Ideally, a map of eligible hydropower projects which may either predefine appropriate locations/regions from both the energy and the environmental perspective, or set the criteria for defining those will be developed in the course of joint drafting. The CSOs committed to a constructive attitude and accept that the drafting of the policies and measures needs to be underpinned by concrete

facts, data and forecast modelling, in line with European standards. The final decision on policies and measures in the NECP remains with the Georgian Government.

On 20 October 2021, an introductory presentation of the NECP was given by the MoESD. This will be followed up by a number of follow-up drafting sessions. The NECP will also be made subject to an strategic environmental assessment (SEA). The CSOs will be involved early in the SEA preparation and contribute the SEA scoping report. Once drafted, both the NECP and the SEA will be made subject to wider public consultations.

4. Next steps

Several participants to the mediation have expressed an interest in an ongoing moderation of the discussions between CSOs and the Government in Georgia also beyond the mediation. The mediators have expressed their readiness for further engagement. On 17 November 2021, the Parties and the mediators agreed to establish an appropriate framework for such continued exchange and discussions.

ANNEX I Invitation letter by the Minister of economy and sustainable development of Georgia and a follow-up letter from the mediators to the Minister of economy and sustainable development of Georgia



საქართველოს
ეკონომიკისა და მდგრადი
განვითარების მინისტრი



MINISTER OF ECONOMY
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26 / April / 2021

Mr Dirk Buschle
Chairman of the Energy Community Secretariat Dispute
Resolution and Negotiation Centre
Am Hof 4
A-1010 Vienna

Request for mediation

Dear Mr Buschle,

The Government of Georgia is committed to a policy of fighting climate change and decarbonization in the energy sector by further developing its potential for renewable energy sources. As a member of the Energy Community, we will do this in line with the *acquis communautaire* as well as the highest standards of environmental protection, safety, transparency and inclusiveness. Yet as in other European countries, renewable energy projects of a certain significance tend to come under intense scrutiny by civil society organisations and local population. In those circumstances, the Government aims at striking a balance between the promotion of renewable energy and any potential additional legitimate environmental and safety concerns raised.

As you may be aware, a public debate of that kind has recently arisen around Namakhvani HPP Cascade project on the Rioni river. To respond to public concerns over the sustainability and safety of this project, the Government has engaged in a review and dialogue with the interested parties which includes the project developer Enka Renewables, as well as a number of local and nation-wide civil society organisations. We have come to believe that in this process, the mediation by a neutral third-party, the Energy Community Secretariat, will be beneficial for strengthening trust as well as creating a discussion atmosphere and process conducive for finding agreeable solutions.

As Chairman of the Energy Community Secretariat's Dispute Resolution and Negotiation Center, we would be grateful for your support and personal involvement in this respect. With your agreement, we would like to ask you and your team:

- to communicate with the appointed representatives of the Government, the civil society organisations mentioned above, and the project developer as well as any other stakeholders you deem relevant,
- to propose a process and a timeline for a mediation between these parties not exceeding six months,
- if and as necessary to review all documents, surveys and procedures which have been carried out so far, and assess them against the *acquis communautaire* and best European practice, and propose neutral external expertise where useful,
- to organize bilateral and/or multilateral discussions in order to understand the interests and concerns of all parties involved, and to sound out options for possible solutions to any legitimate concerns when to be deemed necessary,
- to prepare a final report on the mediation process and your findings at the end of the process,
- to undertake any other actions and steps you deem supportive for the mediation process in an impartial manner.

If you agree with our request for mediation, the Government would inform all other parties involved as well as the public, and commit to support the process and accept the outcome of the mediation.

In thanking you in advance for your engagement and support to all parties involved, we remain
Yours sincerely,

Minister

SIGNED/SEALED
ELECTRONICALLY 

Natia Tumava

Vienna, 28 May 2021

Dear Minister,

Following up on your letter dated 26 April 2021, and our call this week, I would like to briefly update you on the state of the mediation and review process concerning the Namakhvani HPP Cascade project and outline next steps.

