



MONITORING OF THE PROTEST DEMONSTRATIONS HELD AGAINST THE CONSTRUCTION OF NAMAKHVANI HPP CASCADE

Legal Analysis

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INTRODUCTION

The current monitoring Report prepared by Human Rights Center reflects the findings and results of the monitoring the events/protests developed around Namakhvani HPP Cascade (*Hereinafter Namakhvani HPP*); further, the Report highlights the main problems and issues that were identified during the reporting period or had arisen before, but maintained the relevance in 2021 too.

Beside the civil and political rights, the Report pays special attention to the problematic issues related to the freedom of assembly/demonstration and the freedom of expression. The focus was both on the violations of human rights and on the reactions to such facts by various authorities, as well as on the gaps in the legislation in this regard.

The purpose of the current analytical document is not to support the positions of any parties, but to identify the human rights standards set by the local and international institutions regarding the freedom of assembly and demonstration and the freedom of expression. Furthermore, the document provides assessments of the actions taken by the State in Rioni Valley and the grounds for the legitimacy and proportionality of the measures restricting the people in their constitutional rights to move freely, to gather and to protest.

In generating the document, HRC wishes to provide the public, especially the actors involved and other stakeholders, both at the local and international levels, with factual information about the protests held against Namakhvani HPP, along with the information on normative documents, and respective assessments that are directly related to human rights.

HRC applied various methodological tools in preparing the Report. Empirical data is provided through the following main means: studying the Georgian legal framework and policy documents; processing/examining the monitoring reports and various documents prepared during the monitoring of the protests; examining public information available from the courts, administrative bodies and the Public Defender. Information was also obtained through media monitoring.

GENERAL CONTEXT OVERVIEW

The project of Namakhvani HPP envisages the construction of massive cascades between villages Tvishi and Zhoneti along the gorge/valley of Rioni River¹. The very idea originated in the Soviet Georgia, but because of the large scale of the project, the underlying risks and other objective reasons, the project could not see the light of day for a very long time. The project was activated in the 2000's during the government of *National Movement*. Initially, on December 8, 2009, the Government of Georgia signed a Memorandum of Understanding on the construction of Namakhvani HPP with Turkish (Nurol Energy Production and Marketing Inc) and Korean companies (Korea Electric Power Corporation & SK Engineering and Construction Co., Ltd)². Further, in 2019, the Georgian Government with *Georgian Dream* in power granted the Turkish company ENKA and Norway's Clean Energy Group the right to develop, build, own and operate Namakhvani HPP in Imereti and Lechkumi. The authorities hope to increase energy security and claim that after the construction is completed, through own power generation, almost 12 percent of the country's electric power consumption will be secured. The Government also believes that Namakhvani HPP project will employ a total of 1,600 individuals³. ENKA began preparatory works in May 2020 and is carrying out the construction works on four sites simultaneously in parallel with the protests⁴.

¹ See More information: <https://bit.ly/3A0ELo9>. Last seen: 05.17.2021.

² See More information: <https://bit.ly/3gYsxod>, (08-Dec-09). Last seen: 05.19.2021.

³ See More information: <https://bit.ly/3wXgixU>. Last seen: 05.17.2021.

⁴ Ibid:

It is noteworthy that recent statements by the Chair of the Government and other members of the ruling team are essentially in contradiction with the initially stated position of *Georgian Dream*. According to the electoral program declared by *Georgian Dream* for the Parliamentary Elections of 2012⁵, one of the promises was “to ban the constructions of large HPPs and nuclear power stations due to the high indications of seismic intensity”; further, to support alternative and renewable sources, to support similar individual systems among the population, to implement state programs directed at increasing the energy efficiency; taking into account the rise of the demand in electric power and modern environmental standards, to facilitate the construction of micro and small HPPs as well as the rehabilitation of existing HPPs⁶. Contrary to the above promises, in the end, the first steps towards the construction of the large-scale Namakhvani HPP project were taken under the rule of *Georgian Dream*.

In the last 12 years, the Namakhvani HPP project has changed both in terms of technical and energy characteristics. Accordingly, in response to the project changes, several environmental impact assessment (EIA) reports were prepared for Namakhvani HPP. Unfortunately, none of the EIA reports prepared for the last 12 years carries in-depth studies causing number of questions to arise among the public regarding the safety of the Namakhvani HPP construction and the negative impact on the environment.

In recent years, the protests against the construction of hydropower plants in Georgia have been increased to a significant scale. For the majority of the public, HPPs are associated with the deterioration of the natural environment, the forceful resettlement of the population and exposing the interests and health of the people to the risks. The opponents of the construction of Namakhvani HPP also appeal to the above threats. When assessing the general picture, it can be said that there are several reasons for such a negative attitude on the part of the public.

One of the reasons is a general lack of strategic visions. In particular, the State does not yet have a unified, sound energy strategy that would clearly demonstrate the role of hydropower plants in securing the energy and set the priorities for such constructions. Moreover, only the lip-service paid to the idea of hydropower plants being important for the country's energy independence, energy security and economic development fail to convince both the public and field specialists⁷. The situation is further aggravated by the fact that there are no public discussions of the projects dedicated to strengthen the energy security and of the related strategic documents, and no offers are made to the local population for making a convincing choice as dictated by the professional methods of project planning and by the principle to ensure public involvement.

Particular problems stem from the weakness of quality control and management mechanisms raising just questions among the public. For instance, the license to construct Namakhvani HPP was issued to Clean Energy Group, which allegedly failed to ensure the proper completion of Shuakhevi HPP. Furthermore, one of the major problems is the unavailability of economic analysis for the projects. The decisions related to the construction of new hydropower plants are practically never substantiated as no comparison is made between the losses caused by the irreversible impact on the environment and the benefits to be gained taking into account environmental, cultural, economic and social factors⁸.

The terms and conditions set by the environmental decision have not yet been fully met by ENKA Renewables LLC. On January 18, 2021, the Department of Environmental Supervision identified a violation of the terms and conditions set by the environmental decision during the inspection of ongoing works in Tskaltubo Municipality and fined the construction company with GEL 2,000 under

⁵ See "Energy Independence or the Race to the Bottom ?!", Human Rights Center, 04.29.2021. <https://bit.ly/2TvHS6W>.

⁶ See Electoral program of the election bloc "Bidzina Ivanishvili - Georgian Dream" for the 2012 Parliamentary Elections. P. 55.

⁷ See Research by WEG: http://weg.ge/sites/default/files/hesebi_0.pdf

⁸ See Research by EMC: "Construction of HPPs in Svaneti and Impact on Human Rights", Tbilisi, 2019: <https://bit.ly/3kB707B>.

the Code of Administrative Offenses. The report of the administrative offense reads that the company failed before starting the construction of the project the following documents to submit to the Ministry of Environment Protection: a transportation plan of the construction bypassing Kutaisi; waste rock removal projects; monitoring data on quality characteristics of grapes and wine produced in the Tvishi zone and mitigating and/or compensatory measures; construction projects/camp projects⁹.

One of the reasons for the protests of the opponents of the construction of Namakhvani HPP is linked to the gaps in the environmental procedures and reports. In particular, environmental impact assessments come with a time lag to the key technical decisions and do not affect the technical decisions. Furthermore, the main problem and the subject of severe criticism are the quality of the documents of Environmental Impact Assessment (*EIA*) and the quality of the surveys underlying the documents, thus influencing the emergence of negative attitudes towards the construction of hydropower plants.

The Environmental Assessment Code fully and exhaustively defines the scope of the information to be included in the EIA report and on the basis of which the Ministry is authorized to issue a permit¹⁰. Moreover, the Code of Environmental Assessment does not allow for a possibility to issue any kind of conditional permits, as such an approach would be directly contrary to the environmental principles. Therefore, it is inadmissible to make a decision in the absence of complete and comprehensive information on the project and without the mandatory expert evaluation. The abovementioned circumstances constitute a significant element of the EIA report, the preliminary assessment of which provides the grounds to adopt a positive decision allowing the implementation of the project. On the background of incomplete surveys,, the adoption of the EIA report and the evaluation of the project in positive terms shall be deemed as a gross violation of the environmental legislation.

The non-transparent procedures and memoranda are the most significant reasons for the negative attitudes and protests on the part of the public towards the construction of Namakhvani HPP. Most of the memoranda between the Georgian Government and specific companies contain significantly different and sometimes classified terms and conditions. Consequently, the public does not have access to the terms and conditions, giving rise to various conclusions and ultimately creating a wave of protests. Moreover, the memoranda contradict the principles of an open market economy, impose excessive financial risks and other heavy obligations on the State¹¹.

