

To: Ms. Victoria Mequez-Mees
Chief Accountability officer
Independent Project Accountability Mechanism
European Bank for Reconstruction and Development

Copy: Audit Committee
Board of Directors, EBRD

18 January 2022

Dear Ms. Mequez-Mees,

Thank you very much for sharing the IPAM Compliance Review Report (CRR) on the Shuakhevi project and for the opportunity to comment on the draft Management Action Plan (MAP). First of all, as Requesters, we appreciate the thorough review and the number of important conclusions and recommendations from IPAM to Management, both for the EBRD policy and practice, and for the on-going project implementation. The IPAM report brings justice to the Requesters and to numerous other stakeholders, who have raised their grievances with regards to the sub-standard implementation of the Shuakhevi project.

It is important to note, that although the construction stage of the project is over, the operation of the project is on-going and the harms that the project has inflicted on local communities and the environment are still there and require remedies. In this regard, the IPAM CRR recommendations can and should play an important role in, on one hand, bringing the project into compliance and, on the other hand, delivering effective remedies to communities and the environment.

Second, in view of the serious nature of the IPAM findings, as well as the urgent need for Management action to ensure compliance and remedy for the project's failings, Requesters find the Management response to the review and the draft Management Action Plan to be unjustifiably dismissive and superficial. The draft MAP demonstratively undermines the importance of IPAM's work and attempts to escape accountability for the deficiencies of the Shuakhevi projects and the ongoing harm caused by it.

Please, find our comments below. We hope that they will be useful and will be taken into consideration in the finalisation of the MAP and the monitoring by IPAM in the future. The EBRD needs to address the IPAM recommendations in a transparent way that responds to the needs of Requesters and affected communities for more information and remedial measures with regards to geological risks, impacts on local water availability and biodiversity loss.

Last but not least, IPAM should continue monitoring of the MAP implementation until it receives sufficient evidence that the Shuakhevi HPP project is compliant with EBRD standards (and relevant EU standards), and that the harm done on communities and on biodiversity is properly remedied by the EBRD, its client and responsible Georgian authorities.

Sincere regards,

Manana Kochladze
CEE Bankwatch Network

Dato Chipashvili
Green Alternative

Bankwatch and Green Alternative comments on the EBRD draft Management Action Plan on the Shuakhevi HPP Project Compliance Review

1. Policy level recommendations

Recommendation 4 on EBRD projects achieving No Net Loss of biodiversity

Requesters appreciate the IPAM CRR findings and Recommendation 4 on EBRD projects achieving No Net Loss (NNL) of biodiversity. We can also agree with EBRD Management that the Environmental and Social Policy has evolved since 2008 through the revisions in 2014 and 2019. It is also fair to suggest that “*EBRD’s practices have been updated*” with regards to items such as project area of influence and collection of baseline data.

However, there is a difference between policy and practice. The new ESP of 2019 has been improved, however, it would be important for Management to assure IPAM, Requesters and other stakeholders that the improved practices are already in place. In this regard, it should be stressed that there are a number of IPAM requests (e.g. Amusar gold mine, Armenia, and Corridor Vc projects, Bosnia and Herzegovina) that point to persisting concerns with regards to incomplete collection of biodiversity baseline data, inadequate impact assessments and monitoring by the EBRD.

Therefore Requesters recommend that this action should remain open and EBRD Management should provide more information about how the new policy provisions on achieving No Net Loss of biodiversity are implemented. If this is not done in the scope of the Shuakhevi project MAP implementation, then we suggest that PR 6 implementation with regards to baseline data collection and No Net Loss should be the subject of an IPAM Advisory.

IPAM has the mandate to “*Identify institutional learnings that distinguish common challenges, provide constructive recommendations and promote a culture of continuous learning at EBRD*”. In line with this mandate, we suggest that IPAM should analyse data emerging from its casework and produce an Advisory report regarding biodiversity, in line with IPAM’s institutional learning and advisory function (Project Accountability Policy, #3.2).

2. Project level Recommendations

PCM recommendation 5 on engagement with Affected Communities

The requesters appreciate the IPAM CRR’s recommendation that the Bank should work with the project company “*to compile a definitive list of project affected communities including how the project affects each such community*” and obtain inputs from these communities.