At the outset, let me recall that this process covers two main aspects, on the one hand a review of the environmental impact assessment carried out so far and the contracts concluded, and on the other hand a mediation between the Government, CSOs and other relevant stakeholders. We aim at concluding both within six months at the latest, i.e. by October 2021.

In terms of the mediation, we have established and are having regular exchanges with a number of civil society organizations and initiatives including the Guardians of the Rioni Valley, as well as with the two Deputy Ministers appointed by you as focal points from the Government's side. We did not have the possibility to exchange with representatives of the project developer, Enka Renewables, but hope that this will be possible after their meeting with the Government at the end of this week.

In the previous exchanges with both sides, it became clear that in order to create trust and a discussion atmosphere conducive for finding agreeable solutions, two issues will have to be addressed with priority: the continuation of construction works at the site of the Namakhvani project in parallel to the mediation process and the situation in the Rioni gorge. To the extent the current situation will prevail, we intend to address these two issues in a first round of trilateral discussions offline in the week starting 7 June 2021 in Georgia. We will make proposals for concrete dates early next week.

H.E. MRS. NATELA TURNAVA
MINISTER OF ECONOMY AND SUSTAINABLE DEVELOPMENT
GEORGIA

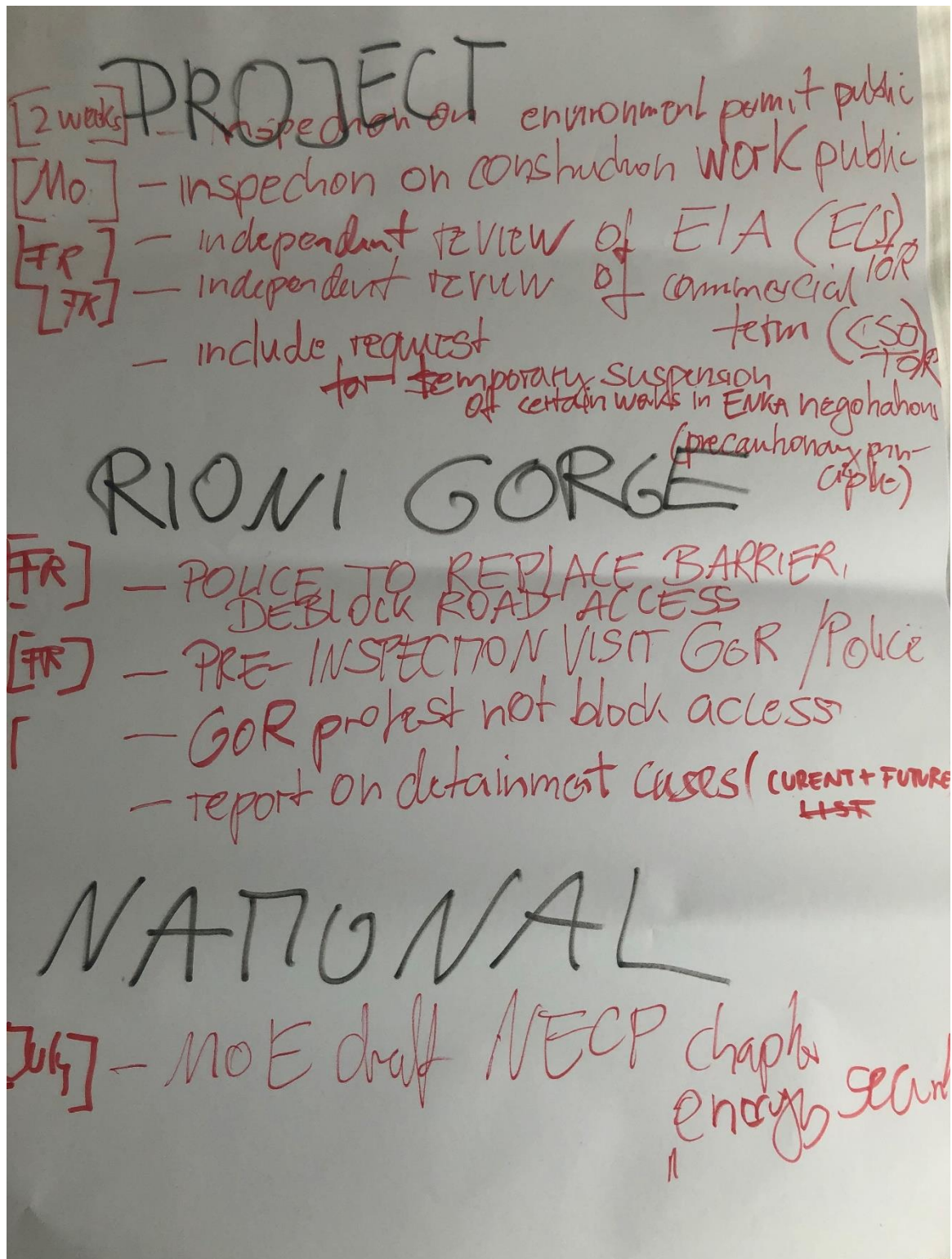
In terms of other stakeholders, we exchanged with several delegations and donors to Georgia which are fully supportive of the process. We were also approached by a private investor [REDACTED] who has concerns about the project as well and whom we will include in the discussions in a separate workstream.

