Convention on the Conservation of European Wildlife and Natural Habitats	

COMPLAINT FORM

***NB:** Complaint forms must be submitted in electronic word format, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis.*

Please, fill in this form and send it to the attention of:

Bern Convention Secretariat
Directorate of Democratic Participation
Council of Europe
F-67075 Strasbourg Cedex E-mail: Bern.convention@coe.int

Earth Law Center - USA
&
Earth Thrive - UK

on behalf of Opposition to Skavica Dam-OSD (Albania), Group of Rural Activists of Dibra-GARD (Albania), North Green Association (Albania), and GLV Integrimi (Albania)

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Date: May 26, 2023

Electronic Signature:

1. Please state the reason for your complaint (refer also to the Contracting Party/ies involved and the Articles of the Convention which might be violated).

Albania has violated Articles 2, 3.1, 3.2., 4.1, and 10.1 of the Bern Convention by approving Law no. 38/2021 and the consequent signing with the US company Bechtel International Inc. of a contract for the design and construction of the Skavica Hydropower Plant (Skavica HPP) on the Drin River. Albania is also neglecting to take necessary administrative measures to protect species and habitats (listed in Appendices I and II and Resolutions no. 4 (1996) & no. 6 (1998)), including because the Drin River should be declared an Emerald site according to the 2011 Biogeographical Seminar.

The dam is planned in the middle of the most important biocorridor for the critically endangered Balkan Lynx, the only connection between the last stronghold populations. The reservoir will flood several thousand hectares of freshwater habitat, riparian and other broadleaf forests, grasslands, and agricultural land. It would destroy the last free-flowing stretch of Drin river inhabited by at least five Balkan endemic species of fish from Resolution 6 (*Eudontomyzon stankokaramani, Cobitis ohridana, Barbus rebeli, Rutilus ohridanus, Pelasgus ohridana, Salmo "farioides"*), adding to the impacts of four existing hydro power plants, with combined power capacity of 1400 MW.[1] The site of Skavica is also very close to a UNESCO Heritage Site, the beech forests of National Park Shebenik-Jablanicë.

As the flood zone will cover an extended area and the dam height will be between 90 and 147 meters (depending on the chosen alternative), there are no possible measures that can be taken to prevent irreplaceable changes and damages to the environment, thus leading to degradation instead of the sustainable development of the environment in this area. Construction of the Skavica HPP will seemingly continue unabated. In 2020, Prime Minister Edi Rama revealed the plans to build the plant with state funds.[2] The Skavica hydropower plant has already had one round of EU assistance canceled.[3] The Albanian government requested funds for the project from the US Development Finance Corporation (DFC)[4], the UK Export Finance (UKEF)[5], the HSBC Bank[6] and as a Flagship under the EU Economic and Investment Plan.[7]

2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected?

Habitats: C3.55 Sparsely vegetated river gravel banks, C3.62 Unvegetated river gravel banks, E1.55 Eastern sub-Mediterranean dry grassland, E5.4 Moist or wet tall-herb and fern fringes and meadows, F9.3 Southern riparian galleries and thickets, G1.21 Riverine *Fraxinus - Alnus* woodland, wet at high but not at low water, G1.7 Thermophilous deciduous woodland, H1 Terrestrial underground caves, cave systems, passages and waterbodies, H3.2 Basic and ultra-basic inland cliffs.
Mammal species: Balkan Lynx (*Lynx lynx balcanicus*), Eurasian Otter (*Lutra lutra*).
Bird species: Rock partridge (*Alectoris graeca*), Eurasian Collared-Dove (*Streptopelia turtur*), Eurasian Nightjar *(Caprimulgus europeus*), Great White Egret (*Ardea alba*), Little Egret (*Egretta garzetta*),

[1] *Cascade Drin*, KESH, http://www.kesh.al/asset/kaskada-drin/(last visited Oct. 3, 2022).
[2] *See* https://balkangreenenergynews.com/albania-secures-lowest-solar-power-price-in-balkans-in-karavasta-auction.
[3] Western Balkans Investment Framework, Skavica Hydro Power Plant, accessed 12 July 2022.
[4] Albanie: 1ère Phase de la Centrale Hydroélectrique Skavica, Energynews, 6 October 2021.
[5] UK Export Finance Supplier Fair: Skavica Hydropower Project, Albania, 20-21 October 2022, London, UK.
[6] Skavica do të kushtojë 1 miliard euro. Shteti do ta marrë borxh të gjithë vlerën në bankën HSBC, MCNTV, 12 January 2023.
[7] List of projects nominated by governments provided by the European Commission on 28 February 2022.

