**Gener 2 response regarding alleged harassment of activists**

*Business & Human Rights Resource Centre invited Gener 2 to respond to the following item:*

# *- «Communities under Pressure - Findings from Valbona, Albania», Center for Human Rights, American Bar Association, 19 June 2019*

<https://www.americanbar.org/content/dam/aba/administrative/human_rights/communities-under-pressure-albania-june-2019.pdf>

*In response, Gener 2 sent the following statement:*

# Introduction

This document is an analysis of the report COMMUNITIES UNDER PRESSURE issued by the Center for Human Rights on June 2019. According to the report the primary purpose of this report “was to investigate harassment and pressures faced by activists and community members who have resisted HPPs in Valbona”, with a secondary objective of understanding the involvement of communities in the decision-making process regarding construction of hydropower plants. The report’s author has kept a limited focus by relying primarily on interviews with a small group of people that represent NGOs, academia, media, community members, etc., without establishing the credibility of these sources, especially those of academia, NGO’s and media representatives. All of those interviewed appear to belong to the same closed group of people who share stories and opinions with only one another, creating a mechanism that reinforces their beliefs. There does not seem to be a challenge presented to those interviewed to substantiate their claims or beliefs. In addition, this report is skewed in its view because there is no context provided regarding the development of the energy sector, no legal analysis of the claims raised, nor interviews with policy makers at the time the project came into existence or even current government representatives, representatives of the business community, supporters of the project, etc. Most of the information presented in this report is opinions of individuals without any evidence supporting the claims. In order to keep it short, the focus of this analysis will be on some of the harassment allegations because in our view this is the most important point of discussion, while the other technical and legal issues are secondary in nature compared to human rights. It is important to understand that any technical, economical and legal allegations and interpretations in the report, have been addressed in the court system where verdicts have been issued and are publicly available. Any commentary from us or any other parties regarding matters already answered in the court adds no real value. However, inside the context of these verdicts we will address some of the secondary issues to clarify these for the readers.

# Project Context

Until 2006 Albania has suffered energy shortages lasting for days and weeks at a time. To counter this problem, at least in the short-term, as much as 50% of the energy consumed within the country is imported (the number varies between 30-50%), sometimes through loans. Policies were put in place a decade ago to develop renewable energies. Lacking the necessary funds to develop the energy sector, the government throughout the years has issued concession licenses to private companies. Such projects are built and operated for 35 years by private entities and at the end of this period are returned refurbished to the government which attains the ownership. It must be emphasized that these projects are initiated by the government, are owned at the end by the government, and are built with private investments. Some of the benefits that arise from this project for example are: increased energy production for the entire country, including Tropoja, capital injection in the region due to the development of the project, employment of locals during and after construction, investments as part of corporate social responsibility, improved infrastructure, and an improved energy system. In addition, a hydropower plant generates cash for the government in the form of concession fees, profit tax, VAT, custom duties from import clearance, local taxes, etc.

Another area of development under focus by the Albanian Government is tourism. In recent years, Valbona Valley has seen a growth in tourism which for the most part consists of small hotels, buildings and houses, built without a development plan, without any studies, without any supporting infrastructure for waste management, quality assurance, electricity and permits. Nevertheless, this industry is one of the main sources of income for some of the local population. The Albanian government, unable to fund the development of tourism in the area, understandably has turned a blind eye to the questions of illegality and lack of permits and has allowed tourism to organically grow to its current shape and form which offers services that do not follow any established standards.