Another reason for the protest is the lack of communication. Locals are concerned about the lack or complete non-existence of communication from the government officials and the developers. Meanwhile, where there is no consistent and right communication, it is difficult to restore the trust of the local population and oftentimes the situation extremely aggravates causing the application of repressive policies on the part of the State.

On June 17, 2019, the environmental report (scoping) submitted by ENKA Renewables LLC¹² was published on the website of the Ministry of Environment and Agriculture of Georgia. The deadline for submitting comments and opinions by the stakeholders was July 9, 2019, and the public hearing of the scoping report was scheduled for September 6, 2019 at 2:00 pm in Tskaltubo Municipality. However, the time of the hearing of the scoping report was later changed to 10:00 am instead of 2:00 pm¹³. The change in the time of the report hearing and scheduling for morning hours significantly hindered the ability of the local population to attend the public hearing, as the premises of Tskaltubo Municipality

⁹ See The construction of Namakhvani HPP cascade goes on in violation of the law, Green Alternative. 22.02.2021: <https://bit.ly/3w8N6Tr>.

¹⁰ See The Code of Environmental Assessment, Articles 10: <https://bit.ly/3jpLgL5>.

¹¹ See Assessment of Namakhvani HPP Agreement, Center for Social Justice: <https://bit.ly/3h1NLlf>.

¹² On May 27, 2019, Namakhvani JSC handed over to ENKA Renewables LLC positive opinion N 73 of the ecological examination issued on December 25, 2015 in connection with the construction of Namakhvani hydropower plants along with the related legal authorisation. See: Order N2-451 of the Minister of Environment and Agriculture of Georgia: <https://bit.ly/2UMFwRj>.

¹³ See Public information published on the official website of the Ministry of Environment and Agriculture of Georgia. 02.09.2019: <https://bit.ly/3ydjiXn>.

City Hall is located quite far from the settlement area. Despite the obstacles, part of the local population still managed to attend the public hearing. However, the relevant and critical questions of the local population raised at the public hearing held at Tskaltubo Municipality City Hall in most cases remained unanswered¹⁴. In accordance with the Code of Environmental Assessment, the public hearing should be held in the administrative building located at the closest distance to the project area¹⁵. The purpose of the regulation is to ensure maximum involvement of stakeholders and local residents in the process.

In accordance with both international standards and domestic legislation, the public hearings without the real involvement of stakeholders and the public are the grounds for revoking the environmental decisions. It is noteworthy that in connection with the construction of Namakhvani HPP, the local population was not provided with complete and exhaustive information about the surveys submitted by the company, the impact of the work to be carried out, possible threats and risks. Therefore, proper public involvement in the environmental decision-making process for Namakhvani HPP was not ensured. Being in compliance with the EU Environmental Law¹⁶ and the Aarhus Convention¹⁷, the Code of Environmental Assessment applicable in Georgia from 2018 stipulates that at any stage of decision-making, the Ministry is obliged to ensure maximum awareness and involvement of the public and stakeholders. In accordance with the Code, the public hearings should be conducted in a transparent manner ensuring maximum public involvement. Only the public hearing conducted in such a manner shall provide the grounds for adopting the environmental decision. In the end, the violations of the procedures for public hearings, restrictions on the rights of stakeholders and provision of incomplete information to the public constitute a significant breach of the procedural part of environmental decision-making and may even lead to the revocation of the decision.

The Ministry of Economy and Sustainable Development of Georgia failed for a long time to make public the agreement signed already in April 2019 between the Government of Georgia and the project implementing company ENKA Renewables LLC on the Namakhvani HPP project. Consequently, the public was unaware of the content of the agreement between the Government and the company on one of the largest and most important projects for the energy independence and energy security of the country. The agreement was made public only since February 7, 2021, when the association of investigative journalists *ifact* obtained the agreement and published it¹⁸.

INTERFERENCE WITH THE FREEDOM OF ASSEMBLY AND LEGAL ASSESSMENT OF TAKING DOWN THE PROTEST CAMP

Freedom of assembly is one of the necessary preconditions for the existence of a democratic society and valid democratic development¹⁹. In the result of the monitoring carried out in the recent years to see the practice of exercising the right to assembly and demonstration, there were identified as problem issues the restrictions by the law enforcement officials on the possibility to erect non-permanent construction during the assembly, further, the improper and inefficient management of the assembly, as well as the legislative gaps related to the impossibility to block the roads in

¹⁴ See Statement of the Center for Social Justice regarding the Public Review of the Environmental Impact Assessment Report of Namakhvani HPP Cascade Project in Violation of the Law. 23.12.2019: <https://bit.ly/3w4OeaD>.

¹⁵ See Articles 9(3) and 12(5) of the Code of Environmental Assessment. <https://bit.ly/2SBSHny>.

¹⁶ See Environmental Impact Assessment EIA Directive: <https://ec.europa.eu/environment/eia/eia-legalcontext.htm>

¹⁷ See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: <https://bit.ly/3dvEdwS>.

¹⁸ See More information: <https://bit.ly/3dupZMv>.

¹⁹ See Article 22, ICCPR, and Article 11, ECHR. See also Dragan Golubovic, "Freedom of association in the case law of the European Court of Human Rights", 17(7-8) International Journal of Human Rights Vol. 17, No 7-8, 2013, pp. 758-771; Ashutosh Bhagwat, "Associational Speech", Yale Law Journal Vol. 120, No.5, 2011, pp.978-1277.

spontaneous protests²⁰. The problems have become particularly acute in the wake of social protests against Namakhvani HPP. The tools used by locals or activists against the construction of Namakhvani HPP are quite diverse. Despite the great opposition, this may be bringing legal disputes at the local or international levels, organizing collective resistance and maintaining unity through accustomed means, exercising the right to assembly and demonstration, and so on.

Although one of the most significant challenges for various activist groups or informal unions is to maintain collectivity and unity in the long-term process of the resistance, in practice we have an interesting experience from Rioni Valley, where local population managed to remain loyal to the resistance and protest for a considerable time manifested in organisation of protest demonstrations immediately in Rioni Valley or in the political center²¹. Further, the protesters actively pursuing advocacy tools such as petitioning and collecting supporters' signatures²². Moreover, in connection with the rallies against Namakhvani HPP, the most common form of resistance is to hold protest rallies in the immediate vicinity of the project area.

Residents of Rioni Valley are protesting against the construction of Namakhvani HPP in various ways²³. Local residents and protesters rotated duties on the spot²⁴. On November 14, 2020, at the rally held in Village Zhoneti the Police by using the force moved the protesters away from the road resulting in clashes²⁵. Earlier, several protests were held in Kutaisi²⁶. Kutaisi then became the center of strong rallies on the issue. Moreover, following the application by the civil society, the dispute is pending before the court to rule on the legality of the environmental decision issued on the project²⁷.

Unfortunately, in speaking of the experience of the protests, a number of episodes can be highlighted, during which the authorities used the repressive police force to handle the resistance against the construction of Namakhvani HPP.

RALLY IN VILLAGE ZHONETI

On November 14, 2020, a rally was held in village Zhoneti against the construction of Namakhvani HPP²⁸. The protesters blocked for several hours the roadway through village Zhoneti connecting Kutaisi with Lechkhumi region. Their actions were within the limits of peaceful assembly. The locals residents demanded the construction works to be suspended. According to the protesters, the construction was carried out by the company and the State without investigating the impact and risks of Namakhvani HPP on the environment. The demonstrators protested against the risks posed by the hydropower plants and against the failure of the authorities to estimate the risks and demanded a meeting with the relevant authorities. Instead of holding a dialogue, the authorities dispersed the rally using police forces²⁹. Considering the fact that the most of the protesters were enchained with each other, many of them fell down and were injured when they were dragged away by the police officers. As a result, several demonstrators received injuries³⁰. Regarding the dispersal of the rally, the Public Defender said that the State should take reciprocal steps³¹. Human Rights Center also released a statement calling

²⁰ See Prohibited Rights: Legislative Standards for the Use of Non-Permanent Structures and Technical Means and Problems of Exercising in Practice, Human Rights Center, 2021. <https://bit.ly/3jtKddi>.

²¹ See More information: <https://bit.ly/363nzR2>; <https://bit.ly/3x75Fc7>.

²² See Petition: Let us save Rioni. <https://bit.ly/3drtqn6>.