Pygmy Cormorant (*Microcarbo pygmeus*), Eagle Owl *(Bubo bubo)*, Short toed Eagle (*Circaetus gallicus*), Golden Eagle (*Aquila chrysaetos)*, Kingfisher (*Alcedo atthis*), Middle Spotted Woodpecker (*Leiopicus medius*), Syrian Woodpecker (*Dendrocopos syriacus*), Lesser Kestrel (*Falco naumanni*), Peregrine Falcon (*Falco peregrinus*), Red-backed Shrike (*Lanius collurio*), Lesser Grey Shrike (*Lanius minor*), Short-toed Lark (*Calandrella brachydactyla*), Woodlark (*Lullula arborea*), Barred Warbler (*Sylvia nisoria*), Ortolan Bunting, (*Emberiza hortulana*).

Fish species: *Eudontomyzon stankokaramani, Cobitis ohridana, Barbus rebeli, Rutilus ohridanus, Pelasgus ohridana, Salmo "farioides"* (*macrostigma* group).

3. What might be the negative effects for the specie/s or habitat/s involved?

For the critically endangered Balkan Lynx, the dam's construction site and planned flood zone will fragment its habitat by destroying the most important migration corridor for the estimated 20-39 lynx left in the wild. The only populations where breeding has been proven the last years (Mavrovo National Park in North Macedonia and Munella mountain in Albania) would become isolated, and the lack of gene flow between populations from both sides of the Drin River would probably lead to the extinction of the subspecies.

For native fish populations, many of them are endemic, and at least five are listed in Resolution 6. The Skavica reservoir will destroy their most important habitat in the Drin River as the existing reservoirs have heavily modified the other river stretches. The most extensive areas of riparian forests in the Drin basin would be flooded. The Skavica project would prevent Drin from being declared an Emerald site despite it being the only area in the Alpine biogeographical region for those species and habitats.

4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, or if the area has been identified as a NATURA 2000/Emerald network site?

Many of the bird species are in Appendix II of CMS and Annex II of the Bird Directive. Many other species and habitats are listed in the Habitats Directive,[8] including the priority habitat 91E0 - the most extensive areas of alder and willow riparian forests left in Albania. The Balkan Lynx (*Lynx lynx balcanicus*) has been assessed as critically endangered by the IUCN Red List. Further, Albania has entered into the Drin Memorandum of Understanding, is party to a joint agreement between Macedonia, Montenegro and Kosovo for the Balkan Lynx Recovery Program I, II, and III (aiming to secure a viable Balkan Lynx population), and has transposed the Water Directive Framework (requiring good ecological & chemical status in an environment without much anthropogenic impact).

5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?

The elaboration of the ESIA report is ongoing, expected to be published in mid 2023. Law no.38/2021 will be challenged by NGOs in front of the Albanian Constitutional Court. *Please see attached Exhibit B for more information on the overall impacts of the Skavica HPP.*

6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)

Additional information available in the appendix.

[8] Note that the transposition of the Habitats Directive is underway in Albanian law.