The plans for the development of the energy sector, which is one of the fastest growing sectors in the country, have also taken into account the growing tourism and its increasing demand for electric energy. In the views of the policy makers and the experts in charge, Albania needs to have a sustainable economic growth where tourism and the energy sectors are both developed simultaneously without harming one another. The development of the project by Gener 2 takes into account this and other constraints, such as the environmental and social impacts. For example, the project site is chosen not to impact the touristic areas, the ecological flow in the river is calculated to be twice of that required by the law, water will be diverted through tunnels instead of pipes and this costly option was chosen by us to minimize the impact on the environment, the powerhouses are constructed in conformance with the local architectural characteristics, etc. Gener 2 has started to rehabilitate all of the areas that are impacted by the construction activities. In addition to that, together with the local authorities, the local representatives, the Protected Area Agency, the Forestry Department, Ministry of Tourism and Environment, etc., Gener 2 at its own initiative, without any legal obligations and as a part of its Corporate Social Responsibility philosophy, has developed rehabilitations plans (currently under implementation) which restore areas that have been damaged by activities unrelated to the construction of the hydropower plants, such human activities, uncontrolled tourism, and natural factors. At the moment Gener 2 has rehabilitated thousands of square meters of damaged park areas (emphasis must be placed on the fact that these areas were already damaged before the works for the hydropower projects started), has planted several hundred trees, it is repairing river banks, and it will continue to do such rehabilitation in the near future.

This development is considered by those that have invested in tourism as an encroachment in their territory, prompting them to engage in a campaign against the development of the hydropower projects. NGOs such as TOKA are founded and operated by people who have had very close ties, or are family members of hotel owners in the valley. Furthermore, they gather funds from organizations that focus on the protection of the environment. A prolonged conflict with hydropower developers provides excellent conditions for such NGOs to request funds in the name of the environment. Unfortunately, their uncontrolled and unstandardized practices of running activities are damaging the valley at an alarming rate and at the moment there are no studies of their impact. The United Nations states the following about tourism: “UN Environment research has indicated that the tourism sector’s consumption of key resources – energy, water, land and materials (such as fossil fuels, minerals, metals and biomass) – is growing commensurately with its generation of solid waste, sewage, loss of biodiversity, and greenhouse gas emissions. In a ‘business-as-usual’ scenario, tourism would generate through 2050 an increase of 154% in energy consumption, 131% in greenhouse gas emissions, 152% in water consumption and 251% in solid waste disposal. This is why sustainability must now define tourism development in the 21st century.”

Although, Gener 2 has offered to provide its support in having a healthy environment and to help the tourism in the area, it been subjected to defamation and libel campaigns, including several court proceedings. After failed protests with very small numbers of participants, after failing to gather support nationwide, after failing in abusive litigations, these businesses/NGOs are using another tactic which is the fabrication of harassment allegations. Gener 2 has been very respectful towards all the opinions and comments and has tried to resolve every issue amicably. Considering the long time we have been present in the area and the great relationships we have developed with the local community, the harassment allegations are a surprise for us but also a low tactic.

# Inaccuracies

The reports starts with the erroneous figure of 11 additional HPPs that are planned to be built in the valley. This statement has its roots in initial project studies and proposals done in the area by different companies. However, the real number of the projects already has been presented to the community. It has been publicly announced by the authorities and this can be very easily checked with government agencies. There is 1 additional HPP planned at the end of the valley and 2 more outside of the park. Thus, the number used in the report is glaringly unverified by the report’s author. It appears that the author has taken at face value statements made by people without any knowledge, or limited knowledge, or outdated information, or that he or she has been misled by incorrect information considering that the number of 11 HPP has already been declared publicly not to be true. This is a very simple fact that unfortunately raises doubt as to the integrity of the report. That is, if the report does not accurately report easily verifiable basic data, how sure are we about the accuracy of the information in the report that is not so simple to verify?

# Unsubstantiated Harassment Allegations

The author attempts to establish a causality link between the anti-HPP activism and harassment by the authorities, but this link is imaginary almost in every case. There are several examples used in this report where the people who are portrayed as victims describe their actions, the response by the authorities and then their opinion on why it happened. The main theme in these examples is as follows: the individual making the statement commits an act that is illegal, gets reprimanded or caught by the authorities, and in return blames the company Gener 2 for law enforcement taking action against illegal activities. This is considered disproportionate because according to these individuals there are others doing the same illegal actions and are not being caught. The report offers absolutely no evidence to prove this allegation of disproportionality.

