

Georgia: Shuakhevi HPP

REQUEST NUMBER: 2019/01



Project
Complaint
Mechanism

Compliance Review Management Action Plan

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1. Management Response

Management welcomes the Shuakhevi HPP PCM Compliance Review Report and appreciates the opportunity to set out a number of general EBRD Policy updates and specific Shuakhevi Project updates as they pertain to the findings and recommendations in the Compliance Review Report. Management accepts the findings and is confident that the recommendations have already been adopted in full and that no further action is required. As a consequence, rather than setting out further actions to address recommendations made by the PCM expert, the MAP sets out the actions already taken and responds to the comments made by the Requesters to the draft version of this document.

Management takes this opportunity to emphasise that this project was approved and implemented under the EBRD's 2008 ESP. The Compliance Review Report provides recommendations that are EBRD (recommendations 1-4) and Project (recommendations 5-8) facing. EBRD focused findings of the Compliance Review Report regarding policy positions on items such as Project Area of Influence and collection of baseline data have been through several revisions and EBRD's practices have been updated to reflect the outcome of the reviews in both the 2014 and 2019 ESP.

It is also important to note that since the complaint was registered, the construction of the Project has been completed and is now in operational phase. The majority of the recommendations are targeted at the construction phase of the project where the majority of impacts occurred. In the table below, it will be demonstrated how related recommendations of the Review were addressed at the appropriate point in the project cycle.

A recommendation (#2) has been made for both EBRD management and the Project to manage technical consultants in an alternative way. Management proposes that existing established Bank and industry practices for technical and E&S matters remain in place so that reporting lines, duty-of-care and liability exposure be maintained. Notwithstanding, the recommendations will be continue to be discussed on projects that require multi-disciplinary teams to ensure that E&S and technical work-streams are fully integrated or separate and discrete, as appropriate. The related technical recommendation (#6) is, by its nature, not clearly addressed by the EBRD ESP under current or previous iterations which, were not drafted with this type of issue in mind. Management therefore proposes that these two recommendations be addressed in line with established practices under civil engineering protocols rather than under the MAP.

EBRD is committed to working closely with our project partners, co-lenders and other project stakeholders to demonstrate that the PCM recommendations have been fully adopted, as described below. This MAP has been expanded following receipt of comments from the Requester.

2. Management Action Plan

Actions to address the Recommendations to Address EBRD Non-compliance at the Systemic and Procedural Levels

PCM Recommendation 1

In order to enhance compliance with PR 1, specifically in relation to identification of a project's area of influence, the Bank should ensure that project sponsors and the Bank have an agreed common and clear understanding of a project's area of influence, including changes in the area of influence, especially in projects that have a large ecological footprint. This includes making sure that project documents identify the area of influence consistently, both within the Bank and in communications with stakeholders, and that changes in project scope are communicated effectively to affected communities. At the same time, the Bank should recognize, and encourage project proponents to articulate that a given project may affect different communities (and different stakeholders) in different ways, and the Bank should ensure that affected community members, especially vulnerable community members, have adequate opportunities to learn about potential project impacts and provide input to the Bank and project sponsors.

Management Comment on Recommendation 1

The project was approved under EBRD's 2008 ESP which included reference to *Project Area of Influence* in PR1. This reference was updated and replaced in the 2014 iteration of the ESP and has been revisited again in the 2019 version. Specifically, Section II of the ESP "Definitions"; section 4.7 of the ESP "Overall approach to project appraisal"; and PR1 paras 4-8 "Scope of Application"; define EBRD projects and the application of the PRs.

Area of Influence is therefore not a term used in the current version of the ESP. A PR1 guidance note has been drafted which clearly stipulates the project definition, associated facilities and the physical scope of projects to be assessed. Management believes that the recommendation has been fully incorporated in the most recent version of the ESP, particularly PR1 and PR10 and associated Guidance Notes.

Response to Requester's Comments to Management Action 1

The Requester made no comment to this action item of the MAP.

