

COMPLAINT: Shuakhevi HPP

REQUEST NUMBER: 2019/01

ELIGIBILITY ASSESSMENT REPORT – July 2019

The Project Complaint Mechanism (PCM) is the accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of environmental, social, and Project disclosure-related Complaints from individuals or organisations concerning EBRD Projects, which allegedly have caused, or are likely to cause harm. PCM may address Complaints through two functions: a Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy or the Project-specific provisions of the Public Information Policy; and Problem-solving, which seeks to support dialogue between the Complainant and the Client to resolve the issues underlying a Complaint, without attributing blame or fault. Affected Parties can request to pursue one or both of these functions. For more information about PCM, contact us or visit [the PCM webpage](#).

Contact information

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🔗 <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html>

How to submit a Complaint to the PCM

Complaints about the environmental, social or public disclosure performance of an EBRD Project can be submitted by email, telephone or in writing to the above address, or via the online PCM Complaint form at:

🔗 <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

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EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a [Complaint¹](#) in relation to the EBRD's Shuakhevi Hydropower Plant (HPP) Project in Georgia in July 2018. The Complaint raises concerns regarding the robustness of the Project's environmental and social impact assessment, due diligence, implementation and monitoring, and cites concerns regarding the adequacy of stakeholder engagement; measures for safeguarding women as a vulnerable group; and the adequacy of biodiversity offset measures. In their [Complaint](#) letter, Complainants request that a Compliance Review (CR) be undertaken by PCM.

In consideration of the issues raised in the [Complaint](#) and their relation to the Bank's responsibilities under the 2008 Environmental and Social Policy (ESP), the PCM Eligibility Assessors have determined that the [Complaint](#) is eligible for a Compliance Review.

The Eligibility Assessors find that the Complaint satisfies the criteria required to proceed with a Compliance Review, as set out in the 2014 PCM Rules of Procedure (PCM RPs).

¹ Unless otherwise indicated, capitalised terms used in this report are those as set forth in the 2014 PCM Rules of Procedure.

I. BACKGROUND

1. The EBRD [Shuakhevi HPP](#) Project, located in southwestern Georgia, involves a senior loan to Adjaristsqali Georgia LLC (i.e., the Client, or the Company) of up to USD 86.5 million (EUR 63.7 million) for the financing of the development, construction and operation of Shuakhevi HPP on the Adjaristsqali River (i.e., the “Project”). The Shuakhevi HPP will have an installed capacity of 185 MW with expected electricity output of 452 GWh. The plant has been designed as a run-of-the-river plant, with capacity for diurnal storage in two reservoirs. This will allow the [Shuakhevi HPP](#) to store water for up to 12 hours and sell electricity at peak demand times. The Project was approved by the EBRD Board of Directors on 30 Apr 2014, as a Category A Project under the [2008 Environmental and Social Policy](#).²
2. The Project’s transition impact stems from three factors: (i) more widespread private ownership, due to the market entry of a new private competitor into the electricity generation market of Georgia; (ii) demonstration of new financing methods, as the Project will be the first power project in Georgia to rely on limited recourse financing; and (iii) the establishment of standards for corporate governance and business conduct, due to the Project’s potential for setting improved HPP implementation standards in Georgia through the application of international best practices.
3. The PCM received a [Complaint](#) regarding the [Shuakhevi HPP](#) on 16 July 2018.³ The [Complaint](#) was submitted by CEE Bankwatch and Green Alternative (i.e., the Complainants), who raised concerns regarding the robustness of the environmental and social impact assessment and due diligence, Project implementation and Project monitoring. Concerns regarding the adequacy of stakeholder engagement, measures for safeguarding women as a vulnerable group, and the adequacy of biodiversity offset measures were cited. The [Complaint](#) requested that the Compliance Review function be used to address their concerns.
4. PCM suspended the registration of the [Complaint](#) on 27 July 2018 (pursuant to paragraph 64 of the 2014 PCM RPs), as the issues raised were reasonably related to another PCM case undergoing Problem-solving, which was submitted by Project-affected community members and registered by PCM four months’ prior, in March 2018.⁴ The PCM Officer notified all Relevant Parties about the [Complaint](#) suspension, pending further progress on the Problem-solving Initiative. PCM determined that the second [Complaint](#) met the registration requirements on 18 February 2019, and updated the [PCM Register](#) accordingly, pursuant to paragraph 20 of the PCM RPs.
5. The Board appointed Mr. Luc Zandvliet as the *ad hoc* PCM Expert responsible for conducting the Eligibility Assessment (jointly with the PCM Officer) on 1 March 2019, in accordance with paragraph 22 of the PCM RPs.

II. ELIGIBILITY ASSESSMENT METHODOLOGY

6. The Co-Eligibility Assessors examined the [Complaint](#), supporting documents and other information provided by the Complainants, EBRD Management and the Client, to determine if the eligibility criteria set out in the 2014 PCM RPs were satisfied.