For example we have the case of the person who protested against a rockfall by blocking the national road. In the statement, at no point in time does it appear that the police have taken actions against free speech, but they have acted in accordance with the law that prohibits blocking national roads without a permit. There are many cases in the country where protests of any nature have resulted in clashes with the police, followed by arrests, due to the fact that the roads have been blocked illegally. This is not an isolated idea. Indeed, other democratic countries have similar laws. The American Bar Association who wrote the report should be aware that according to the American Civil Liberty Union “A protest that blocks vehicular or pedestrian traffic is illegal without a permit”. Being arrested for blocking roads does not appear to be an isolated Albanian or a Gener 2 related incident. Also, it does not appear from the report that the person in question was in possession of such a permit. If we are to use only the knowledge presented in the report, assuming we do not have any further knowledge, how is it reasonable to conclude that when a protestor is detained/arrested for admittedly violating the law that anyone else is at fault - Gener 2 or otherwise? How does one draw this conclusion? Where is that investigation-established link?

In investigating such serious allegations as human rights violations, it is important to clearly see the situation. Some other actors’ perspectives in the situation were not included in the report. To demonstrate, there is another case where an individual has been charged with stealing electricity and somehow Gener 2 is presumed to be at fault for the fact that a person gets caught and charged with theft. The report’s interviewee describes how he has been accused of tampering with his electricity meter (three loose screws). The context here is important. For the past 3-4 years, the government of Albania has taken an extremely tough stance on electricity theft. Hundreds, if not thousands of people have been arrested for the slightest infraction when it comes to the theft of electricity, even those falling behind in bill payments. This tough stance has been controversial in the country but the fact is and remains that there is a zero-tolerance policy on electricity theft. The authorities make regular and frequent inspections regarding this matter. Simply running a search in Google on “electricity theft in Albania” will give you an understanding of the situation being explained here. Remember, this is a poor country borrowing a substantial amount of energy to meet its energy needs. And yet somehow again, according to this report, Gener 2 is allegedly responsible for the illegal actions of someone? The individual interviewed in the report goes even further to state that he also was caught building a structure illegally, albeit small and that again it is Gener 2’s fault he got caught. Illegal construction is considered a serious crime in this country and just like the electricity theft is being fought relentlessly by the current government. Gener 2 is not expressing opinions on these matters, neither providing commentary on the government policies, but it is simply stating facts. An individual has been caught committing crimes and surprisingly this individual blames Gener 2. Yet, if the report’s author had investigated this a little further, perhaps this would have helped the ABA determine disproportionality, as part of their report’s objectives.

The list of these absurd allegations goes on. Each of these with a criminal caught and blaming Gener 2 with no further investigation or evidence. Again, human rights violations is serious. Most examples of self-reported incidents do not seem to make sense. One reported denial of welfare as a punishment. What? How? What does Gener 2 have to do with this? How is the link established? Why hasn’t this individual gone to court? Has an independent legal expert viewed his case to provide commentary or did the author simply record this as a fact? Another person is caught without a vehicle registration and again it is the fault of Gener 2?! Someone else gets fired from their job, and Gener 2 again is behind this, but only through an inkling and no other evidence. Did the reporter contact this alleged subsidiary to verify the claims stated in the report? What is the name of this subsidiary? Given enough information, Gener 2 would gladly launch an investigation regarding any misconduct from any of its subsidiaries. Moreover, when these individuals are faced with the question “How come you did not report this to the police?” the answer according to the report is “We do not trust them”. Being a member of NATO, a candidate member for EU, one would think that Albania would have at least one single institution that can be trusted and willing to speak, but the authors did not include any comments from any authorities, if any were contacted at all.

To be fair, the report states a few times that no links can be established for some of the claims, but for the majority of them it remains silent and it gives the erroneous impression that these allegations are true. Furthermore, to claim a disproportionate use of formal processes as evidence of Gener 2’s is a causal fallacy. As a business in the area, Gener 2 has been subjected to the same unreasonable amount of inspections but it is not blaming the anti-HPP movement. Any individual or entity is responsible for its own actions and cannot blame someone else when they are caught breaking the law. The accusations of those interviewed are clearly misrepresentation of the facts, inaccurate, false, biased and at times intentional slander, libel and defamation.