Management Action 1

The recommendation has been completed in full through previous policy iterations and development of guidance notes and establishing good international practice. Specifically the PR1GN states the following:

In addition to assessing the risks and impacts associated with the project (including project activities undertaken by contractors), the client's assessment (whether this be through a full ESIA for Category A, or less extensive documentation for Category B or C projects) needs to assess risks and impacts stemming from any associated facilities, primary supply chains and/or other relevant facilities and activities as illustrated in Figure 3.

Figure 3 Defining the Scope of the Environmental and Social Assessment



Figure 3 shows the interrelationships between the Project for which financing is sought and the facilities and/or activities which may impact or present risks to the project, or vice versa. The physical boundaries of the assessment should be defined at an early stage in the assessment process and the linkages, and leverage, between the project and relevant facilities and/or activities clearly defined.

The definition of the physical scope of a project is undertaken on a project by project basis in consultation with EBRD. For a typical Category A project, as part of Scoping, available environmental and social baseline data (e.g. that already gathered by local governmental and possibly non-governmental organisations) are reviewed and gaps are identified between available baseline data and the need for recent and relevant data necessary to conduct an ESIA commensurate and proportional to the potential impacts and issues of the Project. The actions to fill these baseline data gaps including any further environmental or social baseline studies that would be required (e.g. intrusive investigations for soil contamination, biodiversity studies, water quality baseline studies, socio-demographic studies, studies of land-tenure, livelihoods & economic strategies, cultural heritage or archaeological studies, etc..) are identified. This scoping document would be subject to scoping stage consultation in line with the EU EIA Directive and EBRD PR1 and PR10 and disclosed publically along with the envisaged stakeholder engagement process for the ESIA.

The ESIA is then prepared based on the Scoping and include a comprehensive description of the current state and likely evolution (in the absence of the Project) of the physical, biological and socio-economic environments present in the Project impact area. The environmental and social baseline for the ESIA is expected to be based on recent data and will consist of a combination of already gathered and available studies through local governmental and possibly non-governmental organisations as well as additional field studies as required. Where available data is insufficient, further studies as defined during the ESIA Scoping stage would be carried out.

No further action is therefore proposed.

PCM Recommendation 2

In order to enhance compliance with PR 4, the Bank should ensure that in situations where independent technical experts identify the need for further testing to manage risks in connection with the construction, operation or decommissioning of structural elements or components of a project, Bank Management follows up with the project sponsor to confirm that the recommended testing has occurred within a specified timeline, and that test results are both documented and made available to all interested parties, and acted upon.

Management Comment on Recommendation 2

For contractual and liability reasons, EBRD cannot be involved in the Owners Engineer – Lenders Engineer process. It is not appropriate for a Lender to manage or comment on discussions on different technical-engineering viewpoints. Ultimately the OE advises the client and takes responsibility (and liability) for any resulting outcomes. The 2008, and subsequent versions of the ESP was not drafted with this type of issue in mind and Management proposes that this work-stream continue to be monitored by appropriately qualified engineers and the project technical advisers under established practices that run in parallel with the E&S work-streams on projects. Management will continue to integrate technical and E&S work-streams where appropriate but will maintain specific divisions where established engineering protocols exist. Management routinely convenes meetings and workshops of various experts across the bank (technical, financial and E&S) to review cross-theme working practices such as those discussed in the recommendation.

Response to Requester's Comments to Management Action 2

The Requester made no comment to this action item of the MAP.

Management Action 2

No further action to that indicated in the comment above is proposed.

PCM Recommendation 3

In order to enhance compliance with PR 4.16, the Bank should ensure that baselines are established regarding availability and use of natural resources prior to Project construction, and that subsequent review of potential adverse impacts on natural resources is not confined to desktop analysis.

Management Comment on Recommendation 3

This recommendation has been accepted in full and has been addressed in the 2014 and 2019 iterations of the ESP and associated Guidance Notes. Specifically this issue is covered in significantly more detail in 2019 version of PR3 on resource efficiency (paras 6-10), PR4 on community health safety (paras 16-17 community H&S, natural hazards paras 22-24), PR5 on restrictions to land use (discusses natural resources throughout) and PR6 on management of natural resources (introduces provision of ecosystem services).