²³ See More information: <https://bit.ly/3ylUAEj>.

²⁴ See More information: <https://bit.ly/3x7Fgut>.

²⁵ See More information: <https://bit.ly/3x9JGBh>.

²⁶ See More information: <https://bit.ly/2U85Sgp>; <https://bit.ly/3jtJwk1>.

²⁷ See More information: <https://bit.ly/3y7hcIm>.

²⁸ See More information: <https://bit.ly/3q4ogm2>.

²⁹ See More information: <https://bit.ly/3q4ogm2>.

³⁰ See More information: <https://bit.ly/2JgnZuY>; <https://bit.ly/3q4ogm2>.

³¹ See Statement of the Public Defender: <https://bit.ly/3hojADK>.

on the authorities to stop using repressive methods against peaceful and just protest and to immediately establish a format for continued and real dialogue with the public and field specialists³².

✓ Were there any legal grounds to disperse the assembly?

The individuals enjoying the right to assembly have the right to choose the manner, time and venue of the assembly under the international standards³³ and the Constitution of Georgia³⁴. Such a right allows the individuals to express a specific opinion during the protest through various forms of both verbal and non-verbal communication³⁵.

Further, one of the main elements of the right is the freedom to choose the locations for an assembly which is particularly important where the location/institution is a subject of the protest or the right location is the most effective means to communicate the message of the protest to the desired audience³⁶. According to the guidelines on peaceful assembly, the authorities may restrict the choice of place, time and manner of holding the assembly only where the interference does not challenge the very purpose to hold the assembly³⁷. A similar approach is followed by the case law of the European Court of Human Rights, according to which, where the time and place of the assembly are of particularly significance for the protesters, the time and place are directly linked to the purpose of the assembly and the change of the time and place may lead to a violation of the right³⁸. However, in some cases, the time and place are restricted in order to ensure the effective operation of various institutions³⁹.

Article 21 of the Constitution of Georgia provides for the right to peaceful assembly⁴⁰. A peaceful assembly also means a demonstration that may be unacceptable or disturbing to those who oppose the particular idea or belief shared by the protest. The right to peaceful assembly includes a protest that might create certain obstacles for third parties or prevent them from carrying out certain actions. Under the international standards, a demonstration may not be considered a peaceful assembly where the organizers and protesters intend to use violence. Sporadic or separate violent actions of some of protesters may not change the nature of the assembly/demonstration and does not automatically make the assembly/demonstration illegal⁴¹.

Due to the fundamental importance of the right to demonstrate for public life, the State has a number of positive and negative obligations to promote and prevent arbitrary and illegal interference with the right to demonstrate⁴². The above obligations include the duty of the respective state authorities to take all necessary measures inter alia the resources of dialogue and negotiation to

³² See Statement by Human Rights Center: <https://bit.ly/3ti6vRj>.

³³ See Council of Europe/European Court of Human Rights Guide on Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Freedom of Assembly and Association, First Edition, 31 December 2019, para. 20.

³⁴ See Judgment №2 / 482,483,487,502 of the Constitutional Court of Georgia of April 15, 2011, II, para.: <https://bit.ly/3qOgSvT>.

³⁵ See Judgment N 1/5/1271 of the Constitutional Court of Georgia from November 4, 2019 in the case *Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia against the Parliament of Georgia*. II. Para. 7. The Document is available at: <https://bit.ly/3yaCxAQ>.

³⁶ See European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE / ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg / Warsaw, 8 July 2019, paras 22, 147. The Document is available at: <https://bit.ly/3hjVTwA>.

³⁷ See OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission); Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010, para. 99.

³⁸ See The judgment of the European Court of Human Rights of 20 October 2005 in the case, the United Macedonian Organization Ilinden and Ivanov v. Bulgaria, Para. 103; Further See Judgment of the European Court of Human Rights of 7 February 2017 in the case of Lashmankin and Others v. Russia, Para. 405.: <https://bit.ly/3qAaEPU>. Further see: The European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE / ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg / Warsaw, 8 July 2019, paras 82.: <https://bit.ly/3hfx9R2>.

³⁹ See Law of Georgia on Assemblies and Demonstrations, Article 9(1): <https://bit.ly/3yeel0r>.

⁴⁰ See Constitution of Georgia, Article 21: <https://bit.ly/3qDafw5>.

⁴¹ See OSCE / ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd Edition), European Commission for Democracy Through Law, Venice, 4 June 2010, Section B, § 26.

⁴² See OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-166.: <https://bit.ly/3ycJ6m6>.

prevent the termination of the assembly and other undesirable consequences. The dispersal of assemblies should be a measure of last resort⁴³.

According to the mentioned international standards of human rights, there existed no basis for dispersing the peaceful demonstration in village Zhoneti held on November 14, 2020. Disperse of the peaceful demonstration has to be carried out on the basis of a balance between the public and private interests. The issue which interest will prevail in the specific case has to be decided according to the individual circumstances of the case and not by applying a blanket approach. Blanket approach is when the State has the power to disperse any kind of demonstration at any place without assessment of individual circumstances, without contrasting the public and private interests and giving due consideration as to which interest is prevailing in the specific case.

Dispersing the peaceful demonstration in village Zhoneti on November 14, was the classic example of a blanket restriction of peaceful assembly.

✓ Question of whether the police force and means used to disperse the assembly were lawful and proportionate

The Constitution of Georgia allows the authorities to interfere in the exercise of the right to assembly and demonstration, provided the demonstration has attained an unlawful nature⁴⁴. Blocking the roadway in violation of the law may not serve for the ground to disperse the assembly/demonstration: the powers of the local self-government body are limited to the actions that are necessary to bring the assembly back in line with the law. The powers to disperse the assembly and demonstration are not there even when the obligations imposed on the participants of the assembly/demonstration are violated but not in a massive way⁴⁵. According to the international standards, the assembly should be dispersed once the law enforcement officers have taken all reasonable measures to facilitate and protect the assembly from harm; further, the assembly may not be dispersed unless there is an imminent threat of violence⁴⁶.

Organizers are obliged to ensure that the participants of the assembly observe the requirements of the law and conduct the assembly in a peaceful manner. In particular, in accordance with the Law of Georgia on Assemblies and Demonstrations, in the case the participants of the assembly violate the obligations imposed on them by law, the organizers within 15 minutes after receiving the warning from the authorities shall call on the participants to eliminate the violations and take all reasonable actions to eliminate the violations⁴⁷.

On November 14, 2020, the State dispersed the participants of the peaceful demonstration without any warning and attempts to negotiate. According to the statements made by the authorities, the aim of the dispersal of the protest was to restore the traffic on the roadway connecting Kutaisi with Lechkhumi region. As mention elsewhere, the roadway is not an overloaded transport junction. Moreover, there was no need for prompt restoration of the traffic on the roadway. Moreover, no unlawful actions on the part of the protesters have been identified.

In accordance with the international standards of human rights, while assessing the proportionality of the measures to disperse a demonstration because of blocking the roads by the rally, the attention must be paid to the fact whether the participants of the demonstration might have other opportunities of expressing their protest in the public space. In the present case, the

⁴³ Ibid: §§ 165-166.

⁴⁴ See The Constitution of Georgia, Article 21.: <https://bit.ly/3qDafw5>.

⁴⁵ **Note: We mean** the obligations and prohibitions provided for in Article 11(1) and Article 13(1)(6) of the Law of Georgia on Assemblies and Demonstrations: <https://bit.ly/3yeel0r>.

⁴⁶ See OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission); Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010, para. 165; para. 166.

⁴⁷ See Law of Georgia on Assemblies and Demonstrations, Article 3(e): <https://bit.ly/3yeel0r>.

demonstration was held in village Zhoneti of Tskaltubo municipality by local inhabitants with participation of the residents of the adjacent villages. Such groups usually lack public spaces where they could express their protest regarding the issues of acute social importance in a way that such protest reach the wider public and could be perceived by the public. Apart the roadway that leads through village Zhoneti and adjacent villages, in fact there is no public space, where protest assembly of individuals could attract attention of the society⁴⁸. The idea of the gathering was to convey a protest message to a wider audience and attract the attention of the public and not just to express the protest on the local level within a narrow group. Accordingly, it is disproportional to restrict the right to assembly in such a manner making us to consider the use of police forces against the participants of the demonstration *a priori* illegitimate.

The violent suppression of the peaceful protest, unfortunately, indicates that the authorities are not interested in holding real, result-oriented negotiations with the local population and in listening to their concerns.