Let me thank you once again to your support to the process,

Yours sincerely,



Dirk Buschle
Deputy Director/Legal Counsel
Energy Community Secretariat



ANNEX III Police dismantling the iron fence in the Rioni Gorge, Georgia



ANNEX IV Local activists and the State Representative (Governor) of the Imereti region discuss potential locations where protest rights can be practiced in line with the national legislation



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ANNEX V ToR Environmental review

Environmental Review of the Namakhvani HPPs Cascade in Georgia TERMS OF REFERENCE FINAL

1. Background

Namakhvani is a cascade hydropower project (HPP) developed in the 70s³ located on the Rioni River in the Municipality of Tskaltubo and the Municipality of Tsageri in the west part of Georgia, several kilometres above the city of Kutaisi – the third largest city in Georgia.

The project consists of Upper Namakhvani (Namakhvani–Tvishi) and Lower Namakhvani (Namakhvani-Zhoneti⁴) and has two⁵ initial designs that were developed in more details:

- 3 HPPs cascade design that consist of HPP Tvishi, HPP Namakhvani, HPP Zhoneti; and
- 2 HPPs cascade design that consist of HPP Tvishi and HPP Namakhvani.

In 2015⁶, JSC Namakhvani initiated a procedure for approving the 2HPP cascade design based on the Law on Environmental Impact Permits (No.5602-RS from 2007) and the Law on state ecological expertise (No.426-IS from 1996 and Official Gazette of Georgia, NO47,26.12.2007).

The EIA report should have been prepared in accordance with the Order №31 of the Minister of Environment and Natural Resources of Georgia on Approval of the Regulation on Environmental Impact Assessment. According to the Law on Environmental Impact Permits, the JSC Namakhvani (fully Government of Georgia owned company) produced a preliminary EIA report and submitted it to the Ministry of Environment and Natural Resources Protection on 4 May, 2015. The Ministry has reviewed the preliminary report and sent back its remarks and comments on 17 June, 2015 in accordance with previous national legislation. For the purpose of obtaining an Ecological Expertise Conclusion, JSC Namakhvani prepared the final EIA report.

The report was approved on 25 December 2015 with Ecological Expertise Conclusion #73 issued by the Minister of Environment and natural resources Protection of Georgia (order #1014). On the basis of this Conclusion, a construction permit was issued by the LEPL Technical and Construction Supervision Agency (TCSA) operating under the Ministry of Economy and Sustainable Development of Georgia. However, construction works did not take place.

On 21 June 2017, the Law on environmental Impact Permits and the Law on state ecological expertise were repealed by the new Environmental Assessment Code of Georgia (No. 890-IIS of 2017). The Environmental Assessment Code was further improved and a new consolidated version was adopted on 5 July 2018.