Response to Requester's Comments to Management Action 3

The Requester made no comment to this action item of the MAP.

Management Action 3

The recommendation has been completed in full through previous policy iterations and development of guidance notes and establishing good international practice. The collection of baseline information is undertaken on a project by project basis and is designed and implemented by EBRD's clients in consultation with EBRD. No further action is therefore proposed.

PCM Recommendation 4

In order to enhance compliance with PR 6.8, the Banks should act expeditiously and decisively if the Bank's monitoring of a client's implementation of a project BAP fails to demonstrate that the project is achieving no net loss of biodiversity. The Bank must ensure that clients prioritize implementation of the BAP, and that they do so in ways the Bank can verify, on a specified timeline, with concrete consequences for failure to comply.

Management Comment on Recommendation 4

This recommendation has been accepted in full and is addressed in the 2014 and 2019 iterations of the ESP and associated Guidance Notes. Please see Action Item 8 for further project specific information as Management is confident that the operations-BAP, which was still being drafted at the time of the Review, does demonstrate that no net loss (NNL) can be achieved and that the implementation is currently being actively monitored.

Response to Requester's Comments to Management Action 4

The Requester agrees with Bank Management that the ESP has been improved through the 2014 and 2019 revisions but makes reference to two other projects against which they have lodged formal complaints and requests the MAP item to stay open for monitoring of new policy implementation in these other projects. Management proposes that these cases continue to be considered separately from this PCM and run in parallel as per the PCM / IPAM procedures, including their associated Management Action Plans. The Requester also make a recommendation to the IPAM office, which is not directly related to this project and therefore will not be addressed by Management under this MAP.

Management Action 4

Management commissioned a specialist biodiversity consultancy during the redrafting of PR6 on biodiversity, this assignment included drafting guidance notes and a capacity building exercise, internally to, and externally of, EBRD. A series of good practice notes and guidance manuals have also been released further explaining the application of PR6. The situation since the 2008 ESP has therefore significantly evolved:

Good Practices for the Collection of Biodiversity Baseline Data:

<https://www.ebrd.com/sites/Satellite?c=Content&cid=1395245538876&d=&pagename=EBRD%2FContent%2FDownloadDocument>

Good Practices for Biodiversity Inclusive Impact Assessment and Management Planning:

<https://www.ebrd.com/cs/Satellite?c=Content&cid=1395245539075&d=&pagename=EBRD/Content/DownloadDocument>

Practical Guide to PR6:

<https://www.youtube.com/watch?v=55ltpU9tvEM>

The recommendation has been completed in full through previous policy iterations and development of guidance notes and establishing good international practice. No further work is proposed, however, consultation with peers and other stakeholders on good international practices for biodiversity assessments is an ongoing process in which EBRD will remain actively involved.

Actions to address the Project-specific Recommendations to Address Non-compliance in Project Implementation

PCM Recommendation 5

In connection with the Project, the Bank should work with AGL to compile a definitive list of Project-affected communities, including how the Project affects each such community. The Bank should take particular care to obtain input from affected communities, including women and other vulnerable members of those communities.

Management Comment on Recommendation 5

The ESIA states (in Section 5.3.2 Area of Influence - AoI) that the AoI is defined by topic / parameter. This is aligned with good international practice (GIP) for an ESIA and there are therefore different AoIs for different thematic subjects - such as biodiversity and social matters - which occurred at different times in the project cycle. Project construction has been completed and the majority of impacts have ceased. The various iterations of the Stakeholder Engagement Plan (SEP) reflect these changes. Since the time of the PCM expert visit to the project, the SEP has been updated and includes a comprehensive mapping of the Project-affected communities. Management therefore is confident that this recommendation has been completed.