EXHIBIT A

Albania's Responsibility to the Natural Lakes of the Drin System (Prespa, Ohrid, and Skadar)

Prespa, Ohrid and Skadar are the largest, transboundary lakes on the Balkan Peninsula. In recent decades, Lake Prespa is under greater anthropogenic pressure which resulted in a drastic water level decline and an increase of the water trophic status[9]. The water level decline has continued over the last few years; causing a certifiable decrease in water quality as changes in the lake volume have a direct effect on the concentration of dissolved nutrients.[10] Because of its great size, Lake Ohrid has the highest degree of endemism worldwide; its uniqueness enables it to serve as an evolutionary hot spot and a potential reservoir enabling the survival of relict species.[11]

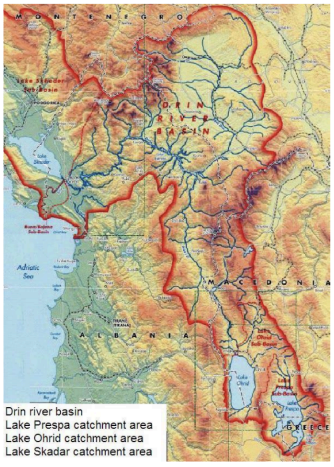


Fig. 1. Map of the Lake Prespa, Lake Ohrid and Lake Skadar and its catchment area

In 2011, Albania– alongside Kosovo, Montenegro, North Macedonia, and Greece – entered into the Drin 2011 Memorandum of Understanding.[12] Under the Memorandum the countries committed to "promote joint action for the coordinated integrated management of the shared water resources in the Drin Basin, as a means to safeguard and restore to the extent possible the ecosystems and the services they provide, and to promote sustainable development across the Drin Basin."[13] This includes safeguarding the health of the lakes that are within the Drin Basin – Prespa, Ohrid, and Skadar, which provide benefits to more than 1.6 million people who live within the five countries.[14] Further, the Memorandum establishes the Global Environment Facility (GEF) Drin Project which aims to promote joint management of transboundary water resources and is implemented by the UNDP and executed by the Global Water Partnership Mediterranean in cooperation with the UN Economic Commission for Europe.[15]

EXHIBIT B

Expected developments at the national level:

The Skavica HPP planning was previously partially funded by the Western Balkans Investment Framework (WBIF); however, the technical assistance was rescinded as the project implementation was not approved by the European Bank for Reconstruction and Development (EBRD). There are claims in the media that the government will search for funding for the estimated 1 billion Euro from US DFC Development Corporation, UK Export Finance and HSBC bank. Another 1 billion Euro is estimated for the people's displacement, according to the same media reports. This shows there is no clarity on the value for money for this project, considering that this project will be paid by Albanian taxpayers money.

Law on the design and construction of the Skavica hydropower plant: The Albanian government did not operate based on the procurement law for public works and public-private partnerships, which foresees open

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[9] Dragana Milosevic & Trajce Talevski, *Conservation Status of Native Species in Natural Lakes of Crim System (Prespa, Ohrid and Skadarlake) and Dangers of Commercial Fishing,* 21 Bulgarian J. Agric. Sci. 61 (2021) https://www.researchgate.net/publication/273510414_Conservation_Status_of_Native_Species_in_Natural_Lakes_of_Drim_System_Prespa_Ohrid_and_Skadarlake_and_Dangers_of_Commercial_Fishing.

[10] *Id.*

[11] *Id.*

[12] *This Drin Memorandum of Understanding,* Drin Corda, http://drincorda.iwlearn.org/drin-coordinated-action/drin-memorandum-of-understanding (last visited Oct. 3, 2022).

[13] *Id.*

[14] *Transboundary cooperation in the Drin River Basin,* International Water Power & Dam Construction (May 11, 2022) https://www.waterpowermagazine.com/features/featuretransboundary-cooperation-in-the-drin-river-basin-9690945/.

[15] *Id.*

procurement through competition. The contract for the first phase of the project was signed on 30 July 2021 (decision no. 485 dated 30.07.2021) following the passage of law no. 38/2021 (23 March 2021) entitled "*On determining the special procedure for negotiating and executing the contract with Bechtel International, INC, for the design and construction of the Skavica hydropower plant*." This is a special law which bypasses the existing public procurement legal framework, public-private partnerships, violating the constitutional principle of equality before the law (article no. 18) and freedom of economic activity of citizens (article 11, point 1), thus undermining the functioning of the rule of law. Furthermore, the parliamentary procedures require that the normal process for any draft law is to be initially consulted with the public. Even though this law impacts more than 8,000 people who are expected to be displaced, and greatly impacts the environment in the Black Drini valley in Dibra region, no one from the community, civil society or the local government was consulted before or was present during the parliament discussions about the draft law. This is evidenced by the parliamentary economic commission minutes of discussions taking place and participants. All the above make the law on Skavica project 38/2021 subject to Constitutional Court review and an application in this regard is undergoing.