The transitional provisions of the law, Chapter VIII Article 48, stipulates that “relevant enabling administrative acts issued in the area of EIA before 1 January 2018 shall remain in force until 1 January 2021”. Further on, paragraph 4 of the Article stipulates that “the developer, with respect to whom a respective enabling administrative act was issued in the area of the EIA

³ Note to the reviewer: The project has changed design and location several times and while the name remain the same, recent design and location of the project differs from previous versions.

⁴ Note to the reviewer: in some documents the following names are used for Zhoneti - Zoneti and Joneti. Also please note that Namakhvani can also be referred to as Namokhvani.

⁵ Note to the reviewer: according to the CSOs there is also a third version of the project design, developed during the period of 2012-2017 by Studio Pietrangeli (Italy) for JSC Namakhvani HPP Cascade (Georgia), link: <https://www.pietrangeli.com/cascade-hydropower-georgia>.

⁶ Note to the reviewer: The previous developer, Nurol Holding A.Ş. (Turkey) and SK Engineering & Construction (South Korea) commissioned ENCON Environmental Consultancy (Turkey, sub-consultant GIS and RS Consulting Center “GeoGraphic”, Georgia) and submitted first EIA of Namakhvani Cascade in April 2011 and public hearing held in Kutaisi. Earlier Feasibility Study was conducted by Hydroprojekt International Ltd. in May 2007, while in July 2006, Pre-Feasibility Review of the Namakhvani HPP Cascade was prepared with support of the United States Agency for International Development (USAID). These documents should be consulted for additional information.

before 1 January 2018, shall, by filing an application, request the issuance of an environmental decision by 1 January 2021". According to the same Article, the Ministry shall issue an environmental decision under simple administrative procedures following the procedures under the Environmental Assessment Code.

In accordance with Article 48 paragraph 4, on 10 May 2019 by the order of the Minister of Environment Protection and Agriculture of Georgia N2-398, the Environmental Decision for the project was issued – Environmental Decision on the placement of 2 hydroelectric power plant cascade Tvishi HPP – 100 MW installed capacity and Namakhvani–Zhoneti HPP 333 MW capacity.

On 27 May 2019, by order of the Minister of Environmental Protection and Agriculture of Georgia №2- 451, this Environmental Decision was handed over to the new project developer, Clean Energy Group Georgia LLC, which changed its name to ENKA Renewables LLC – the current developer of the project.

JSC Namakhvani has undertaken project design changes to prepare a construction / detailed design of the HPP Cascade (both for Tvishi HPP - 100 MW installed capacity and Namakhvani-Zhoneti HPP - 333 MW capacity). As a result of this JSC Namakhvani changed the basic design of the project and initiated EIA screening procedure in line with Article 12 paragraph 5 of the Environmental Assessment Code⁷. In particular, the developer:

- relocated the powerhouse, approximately 1.5 km from the site considered by the basic design approved by Ecological Expertise Report N73, upstream of the Rioni River;
- included about 1.5 km long tailrace channel in order to decrease downstream level and consequently increase the head;
- relocated the intake structure adjacent to the dam, which according to the basic design was planned in 2 km from the dam;
- changed of the headrace tunnel corridor due to the changed locations of the intake and powerhouse;
- Compared to the basic design, the maximum flood level of the reservoir was increased by 1.5 m.

According to the Project modifications, the installed capacity of the HPP Namakhvani –Zhoneti instead of 333 MW will be 324 MW and the average annual electricity generation will be 1135.7 MWh/year instead of 1170 MWh. The designed and environmental flow of the HPP Namakhvani–Zhoneti remained unchanged - 16 m³/sec (10% of the average multi-year flow of 50% provision)⁸.

The dam bottom was also lowered and the height of the dam increased - 105 meters instead of 99 meters. Due to these changes, the reservoir operational level was increased (instead of 310 m above sea level it will be 311.5 m) and consequently, the total capacity of the reservoir will increase (instead of 154.4 million m³ to 167.5 million m³). The mirror surface area will be 510 ha instead of 500 ha and due to this the area of impact of the project will additionally

⁷ Comment to the future reviewer: Interpretation of this clause is disputed by Georgian stakeholders. Consultant should review correspondence of this clause with EIA Directive 2011 Annex I para 24 "Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex" and determine, whether "Change of Exploitation Conditions" can be applied to plants which are not constructed and operational.