² Project Summary Document for Shuakhevi HPP, available at <http://www.ebrd.com/work-with-us/projects/psd/shuakhevi-hpp.html>.

³ Complaint 2019/01, available on the [PCM Register](#) and in Annex 1 of this report.

⁴ [Complaint](#) 2018/03, available on the [PCM Register](#). The first Complaint regarding the Shuakhevi HPP Project was registered by the PCM on 15 March 2018 and found eligible for Problem-Solving on 23 May 2018.

7. The Assessors deemed it sufficient to determine eligibility primarily through a document-based review; a site visit was not deemed necessary for the purposes of this Eligibility Assessment.
8. PCM engaged with Complainants, the Client and Bank staff through meetings and written communications throughout March and April 2019.
9. The PCM Officer informed Bank Management and the Client of the [Complaint](#) registration and invited them to provide a written response. Bank Management's response to the Complainants' concerns was submitted to PCM on 20 March 2019 (see Annex 2). The Client's response to the Complainants' concerns was submitted to PCM on 19 March 2019 (see Annex 3).

III. SUMMARY OF THE PARTIES' VIEWS

10. Each Party's views are summarised below; copies of each Party's response are provided in Annexes 2-3.

A. Complainants

11. As identified in Section 1, paragraph 3 of this Report, the Complainants raise concerns regarding the robustness of the environmental and social impact assessment / due diligence, implementation and monitoring undertaken with respect to the Project. The [Complaint](#) requests that a Compliance Review assess the adequacy and robustness of:
 - a) the Clients' actions with respect to the Project;
 - b) the documentation produced in relation to the Project's design, with particular focus on the geological studies and assessments undertaken; and
 - c) the qualifications of technical professionals used to develop Project deliverables.
12. Complainants further request that the Compliance Review evaluate the adequacy of stakeholder engagement activities, particularly in relation to the inclusion of women in the Project's consultations, and the dissemination of Project-related information to affected stakeholders on a consistent basis.
13. The Complainants also seeks clarity on the measures taken by the Bank and Client in confirming the adequacy of proposed mitigation and offsetting measures in the Shuakhevi Biodiversity Action Plan.

B. Bank Management

14. Bank management maintains that all relevant Project documents and stakeholder activities were conducted and/or disclosed in accordance with the relevant provisions of EBRD's 2008 Environmental and Social Policy.
15. With respect to concerns regarding geological safety, Bank management states that there has been substantial engagement on these issues and that the Client has invested significant resources to engage with Project-affected Peoples, who have voiced concerns about the Project's technical aspects. Bank management disagrees with the position presented in the [Complaint](#) that there is a correlation between the tunnels' construction and the risk of landslides in the Project's area of influence.

16. On the issue of stakeholder engagement, Bank management highlights that EBRD-initiated consultation activities occurred before the EBRD Board of Directors approved the Project, in parallel with engagement activities conducted by the Client. Bank management identifies that the Complainants were included in those consultations.
17. Bank Management indicates that the Social Impact Assessment was extensive, and prepared in accordance with the relevant Environmental and Social Policy Performance Requirements.
18. Bank management commits to provide documents and supporting information to PCM confirming that the Performance Requirements have been met, and welcoming any subsequent action by PCM.

C. The Client

19. With respect to concerns regarding geological safety, the Client explains that sufficient steps were taken throughout Project implementation to ensure that the Project's design, impact assessments and other studies were adequate and fit for purpose. They assert that Project documentation is updated on a progressive basis and that detailed investigations and modifications are conducted as necessary.
20. On the issue of stakeholder engagement, the Client states that engagement with representatives of the Shuakhevi and Khulo municipalities has occurred continuously throughout Project implementation. They assert that additional measures were taken to ensure women's participation in public consultations, including the organisation of women-only sessions focused on gender-specific issues, such as natal health and safety.
21. With regards to concerns raised around biodiversity, the Client states that studies in line with good practice were undertaken to ensure that the Project does not cause significant, irreversible damage to the Project's area of influence, inclusive of an adequate mitigation strategy and monitoring system.
22. The Client notes that information, records, meeting minutes and announcements are kept in a Company Communication Logbook and at Public Information Centres (PICs) for Project-affected people and other interested stakeholders to access, in the Shuakhevi and Khulo municipalities. The Client offers to provide evidence of this information to PCM for further review as needed.
23. In their written responses and during a PCM-Client videoconference, the Client noted that the Complainants did not approach them directly or otherwise to seek clarification on the allegations raised in the [Complaint](#) (rather, the Complainants engaged directly with Bank management).