Response to Requester's Comments to Management Action 5

The Requester makes a number of subsequent recommendations which Management is confident have already been fulfilled. Management acknowledges that impacts associated with the operational phase of the project that will need to be carefully managed and mitigated for the lifetime of the project and mechanisms are in place for that to occur. The revised SEP includes the relevant, and most importantly - current, issues for project affected people. Comments, concerns or complaints on any other issue, which is not covered under the SEP would be recorded and addressed under the Grievance Mechanism, which is confirmed to be functional and operationalised.

The ESIA represented the project at the time of disclosure (2013) whilst the SEP is a 'live' document subject to continuous update (2013 through to 2021). Therefore the lists of villages in the updated SEP should be taken as the most up to date record. The ESIA was carried out on the feasibility design, and the locations of some infrastructure (including SDAs and tunnel adits) was confirmed after the ESIA was complete. These design changes meant that some villages dropped out of the AoI after the ESIA was completed (and later some were added, e.g. as a result of the development of the 35kV line which at the time of the ESIA was going to be a Government project). Design changes were assessed in accordance with the Project's management of change procedure.

These changes were reflected in multiple updates to the SEP (which reached multiple revisions as the Project progressed). These changes and evolving AoI were discussed during each E&S monitoring visits undertaken by the Bank. At all times, the Lender's E&S adviser and EBRD were satisfied that AGL had correctly identified which villages were potentially affected by the Project and how. A material changes document is also disclosed on the project website that explains this further.

AGL has been proactive with community meetings and communicating information to affected communities. Indeed, the context of the local communities made it difficult for any community to be omitted – firstly AGL maintained contact with the heads of municipalities, and secondly all of the villages are closely connected and regularly communicate; if any village had been omitted this would have been identified as an issue and raised quickly.

The anticipated project Area of Influence was documented in the ESIA by thematic technical topic. Management has accepted that the concept of AoI required revision and, as per MAP 1, this has been addressed through various policy revisions. However, Management can confirm this included issues associated with "safety risks, water availability and other grievances" as indicated by the Requester.

Throughout the project construction activities the stakeholder engagement plan was modified as the risk and impacts changed and this was reflected in a comprehensive stakeholder engagement programme and dissemination of information, much of which was local to the project rather than to Tbilisi based entities.

The current Project Area of Influence is clearly defined in the operational SEP and any alteration to this would not reflect the current position at the project site. Any retrospective look at construction related impacts would not be warranted or justified at this point.

Management Action 5

An updated SEP, addressing the recommendations of the PCM has been disclosed for the operational phase of the project and is being regularly monitored, reviewed, and updated whenever required. The updated SEP can be found here:

http://agl.com.ge/new/wp-content/uploads/2021/06/AGL-SEP-Shuakhevi_OP_Covid_final.pdf

The recommendation has been accepted in full and has been completed; no further action is therefore proposed. The project will continue in monitoring phase for the life of the EBRD's involvement and this aspect will be included in periodic reviews.

PCM Recommendations 6

In connection with the Project, the Bank should work with AGL to ensure public access to the results of geological testing (without disclosing legally protected confidential information), including slake durability tests, and to document actions taken by AGL to address the result of such tests.

Management Comment on Recommendation 6

Technical geological information required for the project design is outside the requirements of the Bank's ESP, PRs, GIP or Access to Information Policy. As this is a technical matter (see comments on recommendation 2), EBRD Management proposes that this continue to be managed under the supervision of appropriately qualified technical engineers. Management will encourage AGL to produce a non-technical summary of information suitable for public dissemination.

Response to Requester's Comments to Management Action 6

A number of project components are discussed in the response by the Requester including land-slide risk, community safety, dam-integrity and tunnelling. The recommendation within the Compliance Review Report is specific to the disclosure of the rock testing data. Management will work with AGL to summarise the rock testing data in a publically accessible form, although this is outside the scope of EBRD's policies and will be on a best efforts basis. However, the issues that continue to be raised by the Requester are disconnected from the recommendation hence the MAP action item response remains valid.

