

Law, Resistance, and Development in Georgia: A Case of Namakhvani HPP

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Abstract : The paper will contribute to the discussion on the pitfalls, limits, and possibilities of legal and rights discourse in opposing large infrastructural projects in the context of neoliberal globalisation. To this end, the paper will analyse the struggle against the Namakhvani HPP project in Georgia. The latter has been hailed by the government as one of the largest energy projects in the history of the country, with an enormous potential impact on energy security, energy independence, economic growth, and development. This takes place against the backdrop of decades of market-led -or neoliberal- model of development in Georgia, characterised by structural adjustments, deregulation, privatisation, and Laissez-Fair approach to foreign investment. In this context, the Georgian state vies with other low and middle-income countries for foreign capital by offering to potential investors, on the one hand, exemptions from social and environmental regulations and, on the other hand, huge legal concessions and safeguards, thereby participating in what is often called a “race to the bottom.” The Namakhvani project is a good example of this. At every stage, the project has been marred with violations of laws and regulations concerning transparency, participation, social and environmental regulations, and so on. Moreover, the leaked contract between the state and the developer reveals the contractual safeguards which effectively insulate the investment throughout the duration of the contract from the changes in the national law that might adversely affect investors’ rights and returns. These clauses, aimed at preserving investors' economic position, place the contract above national law in many respects and even conflict with fundamental constitutional rights. In response to the perceived deficiencies of the project, one of the largest and most diverse social movements in the history of post-soviet Georgia has been assembled, consisting of the local population, conservative and leftist groups, human rights and environmental NGOs, etc. Crucially, the resistance movement is actively using legal tools. In order to analyse both the limitations and possibilities of legal discourse, the paper will distinguish between internal and immanent critiques. Law as internal critique, in the context of the struggles around the Namakhvani project, while potentially fruitful in hindering the project, risks neglecting and reproducing those factors -e.g., the particular model of development- that made such contractual concessions and safeguards and concomitant rights violations possible in the first place. On the other hand, the use of rights and law as part of immanent critique articulates a certain incapacity on the part of the addressee government to uphold existing laws and rights due to structural factors, hence, pointing to a need for a fundamental change. This 'ruptural' form of legal discourse that the movement employs makes it possible to go beyond the discussion around the breaches of law and enables a critical deliberation on the development model within which these violations and extraordinary contractual safeguards become necessary. It will be argued that it is this form of immanent critique that expresses the emancipatory potential of legal discourse.

Keywords : law, resistance, development, rights

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