IV. COMPLIANCE REVIEW ELIGIBILITY ASSESSMENT

24. As identified in Section II, the Eligibility Assessors examined the [Complaint](#) to determine whether the Compliance Review eligibility criteria were met as per paragraphs 24-28 of the PCM RPs. They also considered responses provided by Bank Management and the Client, in accordance with paragraph 29 of the PCM RPs.
25. Pursuant to paragraph 24 of the PCM RPs, the Eligibility Assessors did not judge the merits of the allegations made in the [Complaint](#), nor did they make any judgements

regarding the truthfulness or correctness of the [Complaint](#) while evaluating its eligibility for Compliance Review.

26. The Eligibility Assessors confirmed that the criteria outlined in paragraph 24(b) of the PCM RPs were met, as the [Complaint](#):
- relates to a Relevant EBRD Policy (i.e., raising issues covered by the 2008 Environmental and Social Policy); and
 - meets the temporal eligibility requirements for PCM Compliance Reviews (i.e., as the Bank continues to maintain an investment in the Project).
27. The Eligibility Assessors determined that the criteria outlined in paragraph 25 of the PCM RPs were met, namely that the [Complaint](#):
- a) identified Complainants' desire for PCM to use the Compliance Review function to address the issues they raised;
 - b) indicated the outcomes sought through PCM, specifying that *"we call for a transparent process of compliance review to ensure accountability and lessons learned for the institutions involved;"*
 - c) included supporting documentation of Complainants' correspondence with the Bank, as well as further evidence of the communication of their concerns regarding the Project; and
 - d) detailed the 2008 Environmental and Social Policy provisions at issue.
28. The Eligibility Assessors also considered paragraph 27 of the PCM RPs, which provides that: *"Where the Complaint raises issues appropriate for a Compliance Review, the Eligibility Assessors will...also consider whether the Complaint relates to: (a) actions or inactions that are the responsibility of the Bank; (b) more than a minor technical violation of a Relevant EBRD Policy unless such technical violation is alleged to have caused harm; (c) a failure of the Bank to monitor Client commitments pursuant to a Relevant EBRD Policy."*⁵

The Eligibility Assessors considered sub-paragraphs (a) to (c) of PCM RP 27 to be satisfied, as:

- the issues raised in the [Complaint](#) relate to matters over which the Bank has direct and/or monitoring-related responsibilities under Performance Requirements 1, 4, 6, and 10 of the 2008 Environmental and Social Policy; and
 - the issues raised in the [Complaint](#) to reflect more than a minor technical violation of the 2008 Environmental and Social Policy.
29. Pursuant to paragraph 28 of the PCM RPs, the Eligibility Assessors did not find that the [Complaint](#):
- was filed fraudulently or for a frivolous or malicious purpose;
 - seeks competitive advantage through the disclosure of information or through delaying the Project as its primary purpose; or
 - relates to the obligations of a third party.

⁵ PCM Rules of Procedure are available at <http://www.ebrd.com/downloads/integrity/pcmrules.pdf>

V. DETERMINATION

30. On the basis of the assessment above, the Eligibility Assessors found that the [Complaint](#) satisfied the Compliance Review eligibility criteria, allowing a Compliance Review to be initiated following the publication of this Report.

COMPLIANCE REVIEW TERMS OF REFERENCE

Complaint on Shuakhevi HPP
Request: 2019/01

I. TERMS OF REFERENCE APPLICATION

1. These Terms of Reference apply to any action undertaken as part of the Shuakhevi HPP Compliance Review. The objective of the Compliance Review, as per PCM RP 41, is to determine if (and if so, how and why) any EBRD action (or failure to act) in respect of the Project has resulted in non-compliance with the EBRD's 2008 Environmental and Social Policy.
2. Activities carried out under these Compliance Review Terms of Reference may be subject to modification at any time, provided that the Compliance Review Expert and PCM Officer expressly agree to the change (i.e., except any modification that may prejudice the interests of any Relevant Party, or that is inconsistent with accepted review practice).

II. COMPLIANCE REVIEW EXPERT

3. In accordance with PCM RP 40, the PCM Officer will appoint a PCM Expert to conduct the Compliance Review. The appointed Compliance Review Expert shall not have acted as the Eligibility Assessor for this case.
4. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner, and will be guided by principles of objectivity and fairness, giving consideration to (among other things): the rights and obligations of the Relevant Parties; the general circumstances surrounding the Complaint; and due respect for EBRD staff.

III. COMPLIANCE REVIEW SCHEDULE

5. The Compliance Review will be initiated as soon as possible following the posting of this Eligibility Assessment Report to the [PCM Register](#) on the PCM webpage.
6. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit. It is intended that the Compliance Review shall be concluded within 60 Business Days of its commencement. However, if expressly required, and at the request of the Compliance Review Expert, the PCM Officer may extend this time period to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly communicated to all Relevant Parties.