RALLY IN VILLAGE NAMOKHVANI

On February 7, 2021, in village Namokhvani, Tskaltubo Municipality, the protesters gathered from different regions of Georgia for the peaceful rally demanding the cessation of the construction works on the project of Namakhvani HPP. The protest was announced in advance through various means including TV and social media.

According to the reports, the rally was supposed to start at 1:00 pm. However, due to the large number of people and police officers gathered at the rally, as well as the long convoy of vehicles, it was difficult for the participants to arrive at the destination on time. Thus, the rally began at 1:49 pm. The people gathered at the rally moved from the roadway towards the immediate vicinity of Rioni River. Several groups of law enforcement officials were present nearby the protesters.

Those gathered in Namokhvani wanted to erect a camp to spend the night near Rioni River. Initially, the organizers were not allowed by the law enforcement officers to bring appropriate equipment for erecting the camp to the site. However, later, in a peaceful manner through negotiations, the protesters managed to erect the camp at the desired place.

According to the reports released later on, the police officers conducted a search of the two vehicles. As a result of the search, a licensed firearm was seized from one of the vehicles, and "a baseball bat and blunt instrument" from the other vehicle⁴⁹.

The main demand of the people gathered at the rally was to stop the construction of the HPP in the village of Namokhvani and company ENKA to leave the gorge of Rioni River. The number of protesters was about 500 people. Among those gathered were locals and people from different regions, clerics, civil activists, NGOs and representatives of opposition political parties.

No obstacles were in place for monitoring the rally and for media to cover the protest. There has been spread information of the police examining all the vehicles heading to the protest location. However, such a fact was not registered by the legal monitors of Human Rights Center who arrived on the spot.

During the rally, no clashes took place between the law enforcers and the activists gathered there. The organizers have publicly stated that they refrain from protesting in a violent manner, as well as from appearing at the rally as representatives of any opposition party in order to avoid any political context.

⁴⁸ See Statement by Human Rights Center: <https://bit.ly/3iIH5YN>.

⁴⁹ See more information: <https://bit.ly/3qAraPQ>.

A large number of law enforcement officers (about 100 persons) were deployed at the rally. No riot police equipment were evident at the place. The police was present at different locations of the gathering in groups of several officers. The police used minibuses and cars for transportation.

The organizers of the rally erected a protest camp near Rioni River with the help of the protesters. Although, initially there was some resistance from the police to allow the camp erection, but eventually the resistance was exhausted. The protest participants said they were to continue to protest and spend the next day in the camp (which would be the 106th day and night of the protest).

The following demands were voiced at the rally: 1) company ENKA must leave the gorge of Rioni River; 2) stop the construction of Namakhvani HPP; 3) call on the Minister of Economy Natia Turnava to resign due to her statements⁵⁰.

RALLY IN VILLAGE GUMATI

On April 12, 2021, in village Gumati, Tskaltubo Municipality, people from different regions of Georgia gathered to hold a peaceful protest demanding the construction of Namakhvani HPP to be stopped and the population to be allowed to return to Rioni Valley. The protest was announced in advance through various means including TV and social media. According to preliminary information, the rally was to be held in front of the Government Chancellery in Tbilisi at 4:00 pm. However, after a person drowned and disappeared in the Rioni River, the police took down the camp of Rioni Valley Defenders bringing as a reason rather conflicting theories. According to one of the versions, the need to take down the camp stemmed from the rising Rioni River and the possible floods in the surrounding area, and for another reason the police mentioned the ongoing search-and-rescue operation. Finally, the organizers of the protest decided to hold the rally in the village of Gumati.

According to the information spread by the media, on April 29, 2021, the body of a young man was found in Rioni River, which turned out to be the man the police was searching for several days⁵¹.

The protesters intended to enter village Namokhvani but the law enforcement officers did not allow them to do so. On several occasions, the law enforcement officers clashed with the protesters⁵². One of the incidents of such clashes took place near the office of company ENKA. The activists demanded the ongoing construction works in Rioni Valley to be stopped and to be allowed to return to their own land. The citizens were expressing the protest with a peaceful gesture of hands raised up and by approaching the police cordon. At the same time, the law enforcement authorities managed to bring to the Rioni gorge water cannon vehicles and riot police forces.

Sulkhan Tamazashvili, Director of the Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department of the Ministry of Internal Affairs, said that all those who would assault or resist law enforcement officers would be identified and held legally accountable. The protesters claim that a defamation campaign was launched against them, expressed in the actions by the police to attribute ('to plant') bottles of vodka and beer to the activists when the police was taking down the camp. One of the organizers of the rally, Varlam Goletiani, said that if necessary, they would move to the capital and would not break up until their demands are fully met⁵³. The activists marched from Kutaisi to the gorge⁵⁴.

⁵⁰ Human Rights Center, Monitoring Report on the Protest Rally in Village Namokhvani. Report prepared: 07.02.2021.

⁵¹ See more information: <https://bit.ly/3hqtwy1>; <https://bit.ly/2VaF0ga>.

⁵² See footage of the clashes in full: <https://bit.ly/3qCxFIb>.

⁵³ See more information: <https://bit.ly/3h7CP5O>.

⁵⁴ Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: 12.04.2021.

Among the main demands of the protesters were to stop the construction of the hydropower plant in village Namokhvani, company ENKA to leave Rioni gorge, and Rioni Valley Defenders to be allowed to return to Rioni gorge and carry on protests in a peaceful manner.

In order to maintain order, the officers of the Ministry of Interior were deployed at various locations immediately on the site of the protest. The information on the protest was covered without any obstacles. During the rally, on several occasions, clashes took place between the law enforcement officers and the activists gathered there. A conflict situation near the office of company ENKA was defused on the spot⁵⁵. The protesters blocked the roadway and demanded to be allowed to enter village Namokhvani⁵⁶. Some of the activists headed towards Kutaisi in a convoy of cars. Rest of them remained in Gumati. A large number of police officers were present at the rally. No water cannon vehicles and riot police forces were deployed at the location⁵⁷.

Due to the large number of people and vehicles, the traffic was overloaded and according to our information, both roads entering village Namokhvani were blocked by the police⁵⁸.

MAY 24 RALLY, TBILISI

Rioni Valley Defenders, protesting against the construction of Namakhvani HPP, announced a large-scale protest rally in Tbilisi a few days before May 23, 2021. On the first day of the rally in Tbilisi on May 23, the rally organizers announced that they were giving the authorities time until 12:00 am of May 24 to meet their demands:

- *The agreement signed on April 25, 2019 between the Government of Georgia and company ENKA Renewables on the construction of Namakhvani HPP on Rioni River to be terminated and the company to leave Rioni Valley.*
- *To repeal Decree N 2405 of the Government of Georgia of November 21, 2019 approving the Transfer of State-Owned Real Estate to ENKA Renewables LLC with a right to superficies and the Privatization in the Form of Direct Sale.*
- *To revoke the construction Permit issued for Namakhvani HPP in 2015 and all other documents deriving from the Permit.*
- *Natia Turnava, the Minister of Economy and Sustainable Development has to resign*⁵⁹.

The organizers of the rally called on the population of Tbilisi to gather at the Republic Square on May 24 at 12:00 am, where they would announce a plan of further actions, depending on the response they would receive from the authorities.

On May 24, at 12:00 am about a thousand citizens gathered at the Republic Square. About 50 tents were erected on the Republic Square where the organizers and participants of the rally spent the night.

At 12:00 am, the organizers did not start the rally, presumably due to the fact that fewer people gathered at the rally than it was expected. The organizers did not release the response from the government to the protesters either. Due to the lack of people, the traffic on the Republic Square was not completely blocked. Half of the square was fenced with temporary barriers (presumably installed by the police). Vehicles were moving in the middle of the square. Patrol police vehicles were parked in several places near the rally and the preoccupation of the police was also noticeable.

⁵⁵ See more information: <https://bit.ly/3wR82zL>.

⁵⁶ See more information: <https://bit.ly/3uS46gB>.

⁵⁷ See Continuous live stream: <https://bit.ly/364wC44>.

⁵⁸ Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: 12.04.2021.

⁵⁹ The demands were published in the media: <https://bit.ly/3qAZ1rY>.

At 12:10 am there was a noise in the middle of the assembly. Television reporters and cameramen surrounded the two young men, who left the rally and took a quick step towards Rustaveli Avenue. At that time, the organizer of the rally, Varlam Goletiani, using a loudspeaker addressed the crowd and the police that the incident was allegedly instigated. He called on those gathered not to pay attention to such provocations, and called on the police to take legal measures to defuse the situation and prevent any unlawful actions.