⁸ Note to the reviewer: please note that EFlow guidelines (not obligatory approved and validated document by Georgia) and report developed for Georgia with USAID support (not approved yet) is available at <https://geo.org.ge/wp-content/uploads/2019/02/THE-ASSESSMENT-OF-ENVIRONMENTAL-FLOWS-FOR-THE-RIVERS-AND-STREAMS-OF-GEORGIA-1.pdf> and <https://geo.org.ge/wp-content/uploads/2019/02/GUIDE-TO-EF-METHODOLOGY-ENG-28-FEB-2017-ENG.pdf>

Please note that there are **NO** approved standards in Georgia, because firstly we need to approve new water resources management law (policy), which will introduce the river basin management system in the country and accordingly approve EU standards.

include 2 homesteads and 10-12 private lands and possible touching the toe of a large landslide.

According to the new project design, prior to the construction of the dam, a temporary diversion tunnel will be constructed to change the direction of the river to bypass the dam construction site. The diversion tunnel is planned to be constructed on the right bank of the river instead of the left bank as previously foreseen, though the tunnel's technical parameters were not changed.

In January 18, 2019 JSC Namakhvani approached with Screening application to the Ministry of Environmental Protection and Agriculture of Georgia regarding changing the design of both plants: upper and lower Namakhvani HPP.

In February 2019 the changes to the design - modification of the operation conditions for the Lower Namakhvani (Namakhvani-Zhoneti HPP) of the two-stage Project on Construction and Operation of HPPs Cascade (Tvishi HPP and Namakhvani-Zhoneti HPP), were made subject to EIA procedure.

Enka Renewables LLC has made a decision to divide/split the project and prepared a scoping report only on Lower Namakhvani (Namakhvani-Zhoneti HPP).⁹ On June 13, 2019, in order to obtain a scoping opinion, ENKA Renewables LLC submitted scoping report to the Ministry on the modification of exploitation conditions of the two-stage hydropower cascade ("Tvishi HPP"- 100 MW and "Namakhvani-Zhoneti HPP" – 333 MW) construction and operation project on the territory of Tskaltubo and Tsageri municipalities (for the Lower Namakhvani). On August 1, 2019, the Ministry submitted a written request to ENKA Renewables LLC for additional information, in response to which the company submitted additional documentation on August 19, 2019.

As a result of the scoping procedure, a list of studies required and information to be obtained and examined for preparing an EIA report, as well as the issues that required detailed studies during the EIA procedure, were determined and a scoping opinion on Lower Namakhvani (Namakhvani-Zhoneti HPP) was issued by the Ministerial order on 1 October 2019.

The EIA report for the Lower Namakhvani was drafted and disclosed for public consultations in November 2019.¹⁰ In January 2020 additional documents (studies and reports) were published. On February 28th 2020 the Ministry issued the "Environmental Decision on operating condition modifications of the two-stage Project on the Construction and Operation of the Namakhvani HPP Cascade (Tvishi HPP with installed capacity 100 MW installed capacity and Namakhvani _Zhoneti 333 MW installed capacity by ENKA renewables LLC, on the Rioni river in the Municipality of Tskaltubo and Tsageri" approving the EIA report and the project itself (lower Namakhvani).

⁹ Issue raised by comment submitted by CSO: Based on the screening decision design, upper Namakhvani or Tvishi HPP also changed and decreased the installed capacity from 100 MW to 86.8 MW – 360 mln kw.h, gravitational dam height 57.5 metres. The developer should have been obliged to prepare EIA report for both projects but the later scoping statement was requested only for lower Namakhvani HPP.

Note to the reviewer: the scoping and screening decisions concerning the revised design of the project should be taken into account in the review.

¹⁰ On November 8, 2019, in order to obtain Environmental Decision, ENKA Renewables LLC submitted EIA report and other documents required by law to the Ministry on the modification of exploitation conditions of the two-stage hydropower cascade ("Tvishi HPP"- 100 MW and "Namakhvani-Zhoneti HPP" – 333 MW) construction and operation project on the territory of Tskaltubo and Tsageri municipalities (for the Lower Namakhvani), on which the Ministry created an expert commission.