IV. COMPLIANCE REVIEW SCOPE

7. The scope of the Compliance Review is outlined below. Based on the issues raised in the Complaint, the Compliance Review Expert will confirm which provisions of 2008 Environmental and Social Policy apply, and examine any related compliance issues - such issues being limited to matters raised in the Complaint. Although the TOR makes reference to specific PRs, it does not neglect potential inter-linkages between the different PRs.

With respect to the stated requirements under the 2008 ESP:

With respect to the stated requirements under the 2008 ESP:

- Did the EBRD monitor the Project on an ongoing basis, ensuring that the environmental and social components included in legal agreements, such as the implementation of the Environmental and Social Action Plan (ESAP), were being substantially met? Was the extent of the EBRD's monitoring commensurate with the Project's issues, impacts and compliance requirements? (paras. 35 and 36)

PR 1: Environmental and Social Appraisal and Management

- Did the Bank satisfy its obligations to ensure that the potential environmental and social impacts were appraised in the context of the Project's area of influence - and included areas / communities potentially impacted by cumulative impacts of the Project? (PR 1, para. 6)
- Did the Bank confirm that a) relevant stakeholder groups were identified as disadvantaged or vulnerable during the appraisal process (e.g., Project-affected women); and b) the ESAP included differentiated measures so that adverse impacts did not fall disproportionately on them, and that they were not disadvantaged in sharing any development benefits and opportunities resulting from the Project? (PR 1, para. 14)
- Recognizing the dynamic nature of the project development and implementation process, did the Bank ensure that the ESAP was responsive to changes in Project circumstances, unforeseen events, and the results of monitoring? (PR1, para. 15)
- Did the Bank ensure that the Client established procedures to monitor and measure compliance with the environmental and social provisions, including the implementation of the ESAP and PRs over time? (PR 1, para. 20)
- Did the Bank ensure that the results of monitoring were used, where deemed necessary and appropriate, to correct and/or improve the Client's operational performance? Where deemed necessary and appropriate, based on the monitoring results, did the EBRD ensure that the Client identified and reflected any necessary corrective and preventive actions in an amended ESAP, submitted to the Bank for approval? (PR1, para. 21)

PR4: Community Health, Safety and Security

- Did the Bank satisfy its obligations to ensure that comprehensive geological studies were undertaken by the Client during Project design and construction, identifying and evaluating the risks and potential impacts to the health and safety of the affected community(ies), in order to ensure that a) the Project design was adequate from both functionality and health and safety perspectives, and b) that preventative measures and plans were established in a manner commensurate with the identified risks and impacts? (PR 4, paras. 7, 10 and 11)
- If it was identified that the Project (or a stage of the Project) posed potential adverse impacts to the health and safety of affected community(ies), did the Bank ensure that the Client disclosed relevant Project-related information to enable the affected communities and relevant government agencies to understand a) potential impacts, and b) the Client's proposed prevention, mitigation and emergency response measures, as appropriate? Does the Bank ensure that the Client reviews the measures regularly, engaging the affected communities and agencies on an ongoing basis, informing them on the status of implementation of plans and commitments,

results, and discussing with them any material changes needed to the plans, in advance of changes? (PR 4, para.8)

- Did the EBRD ensure that the Client reported on the risks and potential impacts of the Project and the implementation of any action plans to affected communities as part of its reporting to stakeholders? (PR 4, para. 9)
- Did the EBRD ensure that the Client took measures to prevent, avoid or minimise the exacerbation of impacts caused by natural hazards, such as landslides that could arise (or could have arisen) from land use changes due to Project activities? (PR 4, para. 15)
- Did the Bank ensure that the Client avoided or minimised adverse impacts due to Project activities on local water, vegetation and other natural resources in use by the affected communities? (PR 4, para.16)

PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

- Did the Bank confirm that the Client fully characterised the risks and impacts to biodiversity through the appraisal process, in a manner consistent with a precautionary approach, and identify measures to avoid, minimise or mitigate potentially adverse impacts? (PR 6, paras. 6 and 8)
- Did the Bank effectively monitor the implementation of biodiversity mitigation measures to ensure the Project was achieving no net loss or a net gain of the affected biodiversity? (PR 6, para. 8)?

PR 10: Information Disclosure and Stakeholder Engagement

- Did the Bank ensure that the Client provided ongoing / current information to identified stakeholders during Project implementation, disclosing information commensurate to the nature of the Project, its associated environmental and social impacts, and the level of Project interest (including information on safety and biodiversity conservation)? (ESP #7, PR 10, paras. 3, 15 and 21)
- Did the Bank satisfy its obligations to ensure that the Client properly identified affected stakeholders, including disadvantaged or vulnerable peoples and other interested parties, meaningfully engaging with them during the Project preparation and implementation?(PR 10, paras. 8, 9, 12, 13, 15)
- Did the Bank confirm that Project-affected women were consulted in a meaningful way, in consideration of their vulnerable / disadvantaged status, and in a manner that was inclusive and culturally appropriate? (PR 10, paras. 11, 15 and 16)