As it turned out, two young people turned out to be activists of movement Shame: Zura Berdzenishvili and Salome Barker. Salome Barker carried a symbolic LGBT armband, which she has been wearing for two years .

According to the Shame activists, they came to the rally in support of Rioni Valley Defenders, but the leaders of some homophobic groups, namely Guram and Alexander Palavandishvilis demanded from Salome Barker to remove the symbolic armband. After Barker refused to take off the armband, 'Palavandishvili junior' in an aggressive manner demanded her to leave the rally. Other aggressive individuals gathered around them, after which the activists of Shame abandoned the rally so that the verbal conflict would not turn into a physical confrontation. Many reporters were gathered around the activists. They were recording the comments. The Police escorted Berdzenishvili and Barker up to the end of the Republic Square, after which they left. Speaking to the reporters, they said they wanted to take part in the protest, but decided to leave the rally because they did not want to aggravate the situation. According to them, they are forced to leave the rally against their will.

After the activists left, the police took no actions to find out whether the conduct of the Palavandishvilis were within the law and did not react in any other way to the incident. The aggressive behavior of Alexander Palavandishvili and his supporters against the activists of Shame was captured by the reporters present at the rally and the footage was spread in the media. One can hear from the footage that the members of homophobic group demand the activists to remove their armbands or leave the rally. They call them instigators. Further, some slang and hate speech can be heard⁶⁰.

At 1:30 pm, the rally organized by the Rioni Valley Defenders was not started yet. By that time, the traffic was on in the half of the Republic Square⁶¹. Varlam Goletiani addressed the participants of the gathering standing on the stage installed at the Republic Square: "Our movement rejects all forms of violence. This is a people's movement and unites all citizens of Georgia. "We are distancing ourselves from the controversies that are taking place here in the form of violence." At the same time, in order to "avoid conflicts", Goletiani called on the protesters to refrain from wearing items of certain symbols except for the state symbols: "Only state symbols shall be allowed on our rallies and this will prevent such confrontations, we can all keep calm and do the job. Any other symbols other than state symbols shall not be allowed to our rally!"

At 3:30 pm the organizers of the rally started the march and headed to Rustaveli Avenue. The police blocked the way to Rustaveli Avenue near the old post office building. The marchers stopped for a while in front of the police officers' chain and suddenly turned left, towards the Radisson Hotel and Rezo Tabukashvili Street. The organizers of the rally addressed the participants with a loudspeaker that they would go through Tabukashvili Street to the House of Justice, where the Ministry of Justice is located.

⁶⁰ See Radio Liberty Video: <https://bit.ly/3AqUHjL>.

⁶¹ See The post of the monitor on the Facebook page of HRC: <https://bit.ly/3hkh4OZ>.

At 4:00 pm the protest demonstration of Rioni Valley Defenders moved to Dry Bridge via Rezo Tabukashvili Street⁶². The traffic was blocked on Tabukashvili Street. The police were moving ahead of the protest march and was ensuring the traffic to be stopped. At 4:30 pm the demonstration turned on Gia Chanturia Street, and then passed through Soliko Virsaladze Street to Zviad Gamsakhurdia right embankment of Mtkvari River. Here, the police tried to stop a half of the traffic in the middle of the highway, but the protesters quickly crossed the highway and the police had to stop the traffic completely (at 4:45 pm)⁶³. At 4:50 pm the demonstration stopped in front of the House of Justice, under the bridge, where Varlam Goletiani again addressed the protesters.

The demonstration of Rioni Valley Defenders near the House of Justice was on for half an hour. The leaders of the movement addressed the protesters and commented to the media. The media had a live broadcast of the rally. During this time the traffic on the embankment was paralyzed. Police officers were standing on the highway leading to Freedom Square.

At 5:20 pm the demonstration started towards Freedom Square. The police opened the road and let the protesters to move towards Freedom Square. At 5:30 pm, the protesters gathered at Freedom Square. As in other locations, the police blocked the roads and stopped the traffic. The protesters occupied a small section of Freedom Square. No more people joined the rally during the day.

At 6:00 pm, the protest demonstration of Rioni Valley Defenders moved from Freedom Square to Rustaveli Avenue. The marchers arrived at the starting point of the demonstration, near the Republic Square, in the center of Rustaveli Avenue and blocked the main avenue of the capital⁶⁴.

During the day, the protesters deliberately were blocking the highways trying to carry out the initial plan i.e. to paralyze the capital. However, due to the small number of protesters, the goal was not achieved and the highways were blocked only for a few minutes, after which the police managed to unblock the roads again. The protest returned to the Republic Square at around 8:00 pm where participants from the regions spent the night in the protest camp erected on the square.

At the beginning of the rally at 12:00 am, there were about a thousand people gathered at the rally. During the day, the number of protesters fluctuated and a maximum of 3-4 thousand people were gathered. The police stopped the traffic on various locations as the demonstration moved across the city. At the Dry Bridge, when one of the key highways on the embankment of Mtkvari River was blocked, the protesters were calling on the drivers to join the rally. The drivers expressed some solidarity with the rally, but did not join the protest.

The media was actively covering the rally and every major speech or incident was broadcast live including via news programs during the day. The aggression of homophobic groups against Shame activists became a matter of great interest. In several spots of the Republic Square and in other locations, there were vehicles owned by TV companies technically ensuring the provision of the direct coverage by the reporters.

From the morning the police units were at the Republic Square where the protest was announced to resume from 12:00 am to be followed by a demonstration across the city. Patrol police vehicles were parked at various locations. The total number of the police at the Republic Square was about 100 police officers. The police were distributed in groups at various locations in the Republic Square. Some officers were in cars, some on the edge of the sidewalk, at a traffic light, and in the shade of nearby trees. During the protest, at least two police vehicles were parked near the Republic Square bearing no signs that they belonged to the police. However, uniformed police officers were sitting in the cars.

⁶² See The post of the monitor on the Facebook page of HRC: <https://bit.ly/3h7P6an>.

⁶³ The post of the monitor on the Facebook page of HRC: <https://bit.ly/2Trwb0W>.

⁶⁴ See The post of the monitor on the Facebook page of HRC: <https://bit.ly/3yd5ZpU>.

The Police were informed from the beginning that the protesters were planning to picket the roads in the city. Accordingly, the police from the very beginning showed readiness to maintain public order, to control the movement of vehicles in different locations of the city where the protesters would move. Where necessary, the police completely restricted the movement of vehicles.

MAY 26 RALLY, TBILISI

On May 26, 2021, people from different administrative territorial units of Georgia gathered at the Republic Square in Tbilisi. The protest was announced in advance through various means including TV and social media. The start time of the rally was set at 4:00 pm. However, the rally began at 4:30 pm.

Before Varlam Goletiani and other organizers of the rally addressed the gathered people directly, a video on the big screen was shown, where Georgian emigrants from different countries addressed the Georgians and expressed their support to Rioni Valley Defenders. During the rally, a convoy of motorcycles and scooters with Georgian flags passed by with hooters on. Despite a large number of people, not much police officers could be noticed at the place and, most importantly, groups of police officers were standing quite far from the place of assembly.

In order to maintain order, the police officers were deployed at various locations immediately on the site of the protest. The information on the protest was covered without any obstacles. During the rally, no clashes took place between the law enforcement officers and the activists gathered there. At the end of the rally, Rioni Valley Defenders headed towards the Rioni Valley and announced that they would continue the fight from there.

During the rally, part of the road on the Republic Square was blocked. Law enforcement officers controlled and facilitated the smooth movement of vehicles⁶⁵.

ASSESSING THE REMOVAL OF THE PROTEST CAMP

On April 11, 2021, in the village of Namokhvani, the police took down the protest camp of Rioni Valley Defenders erected on the land owned by one of the protesters. This action of the police was accompanied by the mobilization of the great police force from the morning and complete restriction of the traffic towards Namokhvani, including the movement of the protest leaders towards the protest camp.

The decision to remove the tents was preceded by a tragic incident on April 10, 2021, near the protest camp. From around 8:00 pm, the rescue police was looking for one of the persons in Rioni River missing from the protest camp of Rioni Valley Defenders. The incident gave the reason to the Ministry of Interior to strengthen the police control directly in the protest camp area, referring to the need to conduct investigative actions, followed by additional mobilization of the police and special forces in the gorge the next day and the removal of the protest camp.