# Reporting Bias

Another problem with the report’s one sided approach is the missing perspectives of other actors in the report. While it is true that Gener 2 refused to participate in the interview process, it is partially due to pending litigations and also due to the fact that it could not verify if it was the American Bar Association sponsoring this mission. One of the authors, contacted Gener 2 stating that it was hired by ABA and that person could provide evidence to support this fact if necessary, but we contacted the American Bar Association twice by email and we received no answers. Regardless of this fact, we freely made available to the person who contacted us the ruling of the first court case which is a 60-page document that covers almost the entire spectrum of legal claims. Furthermore, Gener 2 is not the only opposing side of the argument. There are many other people in the area who support the project and that claim to have been subjected to threats for doing so. If the authors had done their work diligently they would have surely mentioned some of these cases. Also, there are works done by Gener 2 for the community and most recently the planting of several hundreds of trees where almost every single one of them was cut the next day by those that oppose the project.

# Wrong Legal Basis

Another large omission in the report is a legal analysis. The report wrongfully assumes that public consultations were a legal requirement and that they have never been done. The report simply refers to the idea that there is an obligation for public consultations, a requirement of Aarhus Convention, without checking if this is actually the case. Article 6 of this convention states that there is a list of activities that must undergo public consultations and if the activities are not on the list, it is up to the governments to decide whether consultations are required or not. The activities that must undergo a public participation process are listed in Annex I of the convention where projects such as hydropower plants similar to the one mentioned in the report, are missing. Nevertheless, there is another source that may require public consultations and that is the Albanian Law. It turns out that the Albanian Law made no such provisions at the time the project licenses were issued. Nevertheless, Gener 2 as part of its Corporate Social Responsibility process held meetings with the local community and this is mentioned in the report in passing when referring to the court’s decision regarding signatures. The matter of signatures is irrelevant once one understands that the collection of signatures was not done as a part of a legal process with strict and clear requirements but was handled only as a part of an internal procedure. It should be noted that currently the law has changed and public consultations are indeed a requirement for such projects.

# Suppressing Evidence

Furthermore, the report wrongfully claims that the reason a lawsuit filed on May 2017 was dismissed, was due to the fact that “the plaintiffs did not have standing to sue for environmental purposes”. Gener 2 made this ruling available to the authors prior to them writing this report and it is surprising that out of 60 pages of explanations on issues regarding the legality of permits, procedures, environmental impact assessments, etc., where claim after claim are struck down by legal reasoning, the one mentioned in the report is that “the plaintiffs did not have standing to sue for environmental purposes”. If the case would have been dismissed only due to this fact, the court would have not bothered responding to all the other claims raised. Almost every question of illegality has been resolved in the court room. Another interesting fact about this case is that half of the plaintiffs are members of the same family of hotel owners.

Last but not least, the report also presents the court case that Gener 2 has brought against TOKA and some of its supporters as a threat which in legal terms is “a menace of bodily harm, such as may restrain a person's freedom of action”, when in fact the context of the case is defamation and libel, far from a threat. If one would read the court documents one would understand the reasons that pushed Gener 2 after repeated attempts of trying to hold discussions on the issues and after providing evidence dispelling the myths propagated by TOKA, to pursue legal action which is within the rights of anyone to do so, especially when the other party shows no goodwill or makes no attempts to negotiate in good faith. The report surprisingly chooses to portray this case as a threat by the company while the actions of hotel owners and other business in the area, are depicted as activism. TOKA and its supporters, for the most part hotel owners in the valley and their family members, for a long time have very actively engaged in a campaign of misinformation. The President of TOKA operates a website that advertises touristic activities and it charges fees for tours and hotel bookings (her email address is the primary point of contact and it favors one of the hotels more than the others), has lived in one of the hotels in the area for many years (the one favored by the website), it is rumored to have an office there, and draws the support of these businesses. The claims of Disproportionate Use of Formal Processes falls apart if the report would have investigated the licenses and the permits of these hotels, which for the most part have no construction permits, no environmental permits, improper waste management and treatment systems, lack of food certifications, etc. In our opinion, if there would have been even a normal formal inspection process regarding the legality of the businesses, they would have been closed down for violating the law. However, no entity has engaged in a process of this kind and certainly claiming that activism against hydropower plants is the source of unfair inspections and that Gener 2 has anything to do with it, is libel. Gener 2 has taken no action of any kind against any of these businesses as it is not our place to dictate policy or enforce the law. On the contrary, the company has provided its support to these business. While Gener 2 follows the law to the letter and does not condone any illegal activities, it is also aware that for many people in the area tourism serves as their primary source of income. Therefore, it has helped the community to develop a better infrastructure, rehabilitate damaged areas, fixing river banks to prevent flooding, improving some touristic sites, bringing electricity for the first time in one of the villages, etc. Gener 2 is a member of the community now and it is doing everything possible to improve the area. As a conclusion, after many rounds of discussions with TOKA and its supporters, at times witnessed by various NGOs, embassies and other parties, a defamation claim was brought to court to stop the slandering campaign. Never in our claims have we asked the court to stop peaceful assemblies or to infringe the right of speech. Also, regardless of the legal battles we are determined in our road of providing social investments for the community.