Timeline of the EIA process (including EIA screening) concerning the Lower Namakhvani HPP only is supplemented as Annex I to this ToR.¹¹

According to the Environmental Decision Enka Renewables LLC is obliged to carry out its activities in accordance with the submitted Environmental Impact Assessment Report and accompanying documentation, technological scheme, environmental mitigation measures and emergency response plans, conclusions and recommendations. In addition Enka Renewables LLC is obliged to carry out its activities related to Hydropower plant cascade (Tvishi HPP - 100 MW installed capacity and Namakhvani-Zhoneti HPP - 333 MW installed capacity) in accordance with the terms and conditions set under Ecological Expertise Conclusion №73 approved by the Minister of Environment and Natural Resources Protection of Georgia by order №1014 and conditions of the present order on changes to the construction and operation conditions (Lower Namakhvani) of HPP cascade; These conditions along with other ones are stipulated by the Environmental Decision.

Following the Environmental permit, ENKA renewables LLC applied for a construction permit for the Lower Namakhvani HPP. The Ministry of Economy and Sustainable development issued a Conditional Construction Permit on 22 April 2020 through an Order N60-04, requiring the developer to start the construction phase only after it provides all the required documents in accordance to Article 52 of the Resolution N257 along with respective expert conclusions till 13 April 2021.

In September the Conditional Construction Permit was revised and a new order N135-04 was issued.¹² With the amendments the developer was allowed to start construction of individual parts of the project in case of submitting project documentation as required under Article 52 of the Resolution N257.¹³ Accordingly, activities related to the construction took place on the location of the project by ENKA renewables LLC, including works on derivation channel was commenced.¹⁴

The project has been facing opposition and protests from civil society and the local communities identified as “Guardians of the Rioni Valley” emerged.

2. Description of the assessment

Subject to this review are the following documents and permits:

- *EIA report finalized and approved by Ecological expertise conclusion #73 adopted in 2015;*
- *Screening application and Screening decision (both for Tvishi HPP and Namakhvani-Zhoneti HPP);*

¹¹ Note to the reviewer: the future reviewer will have to verify the dates as part of the review.

¹² Comment by the CSOs: It is important to note that the revision included another amendment of the terms of the existing construction permit. In particular, the amendment deprived the company right to conduct preparatory works as previously allowed by the permit. Nevertheless, the company continued to perform preparatory works in violation of permit conditions, though ministry of economy did not take any steps to prevent unlawful works. More information can be found here: <https://socialjustice.org.ge/ka/products/msheneblobis-nebartvis-pirobebis-darghvevis-miukhedavad-enka-ar-dajarimda>. The revised provision stated that the company could start the construction works on individual parts upon the submission of specific docs i.e. design and expert conclusion of a certain component (without presenting full project documentation of the whole power plant). In other words, legally speaking, company does not have to request for individual permits as such, rather it can “activate” the right within the existing permit by providing documentation on a specific component of the facility it is going to build at a certain moment.

¹³ Comment by the CSOs: Deadline for submitting full project documentation and expert conclusions was April, 2021 according to the original version of the permit. Recently, in March the permit was amended once again and this deadline was extended upon the request of the company, almost by a year – until February, 2022.

¹⁴ Comment by the CSOs: Permitting construction per individual parts is disputed by Georgian stakeholders. The Consultant is requested to review this issue and provide comprehensive opinion on relevance of such approach and the potential impact on EIA process with respect to European and international best practices.