The Ministry of Interior brought completely different and contradictory versions as the reasons to remove the camp in Namokhvani. According to the official statement by the Ministry⁶⁶, the reasons for the removal were the danger of Rioni water levels to increase and flood the surrounding area. However, at the spot, the representatives of the Ministry named the facilitation of the ongoing search and rescue operations to find the man disappeared in Rioni River as the reason for the removal of the protest camp, as well as safeguarding from the risks to be drowned in Rioni River created by unreliable behavior of the local inhabitants.

⁶⁵ Human Rights Center, Monitoring Report on the Protest Rally in Tbilisi. Report prepared: May 26, 2021

⁶⁶ See Statement of the Ministry of Interior: <https://bit.ly/3hoBZ3k>.

At the same time of removing the protest camp, the information was spread about the "seizure of bottles of alcohol from the protest camp area", which was perceived by the protesters as an attempt to defame their movement. The doubts regarding the accuracy of the information are strengthened by the internal rules and practices adopted by the protesters implying that the certain rules of behavior including the prohibition of alcohol are strictly observed.

✓ Were there any legal grounds to remove the protest camp and to disperse the assembly?

According to OSCE/ODIHR guidelines, the erection of protest camps and other non-permanent constructions falls within the scope protected by the right to peaceful assembly⁶⁷. Any act banning the erection of protest camps and other structures in "the controlled areas" was deemed in one of the judgments against the United Kingdom to be contrary to the right to peaceful assembly protected under Article 11 of the European Convention on Human Rights as the erection of the camp acquired an inseparable symbolic meaning from the message of the protest⁶⁸.

According to the interpretation by the ECtHR⁶⁹, the only necessity justifying an interference with the exercise of the rights enshrined in the European Convention could spring from "democratic society". Further, the named requirement includes two conditions: *1. There must be an acute public need for interference with the right; 2. Interference with the right must be proportionate to the legitimate aim pursued.*

According to the interpretation of the Constitutional Court of Georgia: „[...] The Constitution of Georgia may allow for the restriction of the right **[meaning the possibility to ban the erection of non-permanent constructions]** when the exercise of the right has attained an illegal character. One must emphasize that the applicable legislation of Georgia does not provide for the prohibition of non-permanent constructions including the ban on the erection of protest camps, provided that they do not impede the movement on the road."⁷⁰

The judgment by Tbilisi City Court from August 31, 2016, held that the erection of a protest camp without prior consent falls within the right to peaceful assembly. The court interpreted that "the right to assembly and demonstration includes the right to choose the place, time, manner and content of the assembly, which in turn implies the possibility of erecting non-permanent constructions."⁷¹

The justification of the actions brought by the Ministry of Interior was completely inconsistent and unreliable. The police actions presumably were aimed at disrupting the peaceful and lawful protest of Rioni Valley Defenders which is an unjustified and disproportionate interference with freedom of assembly and expression. The assumption is proved by the repeated appeals of Rioni Valley Defenders towards the police to be allowed to erect the protest camp at another place in village Namokhvani instead of the camp removed by the police; the appeal was unreasonably ignored by the Ministry of Interior. Eventually, the protesters were forced to leave the protest site in village of Namokhvani and move to the people gathered near village Gumati.

According to the assessment by HRC, the action of the law enforcement officers not allowing the protesters to erect the protest camp at the gathering place is an attempt to control the manner of peaceful assembly grossly violating the very essence of the right to assembly guaranteed by the

⁶⁷ See Guidelines on Freedom of Peaceful Assembly, second edition, §18, Warsaw/Strasbourg 2010. <https://bit.ly/3bp11C4>.

⁶⁸ See *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 (05 February 2009). <https://bit.ly/3bjcv4q>. Further see the European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 148. The Document is available at: <https://bit.ly/3hfx9R2>.

⁶⁹ See *United Communist Party of Turkey and Others v. Turkey* (para. 45).

See the Case *Political Union of Citizens Movement for United Georgia, Political Union of Citizens Conservative Party of Georgia, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia*. 2011.

⁷¹ See Judgment of the Administrative Cases Panel of Tbilisi City Court of 31 August 2016 in the case №3 / 6463–16.

Georgian Constitution and the Law of Georgia *on Assemblies and Demonstrations*, as well as of the rights protected by international agreements and by the European Convention on Human Rights. The Ministry of Interior has a duty not to interfere with the assembly conducted in a peaceful manner. The right to choose the manner, time and place of the assembly is a part of the right to assembly to the same extent as the content of the assembly. Furthermore, the camp may serve as an attribute of vital importance for the continuation of the protest.

Moreover, it should be noted that holding the rally in village Namokhvani was an essential component for the protest organizers to express their protest, as from that area the protesters could directly observe the preparatory works of the construction of Namakhvani HPP and could protest against the process peacefully. Due to the continuous character of the rallies, the camp was an essential tool for participants to effectively exercise the freedom of assembly and expression. At the same time, the character of the assembly was clearly peaceful as evidenced by the duration of several months of the rallies. Therefore, in the present case, the actions of the law enforcement officers are illegal and unconstitutional.

RESTRICTION OF THE FREEDOM OF MOVEMENT

The reasons for setting up the checkpoints next to village Namokhvani and thereby restricting Georgian citizens in freedom of movement across the country were unclear and unjustified.

During the whole period between April 3, 2021- June 18, 2021⁷², until the mediation process conducted by the EU Energy Community Secretariat began with a purpose to facilitate talks between the Government and Rioni Valley Defenders, there were special police measures taken in Rioni Gorge and the locals were restricted in the freedom of movement towards village Namokhvani and in the right to protest and express themselves in the village.

After the end of the protests carried out from on May 23 in Tbilisi, on May 27, 2021, the activists returned to the location near village Gumati, where the police checkpoints and iron fences were installed until June 18. Therefore, for several days, the activists protested against the construction of Namakhvani HPP and against the illegal restriction of freedom of movement towards village Namokhvani by knocking on the iron fences and creating noise⁷³.

It should be noted that on April 11, 2021, the restriction of movement concerned also media representatives not just Rioni Valley Defenders. Charter of Journalistic Ethics⁷⁴ and the Coalition for Media Advocacy considered the restriction unjustified⁷⁵.

✓ *Were there any legal grounds to restrict the freedom of movement ?*

Chapter 4 of the Law of Georgia on Police provides for the measures of prevention and differentiates them from the measures to be taken in response to the offenses. Article 25 (*order to leave a place and ban on entering a specific area*) and Article 26 (*restriction in movement of persons or vehicles or restrictions in actual possession of an item*) of the same Law govern the preventive measures. Under Article 25, a police officer may order a person to leave a certain place for a specified period of time or to forbid a person to enter a particular area if it is necessary to avoid danger. The time of the restriction referred to in Article 25 may be extended until the threat is eliminated. The implementation of the measures provided for in the above Article may not cause a long-term restriction of the right of a person to enjoy his or her place of residence⁷⁶.

⁷² See more information: <https://bit.ly/3weCLWg>.

⁷³ See more information: <https://bit.ly/361Z0nB>.

⁷⁴ See Statement by the Charter of Journalistic Ethics: <https://bit.ly/3hYJyz7>.

⁷⁵ See Statement by the Coalition for Media Advocacy: <https://bit.ly/2Uigk4T>.

⁷⁶ See Article 25 of the Law of Georgia on Police: <https://bit.ly/361aTdv>.

In accordance with Article 26 of the same Law, the police may temporarily restrict the movement of a person in the manner provided for by the legislation of Georgia: a) where a person acts in a way that creates risks for his/her life and health or for the life and health of other persons; b) where a person fails to comply with the requirements provided for in Article 25 of this Law; the police may in accordance with the legislation of Georgia temporarily restrict the actual possession of an item or the movement of a vehicle in order to avoid danger, provided there is a possibility that the person uses the item or a vehicle as a tool to damage his/her life and health or the life and health of other people or to damage an item belonging to other people⁷⁷.

According to the Law of Georgia on Police, a prerequisite for carrying out the police measures shall be the *assessment of the risks* by the police officer⁷⁸. The concept of danger delimits the preventive activities to be conducted by the police, defining thereby the scope of the actions and at the same time protecting the rights and freedoms of individuals from unjustified interference by the State.