V. COMPLIANCE REVIEW PROCEDURES

8. The Compliance Review Expert shall conduct the Compliance Review process in a manner consistent with the requirements of the PCM Rules of Procedure, in consideration of the concerns expressed in the Complaint, and in consideration of the context of the Complaint. Specifically, the Compliance Review Expert may:

- a) review the Complaint, the Bank's response and the Client's response, in order to frame the compliance issues to be considered in the Compliance Review;
 - b) review all public, internal and Client documentation relevant to the Complaint;
 - c) consult with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team, the relevant EBRD Resident Office, and consultants involved in the Bank's appraisal, implementation or monitoring of the Project, as appropriate;
 - d) gather additional information from the Complainants, Bank staff, other Relevant Parties to the Complaint and/or any interested person or party as relevant for the execution of the Compliance Review. Additional information may be gathered through oral or written communications, meetings, the receipt of supplementary Project documentation, and other engagement methods, as appropriate.
 - e) inform the PCM Officer if there will be a need to obtain additional expertise to effectively conduct the Compliance Review, in alignment with PCM RP 59.
 - f) where there are findings of non-compliance only, identify remedial changes in accordance with the PCM RPs 41 and 44 (subject to the consideration of any restrictions or arrangements already committed to by the Bank or other Relevant Parties in existing Project-related agreements); and
 - g) take any other action as may be required to complete the Compliance Review within the required schedule and in consultation with the PCM Officer, as appropriate.
9. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files; Bank staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review, as per PCM RP 63. All Relevant Parties shall cooperate in good faith with the Compliance Review Expert to enable the Compliance Review to be carried out and concluded as expeditiously as possible. Relevant Parties shall endeavour to comply with requests from the Compliance Review Expert for obtaining access to sites, submission of written materials, provision of information and attendance at meetings. The Compliance Review Expert will advise the PCM Officer of situations where the actions or lack of action by any Relevant Party hinders or delays the conduct of the Compliance Review, and may reference such issues in the Compliance Review Report.
10. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial and/or other information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who owns such document (PCM RP 63).
11. In conducting the Compliance Review, the Compliance Review Expert shall take care to minimize disruption to the daily operations of all involved parties, including relevant Bank staff, as per PCM RP 62.

VI. COMPLIANCE REVIEW REPORTING

12. In accordance with PCM RP 42, the Compliance Review Expert shall prepare a Compliance Review Report. The Report shall include a summary of the issues raised in the Complaint; the steps undertaken in carrying out the Compliance Review (i.e., the methodology); the findings of the Compliance Review (i.e., compliance or non-compliance); and in-depth rationale for these findings. In cases where the Bank is found to be non-compliant, the Report shall also include recommendations for remedial

changes, in accordance with PCM RP 44. Relevant Parties to the Compliance Review shall be provided an opportunity to comment on the draft Report, and the Compliance Review Expert shall consider their comments when finalizing the Report.

- 13.** The findings (and where relevant, the recommendations for remedial change) included in the Compliance Review Report shall be based only on the circumstances relevant to the present Complaint and shall be strictly impartial, in accordance with RP 54.
- 14.** Prior to a) sending the draft Compliance Review Report to the Relevant Parties for comment in accordance with PCM RP 45 or b) disclosing the Compliance Review Report to the Relevant Parties and the Board in accordance with PCM RP 43, the PCM Officer will verify that there are no restrictions on the disclosure of information contained within the Report as a result of the Bank's Public Information Policy, and will consult with the Relevant Parties regarding the accuracy of the factual information contained therein.

ANNEX 1: Complaint

To: Ms. Erica Bach
PCM Officer
EBRD

16 July 2018

Dear Ms. Bach,

We are writing to request from the PCM to start a compliance review on the Shuakhevi Hydropower Plant project. The project was supposed to ensure energy security for Georgia, however, a year after the construction was complete the project is still not operational. On-going problems with the tunnels of the project raise questions about the robustness of the project design, impact assessment and implementation, as well as about financiers' prudence in conducting due diligence before decisions were made on public money spending, and in monitoring of the project implementation.

It should be noted, that one of the villages heavily impacted by the construction, submitted the request for problem-solving to EBRD, IFC and ADB respective accountability mechanisms. The complainants have brought up concerns of unmitigated negative impacts on community safety and access to water, as well as of inadequate handling of their grievances by the lenders and the client Adjaristsqali Georgia LLC (AGL).

As part of the broader review of the adequacy of stakeholder engagement and social impact assessment, we call on the PCM to review whether or not the EBRD has ensured gender equality and proper safeguarding of women as a vulnerable group, and whether or not local women participated in decision-making and were consulted in an informed, meaningful and culturally appropriate manner.