- Scoping report and Scoping opinion for the modified project (the Lower Namakhvani);
- EIA report (the Lower Namakhvani) and relevant studies for the modified project;
- Environmental Decision (the Lower Namakhvani) approved on February 28, 2020;
- Conditional Construction Permit and the Construction permit for the derivation channel (points of relevance to the environmental conditions);

**Note to the review: Please take into account that there are Court Cases against approved permits. Decision by Court should be take into account.*

The EIA report submitted to the Ministry for approval in 2020, included annexes as given below:

- Geological Report and Landslide
- Microclimate Assessment Report
- Update on Hydrological Discoveries
- and other Annexes, studies and documents related to the project

The following additional information were presented to the Ministry within the EIA process:

1. Review of impacts of lower Namakhvani HPP project on Tskaltubo Thermal Water
2. Lower Namakhvani dam spillway hydraulic calculations
3. Seismicity
4. Transportation Scheme
5. Lower Namakhvani dam low level outlet hydraulic calculations
6. Turbine oil spilling
7. Lower Namakhvani Dam Ecological Flow
8. Reservoir Area - crest level
9. Reservoir Length
10. Deposit Area estimated volumes
11. Fish study locations
12. Conclusion from Agency of Cultural Heritage
13. Errata sheet
14. Response Letter to Fauna and Flora International
15. Response Letter to Greens Movement of Georgia

The review should in particular assess, but not limited to, the following aspects of the abovementioned documents and permits:

- Reasonable alternatives and justification of chosen option;
- Full cost-benefit analysis of the project (Article 10 Environmental Assessment Code);
- Irreversible effects on the environment and justification for causing such effects;
- Seismology and dam safety of the whole project including measures proposed (including impacts related to risks of major accidents and disasters)* EIA Directive 2014/52/EU concerning the accident is not fully transposed in national legislation (deadline according to Energy Community Treaty: 1 January 2019). Measures are part of the construction permit;
- Dam and derivation channel engineering including measures proposed* EIA Directive 2014/52/EU concerning the accident is not fully transposed in national legislation (deadline according to Energy Community Treaty: 1 January 2019). Measures are part of the construction permit;
- Response to accidents (Environmental Assessment Code), as well as landslides and geology (including Karst);
- Ecology, biodiversity (Flora and Fauna) with focus on protected species nationally and internationally including measures proposed, including the impact of the Emerald network protected areas in the Rioni Valley, the impact on cave protected areas; impact on existing protected areas located in Rioni Catchment (Ajameti Managed

reserve, Kolkheti National Park, Katsoburi Managed reserve); impact on development perspectives on Protected Areas system (NOT designated yet by national legislation, not required to be assessed as protected areas under national legislation yet): proposed Rioni Managed reserve, Khvamli Planned Managed reserve, other planned protected areas in Lechkhumi and Imereti regions;

- Impact on Tvishi and Usakhelouri winery microzones;
- Hydrology (including riverbank erosion) and sediment;
- Cumulative impact (HPP cascade, other HPPs, access roads, transmission line, etc.)
- The impact on climate and the vulnerability of the project to climate change;
- Environmental flow regulation water supply security (drinking, agriculture, etc.);
- EIA process (public participation, access to information, consultation with relevant competent authorities);
- Environmental conditions set by EIA reports and their reflection in follow up permits.

3. Main objective

The main objective of the review is to secure that the environmental reports, environmental permits as well as the procedures undertaken for preparation, discussion and issuing of reports and permits concerning the Namakhvani HPP are in line with Georgian legislation, the Energy Community *acquis* and best European practice, including but not only limited to EU Environmental Impact Assessment Directive 2011/92/EU as amended by Directive 2014/52/EU and relevant European Commission Guidelines¹⁵. The experts should provide justification for the best practices, checklists (hydropower) and best methodologies used as reference in the review.

4. Specific objective

The specific objectives of this review are:

- to identify all gaps in the assessment prepared and permits issued for the Namakhvani HPP that could pose risks to the:
 - (a) human beings, fauna and flora population and human health;
 - (b) biodiversity, with particular attention to species and habitats protected
 - (c) land, soil, water, air and climate and landscape;
 - (d) material assets, cultural heritage and the landscape;
 - (e) the interaction between the factors referred to in points (a) to (d);
- propose measures to address and mitigate the identified risks and gaps.

5. Deliverables:

- Preliminary statement report on red flag issues – immediately identified issues;
- Draft review report;
- Final review report.