Expected developments on the International Level

This law discriminates not only Albanian companies which did not have the opportunity to compete for this project, but also European companies, thus violating the Stabilization and Association Agreement with the EU (Albanian law no. 9590, dated 27.07.2006). In this aspect, interest groups may file a complaint with the MSA Committee regarding these violations. Once the ESIA is made public, the Skavica HPP will also undergo scrutiny for its compliance with the directives of the Energy Community Treaty to which Albania is party to. Any violations will be submitted in line with the required procedures.

EXHIBIT C

The Inherent Rights of Nature

Introduction: The Skavica Dam, if allowed to be opened, would violate the inherent rights of wild flora & fauna species and endangered natural habitats in Albania. Due to the shortcomings of traditional environmental laws, recognizing & enforcing the Rights of Nature is "necessary" to protect species & their habitats in accordance with the purpose & requirements of the Bern Convention (*see e.g.*, Arts. 4-7).

Rights of Nature and the Bern Convention: The Rights of Nature challenges the notion that Nature is mere property and instead acknowledges that natural entities—including ecosystems and plant and animal populations—possess inherent rights, just as humans do.[16] The Rights of Nature are similar to human rights but for all life on the planet.[17]

The Bern Convention supports consideration of the Rights of Nature. First, the Preamble of the Bern Convention explicitly recognizes the "intrinsic value" of wild flora and fauna ("Recognising that wild flora and fauna constitute a natural heritage of (...) *intrinsic value* that needs to be preserved and handed on to future generations").[18] As such, the Bern Convention takes an ecocentric, or Earth-centered, perspective, rather than taking the typical anthropocentric perspective that Nature's value is derived from its human benefits. Legal scholars have posited that "*entities that have value for their own sake*, rather than for the value they provide

[16] *See generally* Zelle et al., *Earth Law: Emerging Ecocentric Law—A Guide for Practitioners* (2021).

[17] *Concept Note,* Interactive Dialogue of the General Assembly on Harmony with Nature in Commemoration of International Mother Earth Day (Apr. 22, 2020) http://files.harmonywithnatureun.org/uploads/upload905.pdf.

[18] Convention on the Conservation of European Wildlife and Natural Habitats, (Sept. 19, 1979), https://rm.coe.int/1680078aff. *See* Chapron, Epstein, and López-Bao, *A Rights Revolution for Nature, Science* (2019), citing J. Raz, *The Morality of Freedom* (Clarendon Press, 1986) (emphasis added).

others, *can have rights*." Therefore, recognizing the Rights of Nature is the natural extension of recognizing Nature's inherent value.

Article 4 of the Bern Convention also supports, if not necessitates, consideration of the Rights of Nature (*see also* Articles 5, 6, 7, 10). Article 4 of the Bern Convention requires Contracting Parties to "take *appropriate* and *necessary* legislative and administrative measures" to conserve the habitat of wild flora and fauna species and endangered natural habitats. It may be impossible to achieve Article 4 in specific and the overarching purpose of the Bern Convention in general without fundamentally addressing root causes of ecological declines, such as by enforcing the Rights of Nature.

Conclusion: We ask the Secretariat to consider the Skavica Dam Project in light of the Rights of Nature. Specifically, we ask that the Rights of Nature be inferred based on the purpose of the Bern Convention and that they be incorporated into Article 4. More broadly, we ask that you consider the totality of our complaint based upon the Rights of Nature. In making this analysis, note that oftentimes Nature is determined to possess, at minimum, the rights to exist, thrive, and evolve naturally.[19] Additional legal analyses on the Rights of Nature and the Bern Convention available upon request.