In general, under the Law on Police, a situation shall be deemed dangerous where there are sufficient grounds to assume that in the case of an uninterrupted course of the events, there is a high probability that the good protected by the police will be damaged. According to the Law, the existence of the risk must be proved by objective facts which would be sufficient for an impartial observer to make the relevant conclusions taking into account the facts⁷⁹.

Accordingly, in a particular case, the police must assess the facts and circumstances through the eyes of an objective observer and draw a conclusion as to whether such developments are expected in the given circumstances that would endanger the protected good. Despite existing regulations, in practice, the police often fails to adhere to the standard and use restrictive measures based on subjective assessments instead of looking at the facts through objective lens.

According to the interpretation of the Constitutional Court of Georgia: „[...] It is inadmissible that an interference with the exercise of the freedom of a person to be based solely on the subjective feeling, prejudice or intuition. The suspicion of a person committing a possible crime must be based on a fact, a circumstance or combination thereof that convinces the objective observer that the suspicion is well founded⁸⁰.

In the present case, when installing checkpoints in the Rioni valley on the road towards Namokhvani since April 3, 2021, the police officers never explained the reasons because of which risks the police were taking the measures. In this particular case, the threat was not specific and immanent and the expectation of the threat was not substantiated by objective information and facts. As a result, preventive measures by the police were followed by unjustified and gross interference with both freedom of movement as well as freedom of assembly and expression.

The reasoning presented by the Ministry of Interior to justify the action did not meet the basic requirements for interference with the right as provided for by the Constitution of Georgia and human rights standards. Namely, the Ministry referred "to the need to avoid the expected dangers and further escalation of the situation" as the reasons to restrict movement of citizens in the Rioni gorge, failing however to specify what particular threats they meant⁸¹.

⁷⁷ See Article 26 of the Law of Georgia on Police: <https://bit.ly/361aTdv>.

⁷⁸ See Article 2 of the Law of Georgia on Police: <https://bit.ly/361aTdv>.

⁷⁹ See Ruling of the Administrative Cases Panel of Tbilisi Court of Appeals from September 15, 2017, Case № 330310016001256884: <https://bit.ly/3Adu8yd>.

⁸⁰ See The Judgment of the Constitutional Court of Georgia from April 11, 2013, *Georgian citizens– Levan Izoria and Davit-Mikheil Shubladze v. the Parliament of Georgia*, II. para. 29. The Document is available at: <https://bit.ly/3h64x2A>.

⁸¹ See more information: <https://bit.ly/3eD2wt5>.

PRACTICE OF DETAINING/FINING ASSEMBLY PARTICIPANTS

Beyond the restrictions on freedom of movement and the removal of the protest camp, law enforcement officials used other methods of repression against protesters in Namakhvani, such as arrests and fines.

On April 3, 2021, after the law enforcement authorities blocked the roads towards Namokhvani, 12 people protesting against the construction of Namakhvani HPP in the Rioni valley were detained by the police in village Gumati on the grounds of violating the so called curfew and were fined with GEL 2,000 each. The fined persons were staying in Gumati spending the night in cars after the law enforcement officers did not allow them during the day to move in the direction of the protest camp in Namokhvani and the fined persons were out of time (due to the curfew) to return back the same day⁸².

On April 4, 2021, Mirian Maglaperidze, a resident of village Zarati was going to a shop in a nearby village (Mopurchkheti) to buy bread, when he was stopped by the police and asked for his ID card after the police noticed that he was taking a video on his phone depicting the large number police officers deployed in the village. Maglaperidze responded to the request of the police that he never carries an ID card with him when moving in his native village. After having been refused by the police to continue the movement to buy the bread, he asked the officers to assist him in buying the bread, which was regarded as an insult towards the police and he was arrested on charges of petty hooliganism and disobedience⁸³.

On April 9, 2021, Lasha Kutateladze, a protester, was arrested in village Namokhvani for disobeying a lawful order of the police. At the court hearing, the police officer submitted that the offense committed by Kutateladze was expressed in the act of moving within the Rioni gorge. In this case, the judge did not hold Lasha Kutateladze as an administrative offender and released him from the courtroom⁸⁴.

On April 14, 2021, during the protest rally in the village of Gumati, the police arrested six persons for the offenses under Article 173 of the Code of Administrative Offenses. According to the Ministry of Interior, despite numerous warnings from the police, the activists did not leave the roadway, did not obey the lawful orders of the police, after which the police used proportionate measures of coercion⁸⁵.

On May 27, 2021, in village Gumati, where iron fence was installed by the police, clashes between the opponents of Namakhvani HPP and the police took place. The opponents of Namakhvani HPP were expressing the protest by clapping hands on the fence and creating noise, trying at the same time to cross the fence and head towards village Namakhvani, which was not allowed by the police mobilized on the spot. During the clashes, the police detained 8 representatives of Rioni Valley Defenders⁸⁶. The activists arrested on May 28 were released⁸⁷.

According to the OSCE/ODIHR guidelines, detaining a person for the reasons of participation in a legitimate assembly would be considered arbitrary and unjustified⁸⁸. Further, imposing unjustifiably and disproportionately high penalties on the protesters might have a chilling effect on the participants of the event and might equal to indirect restrictions on the right to assembly.

⁸² See more information: <https://bit.ly/3qB4waf>.

⁸³ See more information: <https://bit.ly/3jwb3S4>.

⁸⁴ See more information: <https://bit.ly/3w7Bosh>.

⁸⁵ See more information: <https://bit.ly/2TrjVNY>.

⁸⁶ See more information: <https://bit.ly/3h83Upu>.

⁸⁷ See more information: <https://bit.ly/36baVPL>.

⁸⁸ See European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 36. The Document is available at: <https://bit.ly/3ydLgSu>.

During the protests against Namakhvani HPP, the administrative detentions and administrative fines applied against the demonstrators were in sum unsubstantiated and were aimed not at ensuring public order and peace, but at reducing the protest charge.

LEGAL STATUS OF CIVIL ACTIVISTS AT THE RALLY

Alexander Palavandishvili, son of Guram Palavandishvili, together with the entourage of Palavandishvilis verbally abused civil activists Salome Barker and Zura Berdzenishvili at the rally holding at the Republic Square in Tbilisi on May 24, 2021, and demanded that the activists leave the area⁸⁹. The cause of the assault was a rainbow-colored armband worn by Salome Barker considered by the assaulters to be provocative. However, the law enforcement officers only diverted the civil activists of the vicinity of the rally⁹⁰.

It is noteworthy that this is not the first case of seeing the groups associated with Guram and Alexander Palavandishvilis in action when they assault and attack individuals. None of the incidents were adequately responded by the Ministry of Interior. The authorities are trying to avoid harsh policies against the hate groups and to punish them, thereby further violating the civil rights of peaceful activists and endangering the lives and health of the latter.

Moreover, the obligation of the State to ensure freedom of assembly and expression may not be reduced to a negative obligation on the State to refrain from unjust interference into the instances when the right/freedom is being exercised. The State also has a positive obligation to protect people exercising the freedom of assembly. The State has a duty to protect the peaceful assembly from acts of violence committed by third parties.

In accordance with the international human rights standards, providing the appropriate conditions for the exercise of the right to peaceful assembly is the positive obligation of the State. Offenses committed against such marches require a quick and appropriate response.

As the European Court of Human Rights asserts, "the participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community."⁹¹ Moreover, the European Court interpreted that, [...] pluralism and democracy are built on genuine recognition of, and respect for, diversity. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion."⁹²

PROBLEM OF XENOPHOBIA/HOMOPHOBIA: THE INFORMATION SPREAD AND THE EXPLANATIONS OF THE ORGANIZERS OF THE RALLY

At different stages of the monitoring of the rallies, the information about the rallies against Namakhvani HPP was covered with different interpretations or in different volumes in the TV and online media space. During the rallies, given the current political crisis, full coverage of the rallies against Namakhvani HPP has not been a priority for leading media outlets for a long time. In the online media space, all this time, the pages associated with the ruling political force have been spreading

⁸⁹ See more information: <https://bit.ly/3dyOcBA>.

⁹⁰ See more information: <https://bit.ly/2UfpY8u>.

⁹¹ See Judgment of the European Court of Human Rights in the case - *Ärzte Für Das Leben v. Austria* (Application no. [10126/82](#)). June 21, 1988. <https://bit.ly/3hgrz5G>.