# Conclusion

The report is inaccurate in its conclusions, as it starts with wrong figures (11 HPPs) and the author has made little or no effort in truly understanding the issues or simply does not understand the problems. The report portrays a community under threat by a company and by the government but it does so using the beliefs and opinions of unknown people. There is hearsay and opinions about links and collusions between different people at different government levels and Gener 2, going as far as complaining about violations of the law that are being punished. In a few words everything that happens is Gener 2’s fault. However, compared to the number of legal infractions in the area and how most of the businesses there operate with little or no permits, the claim of Disproportionate Use of Formal Processes is incongruous with the reality. The report takes a stance on public consultations referring to Aarhus Convention and claiming that the company has failed to follow the law, when in fact the opposite is true. There was no legal obligation for the company to hold public consultations but the company was already ahead of the law and, perfect or not, it has completed this process. The report also misrepresents court decisions, omits information, and appears to favor one side by cherry picking information. Unfortunately, the report has a strong confirmation bias decorated with the occasional statements by the authors of not being able to verify certain claims. While the report claims to be an investigation on allegations of harassments, in reality it reads more like a selection of opinions and beliefs chosen by the author. There are many other inaccuracies in the report where the author has taken the simplistic approach of stating the case but without any efforts made in verifying the veracity of the statements. This is the case with claims on water shortages due to the construction works (it is so easy to verify the fallacy of this claim because the water system collects water several kilometers upstream from the construction site and it does intercept with the tunnel works). Other parts of the report illustrate report bias or evidence suppression. An example is the approach taken on describing a counter claim in court by Gener 2 by selecting to quote a part of this claim which is “wasting the court’s time”. What the reports fails to state is the rest of the arguments presented in the case and how the chain of court cases filed by TOKA and its supporters is also harassment against a legal entity. It is considered abusive litigation to file the same arguments over and over again in the court system. Given that the author has provided snippets of the court cases, he or she must have also read the claims made by each side and should have presented all the sides of the story.

In conclusion, the report gives homework to the government and Gener 2. While we cannot speak on behalf of the government, we can address the homework assigned to us.

* Gener 2 always complies with the law on every aspect and it conducts public consultations as required. The report makes the wrongful assumption that Gener 2 does not comply with its responsibilities.
* Gener 2 has in a place a grievance mechanism which has been active and functional since the beginning of the project. We have addressed all the claims that have been presented to us, including human rights impact and continue to do so effectively.
* Gener 2 has in a place a strict vetting process for its subcontractors.
* Gener 2 has not, it is not, and will never retaliate or consider retaliating against TOKA or any of the community members. The right of a peaceful assembly and the right to be informed are not rights that require the approval of Gener 2 to be exercised and Gener 2 does not engage in any way in the violations of such rights. Gener 2 is a strong supporter of the right of a peaceful assembly and the right to be informed.

# Final Note

Gener 2 has taken many steps to resolve any issues and is in constant discussions with representatives of the community, with the community members, with the local authorities, the central government, and environmental experts. Every project has its opponents and proponents but Gener 2 at its core is a company that resolves any problems through constructive dialog and holds high standards in all of its projects. Projects of any kind cannot be built through conflict as conflicts of any kind are counterproductive and do not provide a sustainable environment for success. Gener 2 has a responsibility towards its work force, the country as a whole, the communities where it resides and also to the economy as a whole.