According to the MAP, due to the completion of the construction works, the majority of impacts have ceased and various iterations of the Stakeholder Engagement Plan (SEP) reflect it, thus no further action is proposed. Management’s claims are very far from the reality in Adjara, Georgia, as it is simply not true that impacts have ceased with the end of construction works. The hydrology of the region has been impacted irreversibly and local communities will suffer the consequences, for example with loss of water springs, as a significant long-term impact of the Shuakhevi project.

Indeed the updated SEP lists a number of informational meetings with local communities held from October 2019 to January 2020. Yet the new SEP does not provide information about what project related impacts have been identified for separate local communities, what inputs were collected from the affected people, and what efforts were made by the company to resolve them.

According to updated SEP (Chapter 6: “Stakeholders and Corporate Social Responsibility Programmes”), within the company’s CSR programmes, the EBRD’s client provided “food baskets” to 140 socially vulnerable families in the project affected villages, both in Khulo and Shuakhevi areas, during the COVID-19 pandemics; purchased respiratory equipment for the newly opened Batumi Republican Hospital, and primary healthcare equipment (face masks, gloves, antiseptic liquids) to the Skhalta Ambulatory.

According to Didachara villagers, the meetings with the company were mainly informational, promising villagers to fulfill proposals of the village regarding road, access to lands etc.. Local people have informed us that to date none of the promises have been fulfilled by the company, except buying antifreeze for the school.

Makhalakidzebi villagers informed the Requesters that the problems with water and landslides remain and there were no meetings organized with them. The SEP mentions a meeting with teachers and pupils in this village. Villagers already drafted a collective letter towards the chairman of the Adjara Autonomous Republic requesting an international commission to assess impacts of the project on Makhalakidzebi village and, based on the conclusions, ensure resettlement of the villagers.¹

Therefore, as Requesters we strongly believe that engagement with stakeholders and responding to questions about safety risks, water availability and other grievances submitted by locals are different issues than listing villages in the SEP and providing CSR donations. We recommend that the EBRD should ensure that its client:

- Provides a new SEP plan with specific topics for consultations and measures;
- Conducts a stakeholder needs assessment analysis and undertakes an analysis of the villagers’ concerns in relation to the project;
- Plans and implements specific measures to ensure fulfillment of the Recommendation 5, as updated SEP does not provide such information.

PCM recommendation 6 on Public Access to the Results of Geological Testing

The Requesters highly appreciate the IPAM’s CRR recommendations to the Bank to ensure public access to the results of geological testing and to document what actions have been taken by the company to address it. The requests of local affected people to receive assurances of their safety, or resettlement in case of high risk, have been raised since construction started, but is relevant also during the Shuakhevi HPP operation and for the future.

¹ Please see local media reports: <https://batumelebi.netgazeti.ge/news/279030/>
<https://batumelebi.netgazeti.ge/news/342469/>
<https://socialjustice.org.ge/ka/products/maghalmtiani-acharis-muslimi-kalebi-natsili-ii-qoveldghiurobis-pirispir>

It is notable that the complaint on the Shuakhevi HPP project highlighted the lack of the comprehensive geological studies undertaken by the company during the project design and construction that already resulted in major accidents on main tunnels of the project in 2017. Local people report that since rehabilitation of the plant and re-launching operations, water leakages and activated geological processes are still observed in the dam, as well as disappearance of the spring waters, water-saturated slopes in adjacent villages.

Unfortunately, Management fully dismisses the findings of the report and refuses to disclose the key assessments with the explanation that *“no further rock testing is to be undertaken as part of the operational phase of the project”* and *“this is a technical matter”*. It is welcome that *“Management will encourage AGL to produce a non-technical summary of information suitable for public dissemination”*.

In fact, this information is crucial to be disclosed, as the comprehensive geological data is the key aspect based on which the client conducted construction works, and moreover, it should ensure sustainability of the project in the long-run and address the impacts of the project during the operation phase. Locals fear that due to the lack of comprehensive geological studies for the project, and the lack of publicly communicated results of geological testing, the dam can pose risks downstream.

Moreover, the project has been experiencing technical difficulties since it started operation. A clear indication of these technical difficulties is the electricity generation gap of the plant. Namely, in June-August 2021 the HPP generated only 20.54 mln Kw.h (High water flow season) and so far managed to generate only half of the projected electricity (254.9 mln Kw.h), according to data of the Electro System Commercial Operator².

Therefore, the Bank should follow the recommendations of IPAM’s CRR and ensure proper geological testing, disclosure of the assessments and measures taken by the company to mitigate the geological risks – for the plant and for local people. IPAM should monitor that this indeed will happen and the disclosed data will adequately address the needs for information of affected communities.