⁹² See Judgment of the European Court of Human Rights in the case *Identoba and others v. Georgia* (Application no. 73235/12). 12.08.2015: <https://bit.ly/2UdzDwu>.

misinformation and discrediting information about the events. At the same time, the information campaign of the company in charge of the construction of the hydropower plant was rather inactive for a long time. However, as public attention to the rallies increased and they were actively covered by the leading media outlets, the interests of the authorities and the company per se to use the media for shaping the public opinion became more evident.

Some of the media outlets were covering the protests against Namakhvani HPP in a biased manner. In some of the cases, the biased approach was evident in covering the events in fragments, disrespecting the real situation taking place at the events, or by covering individual participants or small groups who used hate speech against Turkish investors in a xenophobic context. The xenophobic statements of ultra-conservative groups or individuals were oftentimes presented as the spirit of the rallies and as the position of the organizers.

Particularly negative coverage was followed after the incident when the activist joining the protest against Namakhvani HPP was assaulted for wearing an LGBT flag armband, which was widely reported in the mainstream media presenting the protesters to bear homophobic attitudes. Within the same period, some of the prominent individuals from the ultra-conservative forces were actively joining the protest demonstrations, and as they were trying to constantly be in contact with the reporters present at the rallies, the opinion was created that the ultra-conservative forces were the majority of the protesters. Through the one-sided coverage of the events by the media, in fact, the authorities, the media and the ultra-conservative groups loyal to the state security services were trying together to demonize the rally.

Notwithstanding the statements by the rally organizers⁹³, and by the human rights organizations⁹⁴ related to the organizers that they apart themselves from any xenophobic calls, the practice of biased coverage by individual politicians or the media has not changed. Regarding the issue, the Charter of Journalistic Ethics called on the media to be very careful in covering the information received from the rally, so as not to encourage any discriminations on the basis of ethnicity⁹⁵.

Unfortunately, the policy of defamation continues up to the date. At it looks like, the narratives of the authorities and other actors openly serve to delegitimize the social protest, which substantially is the protest aimed at protecting and preserving the state and community interests, and for the whole period, the protest is revealing the actions concerted by the Government and the company directed against the state and public interests.

On March 29, 2021, the Prime Minister Irakli Garibashvili addressed the population informing the people about so called "hybrid war against energy security"⁹⁶. Thereby the Prime Minister supported the narrative that Namakhvani HPP is the only alternative for the country's energy independence and the failure to implement the project is in the interest of the country's enemies⁹⁷. The same narrative was spread through online publications, mainly on the Facebook pages affiliated with the authorities accusing the rally organizers of pursuing Russian interests.

At the same time, on July 2, 2021, the movement "Save Rioni Valley" issued a statement⁹⁸, concerning the Dignity March planned in Tbilisi, and claimed that the movement does not support the Dignity March as it was "a propaganda of a non-traditional way of life" and "an action against the State and society." Meanwhile, on July 5, the leaders of the movement joined the counter-demonstration against the Dignity March organized by the violent groups in Tbilisi, which from the very beginning was showing clearly violent character and intentions⁹⁹. Nevertheless, Rioni Valley Defenders stated that

⁹³ See more information: <https://bit.ly/3AjQ2Qg>.

⁹⁴ See more information: <https://bit.ly/3qDuh9O>.

⁹⁵ See Statement by the Georgian Charter of Journalistic Ethics: <https://bit.ly/3ybD8C5>.

⁹⁶ See more information: <https://bit.ly/3dtFrZd>.

⁹⁷ See more information: <https://bit.ly/36c5kst>.

⁹⁸ See Statement of Rioni Valley Defenders: <https://bit.ly/36omC5M>.

⁹⁹ See more information at: <https://bit.ly/3xyx07g>.

they responded to the call of the Georgian Patriarchate and were intending to attend the prayer and were distancing themselves from any violence¹⁰⁰.

The decision made by Rioni Valley Defenders to join the counter-demonstration that was declared to be violent was unacceptable to the organizations actively supporting Save Rioni Valley movement namely for the Center for Social Justice and Green Alternative.

According to the statements made by the Center for Social Justice, the support by Rioni Valley Defenders to some of the anti-democratic and inhumane forces and thus taking side of radical groups, make evident that the leaders of the movement had abandoned the very foundations and values of philosophical and ethical character adherent to the movement, and thus making the alliance with them no longer possible. However, the Defenders carry on the legal and political struggle against unfair, opaque and undemocratic energy policies, as well as against the construction of the Namakhvani HPP being a clear manifestation of such policies¹⁰¹.

According to Green Alternative, Rioni Valley Defenders, who were considered as allies in the resistance, took completely unacceptable positions regarding the Pride when taking part in the events prejudicing human rights and thereby have discredited the entire resistance movement. Therefore, Green Alternative shall no longer communicate with the movement on the issues¹⁰². As for the campaign against Namakhvani HPP and the public movement Save Rioni Valley, they said that the Green Alternative was against the construction of Namakhvani HPP already before the formation of the public movement and would carry on the resistance¹⁰³.

CONCLUSION

In conclusion, we may say that the analysis of the decisions and the environmental permit issued by the State in relation to the implementation of the Namakhvani HPP project reveals gross violations of the procedural environmental principles established by the national legislation and international standards. Among the violated norms are the requirements for the involvement of the public and stakeholders in the environmental decision-making process.

Practically, the decisions made by the state agencies have failed to answer the legitimate questions raised among the public. Up to the date, among the unresolved issues remain the lack of trust in the quality of the environmental impact assessment documents and the surveys, the gaps in terms of public awareness/involvement, the ignorance of socio-economic interests of the local population, the problem of transparency of the information and data, and the reasonable doubts about the profitability of the projects. The above problems became particularly acute in their totality regarding Namakhvani HPP notwithstanding the fact that the national legislation was fundamentally improved.

Consequently, the mentioned problems forced the public to turn to large-scale protests against the policies of building hydropower plants, opposed by the State with a repressive police system.

The authorities themselves contributed to the escalation of the process and left no room for substantive, constructive dialogue as the authorities had deployed much police forces for managing the protest demonstrations and introduced unjustified restrictions grossly violating the rights of local residents.

Taking into account the reality created at the place, detaining a person for the reasons of participating in a legitimate assembly was considered arbitrary and unjustified. Imposing unjustifiably

¹⁰⁰ See more information at: <https://bit.ly/3k1xyi0>.

¹⁰¹ See Statement of the Center for Social Justice: <https://bit.ly/36LjHV4>.

¹⁰² See Statement of Green Alternative in full: <https://bit.ly/3wWrTwm>.

¹⁰³ See Statement of Green Alternative in full: <https://bit.ly/3xRNC3D>.

and disproportionately high penalties on the protesters had a chilling effect on the demonstrators and equaled to indirect restrictions on the right to assembly.

Finally, the authorities try to create some obstacles and prevent the legitimate and peaceful social protest of *Rioni Valley Defenders*. The State uses the law enforcement system to pursue its rigid, repressive and violent policies and grossly violates the fundamental rights to assembly/demonstration, expression, free movement of persons guaranteed by the Constitution of Georgia and international human rights instruments.

There are also a number of discrediting campaigns demonizing the opponents of the Namakhvani HPP construction most common of which was the campaign regarding xenophobic statements allegedly expressed by *Rioni Valley Defenders* against the Turkish investor. Representatives of both the Government and the company, as well as some opposition parties, were actively involved in the campaign. Therefore, the populist and hate speech rhetoric of some of the politicians feed the negative, xenophobic attitudes towards foreigners and migrants among the public, which may cause dire consequences and may be used by various ultra-right forces to achieve their own goals.

RECOMMENDATIONS

Human Rights Center calls on:

The Government of Georgia

- *To end the unjustified, disproportionate and arbitrary restrictions on both freedom of expression and freedom of movement; to give Rioni Valley Defenders the opportunity to protest peacefully, and to choose a way towards the meaningful dialogue with the population to resolve the problem.*
- *To take all possible measures to provide reasonable answers to the legitimate questions of local residents and the stakeholders regarding the expected impact of the Namakhvani HPP project and not to allow the implementation the project without an expert and thorough examination of all the necessary aspects of the impact on the environment.*

The Ministry of Interior

- *To respect the constitutional right to peaceful assembly guaranteed to citizens by the Constitution, which, in turn, may affect ongoing democratic political or public processes leading to the resignation of the Government or its members, or even to the change of the political system or the form of government;*
- *To change the unlawful and arbitrary practice of restricting the erection of protest camps/other constructions during peaceful assemblies;*
- *To change the illegal and arbitrary practice of detaining/ fining and restricting freedom of movement during peaceful assemblies.*