Additionally, we are concerned about the adequacy of the biodiversity offset measures and would like the PCM to review compliance of these measures with the stated objectives of the EBRD 2008 Environmental and Social Policy's Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources, namely to protect and conserve biodiversity (using a precautionary approach) and to achieve no net loss or a net gain of biodiversity.

As the status of the project is unclear for a year, while the financial prospects of the project are in question, the implementation of the project's environmental, social and stakeholder engagement measures needs to be up-dated and communicated transparently to impacted people and the public.

In view of the continued ambition of the Georgian government to build risky dams¹ and of the lenders like the EBRD to provide public money investments for these projects, we call for transparent process of compliance review to ensure accountability and lessons learned for the institutions involved.

I. Factual Background

1. Status of the Shuakhevi Hydropower Plant (HPP).

The Project Summary Document ([PSD](#)) for the Shuakhevi HPP project (# 45335) was disclosed in February 2014 and it appears that as of 1 July 2018 it has not been up-dated for the four years since. The PSD informs that the project was approved by the EBRD Board of Directors on 30 April 2014 and that currently the status of the Project is "Disbursing" suggesting that the EBRD "*maintains financial interest in the project*"².

According to a [procurement notice](#) from 24 April 2017, the project construction phase has been completed and commissioning activities were underway, as operations were expected to commence in June/July 2017, a year ago.

1 For example Nenskra HPP and Namakhvani HPP.

2 The EBRD's Environmental and Social Policy of 2008 should thus apply to the Shuakhevi HPP project, as per #3 and #36 of ESP 2008.

A [press release](#) from the Ministry of Energy of Georgia from 24 June 2017 announced that project construction was completed, claiming that by adding its 187 MW to the total installed capacity of the country “the Shuakhevi HPP project will significantly contribute to Georgia’s path toward energy independence”.

Following media news about problems with the Shuakhevi HPP tunnel, a [Statement about Skhalta Didachara Tunnel](#) from the client, Adjaristsqali Georgia LLC (AGL), from 31 August 2017 informed the following:

“There appears to be some blockage in the transfer tunnel between Skhalta and Didachara. This blockage is estimated to be around 170 meters away from the tunnel outlet in Didachara reservoir area. However, this blockage will not impact the operations of the Shuakhevi Plant which is ready for commercial operations.”

On 2 November 2017 the company released a [Statement on Tunnel Inspection](#) informing that the entire tunnel system is inspected:

“AGL continues with an inspection of the entire tunnel system on the Shuakhevi HPP. The AGL technical team, together with its international consultants and experts, are inspecting the entire system. At the same time, dewatering of the tunnel is continuing to allow inspections in all sections of the tunnels.”

While other up-dates on the results of tunnel inspection from the company are missing, the reports on environmental flow from October 2017 to January 2018 include a note that from 4th October 2017 the plant is not in operation³.

A PCM Eligibility Assessment report from May 2017 on a problem-solving complaint, which was submitted by negatively impacted local village, does not provide any information on the status of the project or the result of the tunnel inspections. The summary of EBRD Management and clients responses included in the PCM EAR is insufficient to understand whether the environmental and social covenants that are part of the project agreement are currently being properly implemented and monitored. The PCM has since initiated a Problem-Solving Initiative with the EBRD’s client and complainants from local community.

2. Project cost and EBRD investment.

In October 2013 the EBRD disclosed project information on its web site together with the project ESIA. This [information](#) suggested that the bank is considering extending a senior loan to Adjaristsqali Georgia LLC of up to USD 110 million (EUR 83 million).

According to the Shuakhevi HPP PSD, the project is for a senior EBRD loan of up to USD 86.5 million (EUR 63.7 million) for the financing of the development, construction and operation of the Shuakhevi HPP. The total project cost is reported in the PSD as USD 417 million (EUR 307 million).

The Asian Development Bank (ADB) and the International Finance Corporation (IFC) have co-financed the project. An EBRD [press release](#) from 19 March 2015 reports that the EBRD’s investment is USD 90 million⁴: “The \$250 million debt financing arranged by IFC represents the largest-ever private hydropower investment in Georgia, consisting of two \$90 million long-term senior loans, one each from ADB and EBRD, and \$70 million from IFC. IFC’s total investment in this project is \$104 million, which includes a \$34 million equity investment in the project company.”

3. The Client.

The EBRD’s client is Adjaristsqali Georgia LLC (AGL), a special purpose vehicle established in Georgia for the sole purpose of constructing a cascade of three hydroelectric power plants on the Adjaristsqali river, the first of which will be Shuakhevi HPP. Adjaristsqali Georgia LLC is owned by Norway’s Clean Energy Invest AS (40%), India’s Tata Power (40%), and IFC Infraventures (20%).

4. Project’s Technical Parameters.

3 Environmental flow reports from September 2017 to January 2018 are available on the company’s web site (as of 1 July 2017): <http://www.agl.com.ge/page.php?id=155>

4 Note the differences in project investment reported in the EBRD press release, PSD and ESIA pages (\$ 90, 86.5 and \$110 million resp.)