The compliance review report confirms that the ESIA has a complete chapter on landslide risk and this is the relevant issue connecting geological risks to local communities via the PRs. The ESIA and the report explains the efforts that were taken to avoid major and critical risk features (including tunnel portals as well as dams) and seismic monitoring was in place during tunnel blasting. The inclusion of technical issues associated with the tunnelling and linking it to community safety by the Requester is inaccurate given that the landslide risks are due to surface slippage and that these risks can be demonstrated to have been mitigated, while the tunnel works took place in deep rock formations.

The ESIA also states (in the water quality / use chapter) that the alignment of the tunnel largely avoids landslip areas where communities are located. However, the Requester focuses on the tunnels specifically and whether (1) a tunnel collapse could have community safety implications and (2) whether the Bank was right to accept the risks associated with significant tunnelling. The second is a purely technical issue and does not relate to the ESP. The first point needs to be distinguished between construction (tunnel

blasting) and operation (tunnel pressurisation) phases of the project. Community H&S risks associated with construction risk – which is now completed – including risks of blasting were managed by participatory seismic monitoring in local villages. Operation phase community safety risk is linked to tunnel structural integrity which is unrelated to surface slip or landslide risk. This is an important distinction which needs to be considered. All these potential risks and impacts were assessed, mitigated and monitored and no community safety issues have arisen.

Management Action 6

Management understands that this recommendation is primarily targeted at the construction phase of the project. No further rock testing is to be undertaken as part of the operational phase of the project and therefore no further action is proposed. During project monitoring, EBRD will work with the client to issue a non-technical position paper on historical rock testing methods although this remains out of scope of the ESP and is therefore beyond compliance with EBRD's policies. However, EBRD will request that the client make available any rock testing data to project affected people should it be requested.

PCM Recommendations 7

In connection with the Project, the Bank should work with AGL to arrange a thorough hydro-geological review (or to augment existing reviews) that includes gathering historical information regarding water availability and use, as well as proper validation of inferences and conclusions based on physical analysis, not confined to desktop analysis.

Management Comment on Recommendation 7

A precautionary and participatory process has been adopted with regard to water resources in the area and an extensive participatory spring-water monitoring programme that included ~600 monitoring sites across 20+ villages was completed. Local community members were trained and hired to undertake the monitoring. Results were also required to be issued to and reviewed under the Environmental Permit. The programme was successful in identifying some changes in water availability, although except in a small number of cases, these were not attributed to the Project. There have been no issues associated with water availability / use recorded by community members since the registration of the complaint and it is noteworthy that the grievance mechanism held by the company is fully operational and is utilised routinely by local communities on a range of issues. Management will continue to review the grievance mechanism of the company as part of routine monitoring.

Response to Requester's Comments to Management Action 7

The baseline data collected for springs in the project footprint is extensive and comprehensive. The spring monitoring has been a participatory process and is ongoing. There have been no grievances lodged by local communities with the project company regarding water emergence or availability since 2017. The information at a local level is therefore different to that held by Requester, who is remote from the Project, and contradict with the information held by the Project and the Bank.

An appropriate level of assessment was carried out to determine the level of risk presented to changes in hydrogeology in the absence of detailed primary data. This assessment found the risk to be negligible, and therefore the (significant) cost of undertaking a further programme of intrusive surveys to characterise the groundwater regime is not warranted.

An ESIA baseline must be commensurate to risk and in this case there was insufficient justification for a full hydrogeology survey. The ESIA correctly identified that the assessment finding was subject to uncertainty, and identified appropriate and feasible precautionary measures that could be applied if needed. The final conclusion of an independent report commissioned by the Lender group in 2020 supports the approach taken in that a linkage is not identified between the tunnelling works and the spring water issues identified by the Requester.

It is also worth noting that the following has been reported by independent experts:

"The public information centres have 2 employees each, who are from the local communities and trained by AGL. The centres are equipped with photos of the Project, pamphlets (on social aspects, construction information, spring water sources)..."