PCM recommendation 7 on Hydrological Review of historic data

The IPAM CRR conclusions are confirmed by the assessment report by the Compliance Advisory Ombudsman (CAO) of the IFC that looked into the adequacy of baseline data required to assess project impacts regarding groundwater. According to this report *“CAO has questions as to the adequacy of IFC’s review and supervision of the potential impacts of the project on spring water, and the associated mitigation measures proposed”*. Thus, CAO concludes that the water scarcity raised by the complainants warrant a compliance investigation. In this regard, it is important to stress that there will be further reviews of this aspect of the Shuakhevi project’s failures from the accountability mechanism of another lender.

The EBRD claims that a precautionary and participatory process regarding local water resources has been successfully applied and an extensive participatory spring-water monitoring program was launched with 600 monitoring sites across 20+ villages. According to MAP, except in a small number of cases attributed to the project, there have been no issues with water availability and use. Thus the Bank dismisses the recommendation of IPAM’s CRR and does not propose further actions in this regard.

2 See: https://esco.ge/files/data/Balance/energobalans_2021_eng.pdf

The claims of the Bank are contradictory to the actions of the communities as well as the conclusion of the IFC Compliance Advisor Ombudsman (CAO) report and lenders monitoring report that shows that, despite the development of groundwater monitoring plan in 2019, the actual monitoring in 2020 was done visually.

Makhalaikidzeebi villagers have already addressed a collective statement towards the head of the Adjara Autonomous Republic with request to establish an international unbiased commission that will assess impacts of the project on livelihood of the villagers including on spring waters and, based on its conclusions, they request resettlement from the village.

Therefore, Requesters strongly believe that the Bank has to ensure that its client conducts a thorough hydro-geological review, as recommended by the IPAM's compliance report, and to validate the data based on physical analysis, not confined to desktop analysis.

Recommendation 8 No Net Loss (NNL) of Biodiversity

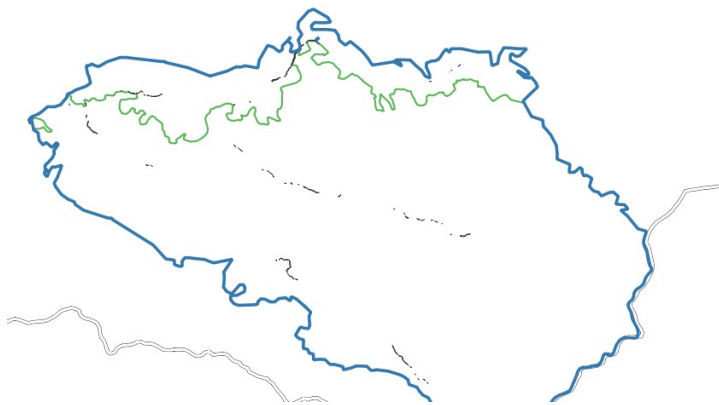
Requesters appreciate the IPAM recommendation that the EBRD *"should establish a protocol for systematic biodiversity monitoring and reporting, [...] which enables AGL, the Bank and other interested parties to determine during all phases of the Project whether the Project is achieving no net loss of biodiversity."*

Management responds that a new Biodiversity Action Plan for the Operation Phase (OBAP) from 2021 "confirms NNL of biodiversity". The findings of this OBAP are not accurate and we request Management to take additional steps that should be monitored by IPAM.