According to the EBRD's PSD, the hydropower plant is located on the Adjaristsqali river in south-western Georgia and it has an installed capacity of 185 MW with expected electricity output of 452 GWh. The plant is designed as a run-of-the-river plant with capacity for diurnal storage in two reservoirs, allowing Shuakhevi HPP to store water for up to 12 hours and sell electricity at peak demand times. The project includes two dams that are 39 metres and 22 metres high.

The Shuakhevi HPP is part of the Adjariskhali hydropower cascade, so according to the PSD, the area of influence includes another such large dam, the 19-metre Koromkheti Dam, and extensive tunneling at both the project site and within the area of influence.

The ESIA documentation disclosed by the EBRD in October 2017 is for the Adjariskhali Cascade, which includes construction and operation of the Shuakhevi and Koromkheti HPP schemes with total installed capacity of 331 MW. The estimated power output (annual average production) was expected be 930 Gwh of renewable electricity per annum. In this cascade, the Shuakhevi HPP (181MW) includes the following elements:

- Dam and reservoir on the Adjaristsqali river at Didachara;
- Dam and reservoir in the upper reaches of the Skhalta River;
- One weir to allow abstraction and sediment basin on the Chirukhistsqali River;
- Transfer / headrace tunnel between Chirukhistsqali weir and small capacity Hydro Power Plant (HPP) at the Skhalta dam HPP (6MW)
- Transfer tunnel between Skhalta dam and Didachara reservoir;
- Headrace tunnel from Didachara dam to the main HPP unit near Shuakhevi village (175MW).

5. Project's Category

The project has been categorised A in accordance with the Bank's 2008 Environmental and Social Policy, because it includes two dams of 39 metres and 22 metres, which are higher than the 15-metre height cited in Appendix 1 of the 2008 Environmental and Social Policy as indicative threshold for Category A.

6. Project's ESIA package

International consultant Mott MacDonald was responsible for developing the feasibility study for the Adjaristsqali cascade and tender design for the 185 MW Shuakhevi project as well as the Environmental and Social Impact Study (ESIA) for the Adjaristsqali cascade. Gamma Consulting were selected as Georgian engineering and ESIA partners for the project⁵. The consultants prepared an Environmental and Social Impact Assessment (ESIA) package, including:

- Non-Technical Summary (NTS);
- Environmental & Social Impact Assessment (ESIA);
- E&S Management Plans;
- Construction Management Plans;
- Biodiversity Action Plan;
- Land Acquisition and Livelihood Restoration Plan;
- Stakeholder Engagement Plan (SEP);
- Environmental and Social Action Plan (ESAP).

The EBRD claimed in 2013 that its environmental and social due diligence determined the ESIA package was fit for purpose and meets the EBRD's Performance Requirements, as mitigation measures were included in the ESAP. The ESAP, agreed by the EBRD and the client, included key actions that the client agreed to implement in order to achieve the Bank's Performance Requirements throughout the project cycle. The project was to be monitored by the bank in line with the ESAP, Georgia's regulatory requirements and the EBRD's Performance Requirements. An updated ESAP was released in September 2017.

7. Project's Transition Impact.

According to the PSD, among the project's transition impacts is: *"(iii) Setting standards for corporate governance and business conduct from the project's potential for setting improved standards for HPP implementation in Georgia through the application of international best practices."*

5 According to the client's web site, see: <http://www.agl.com.ge/page.php?id=149>

8. Complaints on the Shuakhevi HPP projects

In February 2018 complainants from Rabati Settlement of Makhalakidze Village, Shuakhevi Municipality of Georgia, submitted complaints to the independent accountability mechanisms of the EBRD, the ADB and the IFC. The complainants requested from the mechanisms problems-solving and compliance review alleging that "grave violations" of the lender's safeguard policies⁶ during the Shuakhevi HPP construction works that have "left no drinking water in the village" and have caused increase of rock falls threatening the life of local population; intensification of landslides; decrease in crops volumes; disappearance from local river of trout and other species of fish protected under the IUCN Red Data List of Threatened Species. The complainants further alleged that the lenders and the client have not dealt adequately with their grievances and that Adjaristsqali Georgia LLC has refused "to assume responsibility and to inquire into the real reasons of the calamity".

9. Previous PCM complaints on Georgian hydro projects

The PCM has already reviewed the Paravani HPP project following a Green Alternative complaint from December 2011, as well as the Dariali HPP project following a Green Alternative and Stepantsminda complaint from November 2014. In the case of the Paravani complaint, the PCM found EBRD non-compliant with its Environmental and Social Policy on three of the six elements of the complaint, as two of these elements related to the issue of biodiversity.