EXHIBIT D

Social Impacts of the Dam (impacts on people, displacements, etc)

Residents of the Drin basin protested against the government sponsored HPP due to the proposed plant's risk of submerging 32 villages and 13,000 hectares, which protestors claimed will displace upwards of 12,000 people.[20] Activists claim that since Dibra has a large population of Indigenous people, as well as strong cultural, historical and ancient heritage, Skavica could be in violation of the UN Declaration on Human Rights. Further, a resident of Dibra claims that it will decimate the regional economy and drown out existing livelihoods, forcing residents to abandon the region en masse.[21] In addition to the 32 villages that will be directly affected by flooding, several other villages in the region will be subjected to a new microclimate as a result of the new lake formation caused by the damming of the river.[22] The resident argues that the dam violates Article 17 of the Albanian constitution which states: "*Limitations of the rights and freedoms provided for in this Constitution may be established only by law, in the public interest or for the protection of the rights of others. A limitation shall be in proportion to the situation that has dictated it. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights*."[23] The lack of autonomy for the region in the decision to build Skavica Dam is unconstitutional. According to the Social and Environmental Impact study, 35 villages on 14,146 ha of land could be affected.[24]

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[19] *See e.g.,* UN Harmony with Nature Initiative, http://www.harmonywithnatureun.org/rightsOfNature/. Colombian courts found the rights of ecosystems to protection, conservation, maintenance and restoration. *See id.* Thomas Berry found that nature has at least three rights: the right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth community. See https://www.therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence/.

[20] Eduart Halili, *Dibra Residents Protest against HPP in Skavica,* Albanian Daily News (May 16, 2022), https://albaniandailynews.com/news/dibra-residents-protest-against-hpp-in-skavica.

[21] Ferzileta Gjika, *HEC SKAVICA - paguhet nga Taxpaguesit Shqiptare! Te drejtat legjitime te banoreve!* Stop Skavica (Mar. 17, 2022), https://stopskavica.org/2022/03/17/hec-skavica-paguhet-nga-taxpaguesit-shqiptare-te-drejtat-legjitime-te-banoreve/.

[22] *Id.*

[23] Constitution of the Republic of Albania Nov. 28, 1998, art. 17, https://www.constituteproject.org/constitution/Albania_2016.pdf?lang=en.

[24] *Villages at Risk,* Stop Skavica, https://stopskavica.org/category/villages-at-risk/ (last visited Oct. 3, 2022) (Listing the following villages at risk: Fushe-Alie, Fusha e Kastriotit, Bllice, Muhurr, Luzni, Mustafe, Arras, Zall-Dardhe, Zalle-Sine, Topojan, Rreth Kale, Rec, Lugjej, Lacej, Koder-Leshaj, Kraj-Rec, Kalais, Gur-Kalis, Gjorice e Poshtme, Draj Rec, Zall Rec, Fushe-Muhurr, Vakuf, Vajmdhej, Kishavec, Gradec, Brezhdan, Bucev, Kanderr, Pergjegje, Arat-Poshtem, Rreth Kale, Selane, Topuze, Brest I poshtem, Fshati Kukej, Katund i Ri, Lazrej).

EXHIBIT E

Political Causes, Impacts of the Dam

Many claim the primary motivation to build the Skavica plant is to sever ties with the Russian energy sector and claim energy independence. A representative for the Albanian Power Corporation (KESH) stated: "The development of Skavica will reduce Albania's annual electricity imports by an average of 55% annually, increasing the security of the country's electricity supply."[25] However, taking the year 2020 as a reference, if Skavica were operating, it would contribute 12% of the country's energy needs for that year and supply an additional 20% of energy towards production of the three other dams in the cascade operated by the Albanian Power Corporation. Overall, taking year 2020 as a reference for the baseline data, Skavica would only contribute a total of 20% to the country's energy needs[26] and would only reduce the energy imports by 40%. Furthermore, the WB and the EU in its progress reports have highlighted the country's overdependence on hydropower which is dependent on rain. As Albania is among the countries most prone to climate change patterns in the western Balkans, which have an impact on rain reduction for the upcoming years, building another large dam will only reinforce this overdependence and go contrary to the country's own commitment to diversify the energy sector. This project is opposed by the residents and non-residents of the lower Dibra valley and general Dibra region for its devastating impact on people and environment. It is suspected that only political benefits from choosing Bechtel as the contractor are driving forward this project, given that during a previous project to build two smaller dams on the Black Drin river in 2016, the government led by the same Prime Minister Edi Rama, had a completely different official stance.[27] In opposition to building a large dam of this size, the former Minister of Infrastructure, Damian Gjiknuri, has earlier said[28]: "...the most optimal solution is the option of using two dams, taking into account the economic, social costs, other elements related to flooding and the best use of the Cascade...".