6. Experts profile

- EIA process (national and international legislation and best practices) and related permits.
- Environmental economy;

¹⁵ Note to the reviewer: Please consult the following webpage: <https://ec.europa.eu/environment/eia/eia-support.htm>

- Seismology, dam safety, geology and underground construction;
- Hydrology; dam and derivation channel;
- HPP engineering and operations (impact on environment);
- Ecology and biodiversity and environmental flow of river;

7. Language

The reports indicated in chapter 5 as deliverables will be prepared on English language. Parties to the mediation can prepare translation to the report on their own cost. The future reviewer will present the deliverables.

8. Duration and milestones

- a. Starting date – deadline: beginning July 2021 – end November 2021
July 2021: gather relevant information concerning the assessment;
August 2021: site visit
August 2021: first red flag report
September – October 2021: draft review report;
End November 2021: final review report.

ANNEX VI ToR commercial review

Terms of Reference (ToR)

I) Analysis of the tender process with regard to best practices

II) Analysis of the Namakhvani contractual framework with regard to appropriate sharing of risks and obligations and

III) Compliance assessment of the Namakhvani contractual framework with regard to State aid

Introduction

Following a Memorandum of Understanding between the Government of Georgia, Electricity System Commercial Operator JSC (ESCO) and Namakhvani in 2012, a tender procedure was launched in 2016/2017 which on April 25, 2019 led the Government of Georgia to sign a contract with Clean Energy Group Georgia LLC (later taken over by Enka Renewables) for the detailed design study, financing, construction, testing, commissioning, ownership, operation and maintenance of the Namakhvani Hydropower plant (HPP) project (BOO-Agreement).

Public information about the project and process was very limited until in February 2021 after it was obtained by one of the investigative media outlets 'Ifact', instigating public scrutiny of the project. In particular, the tender process as well as the contractual framework, in particular the risk sharing and obligations contained therein and compliance with State aid, raised concerns.

The purpose of the Assessment

Due to the high public interest in the Namakhvani HPP project, it is important to conduct an objective analysis of the tender process and the contractual framework resulting from it, in order to assess its compliance with best international practices and principles and applicable legal framework.

Therefore, the TOR contains the following three areas of assessment:

- (1) examination of the tender process starting from the preparation of the tender until the signing of the contract;
- (2) analysis of the contractual framework generally;
- (3) analysis of State aid compliance of the contractual framework (BOO-Agreement, including its annexes).

Finally, the question whether the project's environmental impact was carried out according to the EU EIA Directive and whether it was carried out at an early stage in the decision-making process when all project options were still open, as required under the Aarhus Convention will be subject of a separate assessment.

1) Examination of the tender process until the signing of the contract or the rendering of the last final decision, by a Georgian court, with regard to the tender process, if that is later in time

The tender process was initiated by the Expression of Interest and its instructions, followed by bids including the supporting documentation, and finalized by the bid opening and evaluation as well as the winner announcement of the submitted bids. These documents have to be reviewed with regard to best practice for similar tenders with a special focus on impartiality and transparency of the process, and its compliance with the Georgian laws applicable at the time when the tender has been carried out. This assessment depends on availability of all relevant documents in English

2) General assessment of the contractual framework

The contractual framework, in particular the BOO-Agreement including its annexes such as the PPA, contains obligations and rights of the Clean Energy Group Georgia LLC and the Government of Georgia relating to the detailed design study, financing, construction, testing, commissioning, ownership, operation and maintenance of the Namakhvani HPP project. These obligations have to be assessed with a view to compliance with general principles and a balance of obligations between the parties to the contract. The contract review will also include applicable PPP legislation. The Ministry of Justice will make available the terms of reference, the material under review, and connect the two review processes.

3) State aid compliance assessment of the contractual framework

The contractual framework, in particular the BOO-Agreement and its annexes, contains a number of obligations of the Government of Georgia which may provide potential advantages to the contractual counterparty. Any such measure has to be assessed with regard to the existence of elements of State aid and potential compatibility under Energy Community law.

Energy Community experts

The revision will be conducted by the Energy Community Secretariat with close coordination of all interested stakeholders.