"The first step in the process was establishing trust and the expectations of each party in the consultation process. This was achieved through the agreement of a memorandum of understanding between the representative heads of local communities, the municipality, relevant NGOs and AGL. The topics covered in the memorandums differ from one community to another, but the majority of them focus on the options for employment of locals, quality and quantity of spring water and quality of local roads used by the Contractor."

The content of items 2.5 and 2.6 of the MoU (example below is with Diakonidzeebi) is also pertinent in terms demonstrating AGLs commitment and engagement with the local populations on this issue, although the MoUs only covered a small number of the total villages covered by the monitoring scheme:

2.5. The Company shall survey the availability and quantity of water supply available to households located within 500 m from the center line of the tunnel crossing close to the Diakonidzeebi village. The survey shall be undertaken immediately prior to the commencement of tunneling operations within 500 m of the water supply source. A second survey shall be undertaken immediately after the tunneling operations have progressed more than 500 m beyond the water supply source. The survey of water availability and quantity shall, to the extent possible, consider the normal seasonal and inter-annual variability of the water supply.	2.6. In the event of material loss or elimination of the water resources in Diakonidzeebi, as determined from the survey conducted according to Article 2.5, resulting from construction of the transfer tunnel connecting from the Sikhaita River to the Didachara reservoir, the Company shall implement remedial works in the tunnel construction to mitigate the loss of water. In the event that such remedial works are not	possible, or are not successful, the Company shall design and implement an alternative water supply to replace the lost supply. Temporary water supply shall be made available until such time as a permanent water supply can be constructed. If such replacement is not possible, the Company, as a last resort, shall resettle the affected households within 6 month from the loss certification and the resettlement shall comply with the IFC Performance Standards. The Company will cover the cost of reasonable housing until resettlement is achieved.
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Management can confirm that all of the above have been met and independently verified.

Management Action 7

No further action proposed although this issue will continue to be monitored for the lifetime of the EBRD loan to ensure there is no change in the situation.

PCM Recommendation 8

In connection with the Project, the Bank should work with AGL to establish a protocol for systematic biodiversity monitoring and reporting, including timelines and content requirements, 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 Comment on Recommendation 8

Since the issue of the complaint and the visit by the Compliance Review expert an Operations BAP has been completed and disclosed, which includes all of the items in this recommendations and confirms>NNL of biodiversity. The O-BAP can be found here:

http://agl.com.ge/new/wp-content/uploads/2021/05/0416400_Operation-Phase-BAP-SHPP-v3.0_Final_20210415-AGL.pdf

Response to Requester's Comments to Management Action 8

The Requester raise 6 additional points, four of which are unconnected to the original complaint or the recommendation provided by the compliance review expert. Items 1 and 2 raised by the Complaints relate to the O-BAP and Management can provide the following further clarifications.

The Biodiversity Action Plan and Biodiversity Management Plan have all been updated since the compliance review and should be considered in detail in the context of this finding. The O-BAP has combined all the further assessment and analysis since the 2013 ESIA. Although this is only recently finalised, various drafts of this have been provided for review by the Bank throughout the project implementation.

Due process has been followed and the publishing of the statistical trend analysis as part of the O-BAP has addressed this issue and will continue to do so in future. The statistical trend analysis that has been carried out presented in the O-BAP can be considered a good example of GIP which exceeds EBRD's own guidance notes on the collection and interpretation of biodiversity data. The O-BAP includes a full status update on actions closed and on-going actions (including those specific to operation phase and construction phase actions where further monitoring is needed to verify effectiveness). This includes actions to address impacts identified by the statistical trend analysis and additional mitigation measures.

The Requester also raise the issue of protected areas (items 3-6) which was not included in the original Complaint. For the avoidance of doubt this issue was also assessed in full and risks and impacts were also addressed with this regard. However, as this is not linked to the complaint the MAP is not considered to be an appropriate place to address this comment.

Management Action 8

The effectiveness of the O-BAP will be subject to ongoing monitoring of the project by EBRD and the lenders E&S consultant, no further action proposed, however, future evolutions of the O-BAP will be disclosed by the company as is good practice.