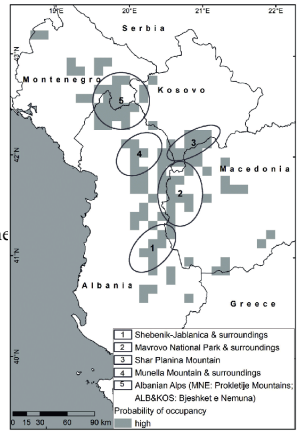
Another claim by the government that it will reduce the flooding of the Shkodra lowlands is not backed up by scientific data. On the contrary, the flooding is caused by shallow Buna river beds which cannot transport accumulated water during peak rainy reasons.[29]

EXHIBIT F

The Effect on the Balkan Lynx

The Balkan Lynx is a critically endangered species that activists use as an "umbrella" species, so by protecting this lynx, one protects the entire ecosystem that lives under it. It is a subspecies of the Eurasian Lynx, distributed in the south-west Balkan region.[30] The main threats to the species include its small population size, limited prey base, habitat degradation, and poaching – which all converge on the issue of its lack of territorial integrity.[31]

Below is a map showing the historical habitat of the lynx, and where it could be found in the years denoted. However, since a majority of these years, the species has dwindled so drastically they most likely cannot be found there anymore.



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[25] *Bechtel Signs Contract with Albanian Government for Skavica Hydro Project, supra,* note 2.

[26] *Ministri Gjiknuri: Po spekulohet qellimisht mbi Skavicen*, Republika E Shqiperise Ministria E Infrastruktures Dhe Ene https://www.infrastruktura.gov.al/en/ministri-gjiknuri-po-spekulohet-qellimisht-mbi-skavicen/.

[27] *See* Dr. Adriatik Balla, *Skavica - Me mire nje Diber pa hidrocentral apo nje Shquperi pa Diber?* (Mar. 6, 2022), https://stopskavica.org/2022/03/06/skavica-me-mire-nje-diber-pa-hidrocentral-apo-nje-shqiperi-pa-diber/.

[28] *Id.*

[29] Ferzileta Gjika, *Nevojat Energjitike Shqiptare dhe Projekti Skavica,* Gazeta Dielli (June 7, 2022), https://gazetadielli.com/nevojat-energjitike-shqiptare-dhe-projekti-skavica/