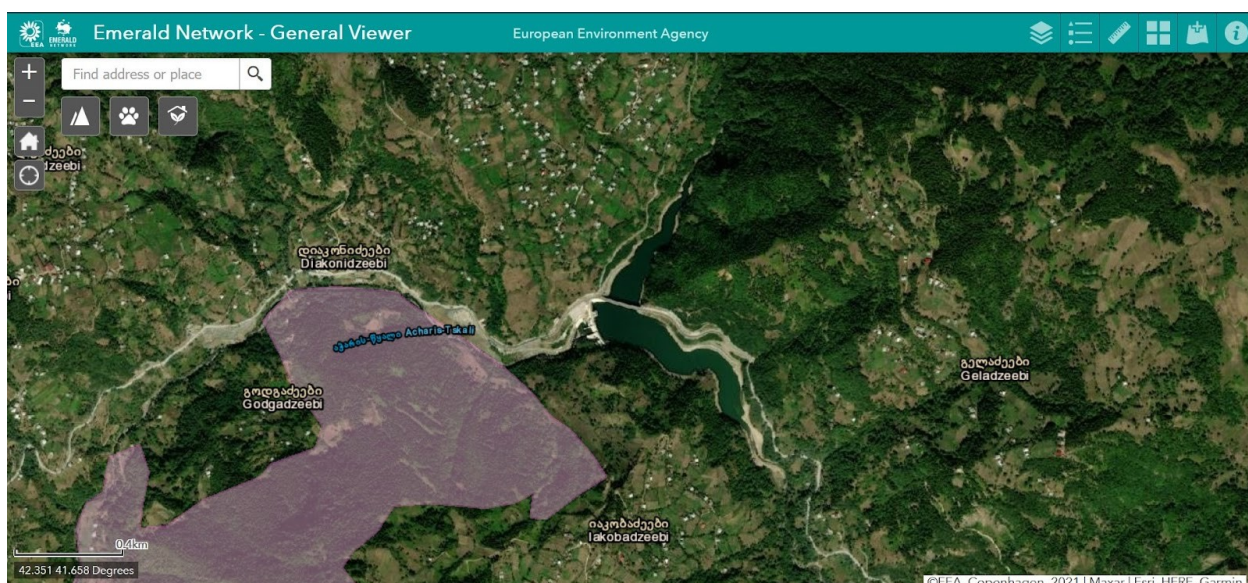
1. Even without taking into account the Bern Convention and the Habitats Directive, the OBAP shows some very serious impacts on biodiversity that indicate No Net Biodiversity Loss cannot be achieved. On birds (page 59) it is observed the disappearance of the nesting of one pair of Egyptian vulture. This was possibly the only pair of this globally Endangered species in southeast Georgia and the impact cannot be compensated by supporting *"the protection of at least 1 nest of Egyptian vultures from disturbance due to anthropogenic and development of activity"*, as in the best case will protect existing nest(s) very far away from the lost one, but not compensate the decrease of the breeding population. At the same time, in the Monitoring and Adaptive Management, the only measure that could compensate for the loss of breeding birds is 100 bird boxes to be installed in the Study Area by 2017 (page 73 of the OBAP). The parameter for measurement of no net loss is % of nest boxes raising successful hatchlings and does not evaluate at all the conservation status of the nesting birds. We request Management to investigate and disclose how No Net Loss of Biodiversity was achieved when impacts are on endangered species and compensation is for common birds. IPAM should continue monitoring of the issue.
2. On aquatic habitats (page 46-47) it is clearly shown that 39.1 ha of these will be lost due to inundation by reservoirs, without mentioning the downstream impacts from hydropicking or leaving only 10% of the water in the river. Consequently, the monitoring of fish 2014-2019 has shown a decline in fish abundance of the river Adjaristsqali downstream of Didachara reservoir and disappearance upstream of three endemic species of fish (Didachara dam has no fish pass installed). In line with what is written in a report by Balkani Wildlife Society quoted by the Requesters, the OBAP admits that NNL cannot be reached: *"it is very challenging and thereby not feasible, to restore natural aquatic habitats to original conditions through a biodiversity offset"*. Evenmore, some of the measures proposed can lead to additional loss of biodiversity. For example, restocking of brown trout and other species. There is no restocking material in Georgia from the fish inhabiting the Adjaristsqali

and no DNA studies of local fish, so the introduced fish will most probably lead to genetic pollution of the local populations. Brown trout in the region could be a different species from *Salmo trutta*. We strongly insist Management to engage with the client to construct fish passes on all dams and weirs and increase the minimum e-flow from the dams in line with the USAID supported guideline “The Methodology for the assessment of Environmental Flows for the rivers and stream of Georgia” developed by the international team of experts to support Water Framework Directives in 2017, as first steps to mitigate the loss of aquatic habitats and impacts on fish. We also insist on DNA analysis of all fish species in the river Adjaristsqali, especially if any restocking is planned. IPAM should continue monitoring of the issue.