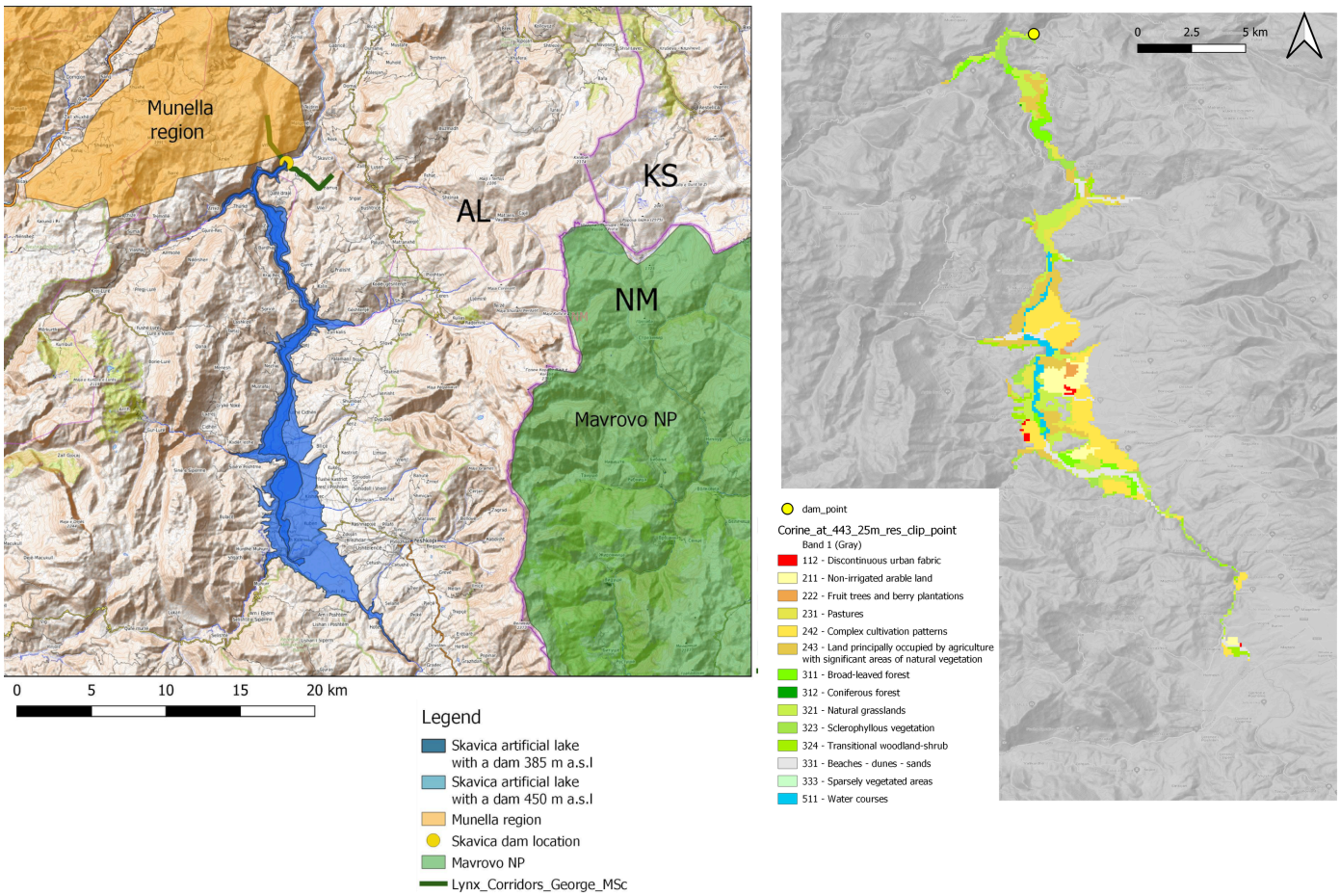
[30] Dime Melovski et al., *Balkan lynx and the Balkan Lynx Recovery Programme,* 14 CATnews (2021) https://www.researchgate.net/publication/355152949_Balkan_lynx_and_the_Balkan_Lynx_Recovery_Programme.

[31] *Id.*

Currently, there are between 40 and 70 individuals left in the wild, split between Macedonia, Montenegro, Albania, and Kosovo.[32]

Albania, Macedonia, Montenegro, and Kosovo have partnered since 2006 to secure "the long-term existence of a viable Balkan Lynx population in its historic distribution range in harmony with and supported by local communities".[33] The program has three conservation targets: 1. the Balkan Lynx, 2. the Balkan Lynx's prey, 3. Balkan Lynx's habitat.[34] All three of those targets will be affected by the construction of the dam, as habitat will be compromised for both the predator and the prey.

Balkan Lynx Corridors



[32] Daniel T. Cross, *Critically endangered Balkan lynxes still have a fighting chance,* Sustainability Times (Sept. 13, 2019) https://www.sustainability-times.com/environmental-protection/saving-critically-endangered-balkan-lynxes-in-macedonia/#:~:text=This%20critically%20endangered%20feline%20subspecies,%2C%20Montenegro%2C%20Albania%20and%20Kosovo..

[33] *Balkan Lynx Recovery Programme*, Protection and Preservation of Natural Environment in Albania, https://ppnea.org/portfolio-item/balkan-lynx-recovery-programe/?lang=en (last visited Oct. 3, 2022).

[34] *Id.*