3. The OBAP shows lack of understanding of the procedures of the Bern Convention by not considering the proposed Goderdzi Emerald site. Chirukhisqali dam and reservoir, Skhaltha dam and reservoir and most of the tunnels are located in the site. On pages 14-15 of the OBAP it is correctly written that the site was proposed in 2014, but then wrongly concluded that, as it is not listed as an officially nominated site, it should not be considered. Recommendation No. 157 (2011) of the Standing Committee of the Bern Convention clearly states that the Contracting Parties “*should take the necessary protection and conservation measures in order to maintain the ecological characteristics of the candidate Emerald Network sites*” and “*ensure that, if and when appropriate, these measures include administrative, management or development plans corresponding to the ecological requirements for the long term survival of species and habitats present in the proposed Emerald Network sites, in particular those of the Bern Convention Resolutions No. 4 (1996) and No. 6 (1998) or specified by Recommendation 16 (1989)*”. Moreover, Contracting Parties should “*Nominate as Emerald Network candidate sites all proposed sites which have been evaluated at biogeographical level and confirmed as meeting the criteria defined in Appendix P*”. The site was evaluated already during the 2015 biogeographic seminar and again during 2017, 2019 and 2021. This means that all 14 natural habitats (from Resolution 4) and 43 species (from Resolution 6) protected in the Emerald site should be evaluated in the ESIA and consequently monitored. If there is no assessment and monitoring on the impacts on all these habitats and species, how did the Management, Client and external experts conclude that there was No Net Biodiversity Loss? We request Management to engage with the Client, the responsible Georgian authorities and the Bern Convention in order to monitor all necessary measures to ensure the long term survival of all 43 species and 14 habitats and not only the so-called Critical Habitat trigger species. IPAM should continue monitoring of the issue.
4. There is no explanation why the borders of the Goderzi Emerald site were changed in the last 2 years (since Shuakhevi Project is operational) to exclude the Shuakhevi powerhouse, Didachara Dam, part of Didachara-Shuakhevi tunnel, as well as the main river in the site - Adjaristsqali:



Map of the borders of the Goderdzi Emerald site as proposed in 2014 (blue line) and modified before the 2021 seminar (green line).



Map of the borders of the Goderdzi Emerald site in 2021 (pink) excluding Didachara dam and reservoir and the river Adjaristsqali

We request the EBRD to investigate and to disclose why the Emerald site borders were changed to exclude the project site, and if this is a result of impacts of biodiversity loss by the Shuakhevi project. IPAM should continue monitoring of the issue.

5. In relation with Complaint No. 2016/9 to the Bern Convention: possible threat to “Svaneti 1” Candidate Emerald Site (GE0000012) from Nenskra Hydro Power Plant development, with a letter from 11 May 2020, the Secretariat of the Convention “took note that 12 Emerald Network sites [including Goderdzi] had been removed by the authorities from the list of candidate sites during the 39th Standing Committee, despite assurances of the authorities that studies on those sites would be completed by the end of the year. Moreover, freshwater habitat sites were lacking, but were also due to be mapped by the end of the year. It also noted the concerns of the complainant on the reduced scale and scope of the proposed Emerald Network sites, which exclude areas where hydropower plants are planned to be constructed, the lack of protection of large rivers and the lack of strategic planning for hydropower development in Georgia.” The OBAP doesn’t mention at all this case file at the Bern Convention, strategic planning for hydropower development and the lack of protection of large rivers in Georgia. We insist Management to engage with the Georgian Government

to ensure that it fulfills its obligations under the Bern Convention with regards to the protection of rivers by hydropower development. IPAM should continue monitoring of the issue.

6. The OBAP doesn't take into account the commitments of EBRD in its Environmental and Social Policy document to implement European secondary legislation - the EU Directives and the European Court of Justice (ECJ) rulings. In particular the project is in a continuous violation of the EU Habitats Directive which transposes the Bern Convention in the European Union secondary legislation. In this case it is necessary to apply the requirements of the Habitats Directive and related ECJ rulings on the protection of the proposed Goderdzi Emerald site and this area to be considered as a proposed NATURA 2000 site. This strict protection regime of Article 6.2 of the Habitats Directive should be applied both for the fully designated sites (so called Special Areas of Conservation - SACs), as well as for proposed NATURA 2000 sites (so called Sites of Community Importance - SCIs). This supports our claim that the proposed Emerald site should be assessed and protected as if it is already designated. But additionally, other obligations arise as the Habitats Directive and related ECJ rulings are more elaborated and detailed than the Bern Convention. For example, offsetting/compensation measures should have been taken before the impacts appear in order to maintain effectively the coherence of ecological network (Case C-239/04 Commission v Portugal, paragraph 35; C-258/11, Sweetman and Others, paragraph 35; Case C-404/09 Commission v Spain, paragraph 109. We request Management to evaluate the offsetting/compensation measures in the Shuakhevi HPP project in line with obligations from the Habitats Directive. IPAM should continue monitoring of the issue.