The Dariali project experience is of particular relevance, as project construction was interrupted in May 2014 by a geological disaster resulting from the intensive movement of the Devdoraki glacier that caused a mudflow in the Dariali Gorge blocking the Tergi River. The incident was characterised by the EBRD as a force majeure, in spite of the fact that geological problems in the vicinity of the project site were predicted by Georgian geologists. The PCM compliance review expert concluded non-compliance of the EBRD with its policy, as "in contrast to the requirements of EBRD Performance Requirement (PR) 1.9, the ESIA did not adequately consider certain geotechnical risks independent of the Project that might have an impact on the Project".

With regards to lessons learning from hydropower projects in Georgia the PCM report on Dariali HPP stated that "while compliance review reports in other cases may inform the compliance review here, the Bank's alleged failure to consider the Paravani HPP Compliance Review Report would not in and of itself establish non-compliance with the Bank's 2008 Environmental and Social Policy (ESP)". This may well be true that there was no policy requirement to instruct the EBRD to pay extra caution with Georgian hydropower projects, in view of past problematic experiences. However, by now - with or without a specific policy requirement - the problematic track record is setting a very troubling context and thus calling for a compliance review that questions the EBRD's overall approach in the hydro sector in the country.

II. Policy Violations: Failure of the EBRD to comply with its policy and to ensure that its client and the Shuakhevi HPP project are compliant with ESP 2008

10. Non-compliance with PR1 on Environmental and Social Appraisal and Management

The ESIA package for the Shuakhevi HPP project, raises a lot of questions during the ESIA preparation, approval by the government of Georgia and later during the EBRD's due diligence process.

It is important for the PCM compliance review to clarify what went wrong and why the project design and ESIA could not guarantee the functionality of the project (specifically of the tunnels) or community safety and security? This situation requires a hard look at the client's capacity to implement such complex projects in Georgia, at the consultants' credibility to assess adequately the project's risks and impacts, and at the lenders' ability to conduct due diligence and monitoring in accordance with the objectives of their safeguards policies – particularly of the EBRD's due diligence.

The EBRD has committed in its ESP 2008 to "ensure through its environmental and social appraisal and monitoring processes that the projects it finances [...] are designed and operated in compliance with

6 Failure to assess, communicate and prevent the negative impacts described by complainants suggest non-compliance with PR1, PR4 and PR10.

*applicable regulatory requirements and good international practice*⁷ as “new facilities or business activities to be financed by EBRD will be designed to meet the PRs from the outset”⁸.

The question about geological studies and geological risks is particularly pertinent. Adequate project design, impact assessment and mitigation strategy relate mostly to PR 1 on Environmental and Social Appraisal and Management, although there are provisions in PR 3 on Pollution Prevention and Abatement and PR 4 on Community Health, Safety and Security that are relevant for the Shuakhevi HPP problems is relevant from the point of view of communicating these to impacted and interested stakeholders.

10.1. Geological safety: design, assessment, verification and mitigation in high-risk areas

The Shuakhevi HPP ESIA includes 30 pages on Geology, Landslides and Seismic Risk⁹ and acknowledges that the Adjara region is highly sensitive to natural hazards, such as mudflows, erosion and landslides. It also acknowledges that public consultations have identified landslides as a major source of concern for local people, due to catastrophic landslides in the past, however, it claims there would be no remaining significant risks of landslide from the project's activities after mitigation.

Importantly the ESIA claims further that full geological risk assessments were undertaken during the feasibility stage. This claim contradicts interview by Batumelebi¹⁰ with [REDACTED] deputy head of Adjara Region Georgia. When asked about the reason of tunnel collapse, [REDACTED] responded: “I would like to underline that tunnel has not collapsed just smashed down. We have not clarified the exact reasons yet but we think that unexpected geological processes developed. Of course geological studies existed but you can not estimate everything in Geology”.

On the question about detail geological studies, Gerard responded “We conducted detailed geological studies. In parallel of tunneling Geologists were working. They were studying rock layers after every three meters and making reports. We were making decisions based on their conclusions. If they were telling us that we are facing complex layers we would be using concrete coating or metal constructions for making tunnel stable, but geologists have not seen necessity of such measures.”

This raises questions to how full were the full geological studies before construction started and why important geological studies were carried out in parallel to tunneling? We invite the PCM to clarify through the compliance review:

- if detailed geological studies were conducted before construction started?
- if they were sufficient to ensure that the project design was adequate?
- what kind of geological studies were conducted during construction?
- what role did the EBRD play in ensuring that the geological studies and project design were robust and justified the backing of public lenders?
- did the EBRD identify any risks with regards to geological stability and tunnel design?
- how did the EBRD respond to calls from local communities and interested stakeholders, like Green Alternative (see correspondence), to ensure proper geological studies were in place to guarantee the safety of nearby villages and prudent spending of the bank's resources?

In this regard, PR4 on Community Health, Safety and Security requires that “structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals” and for high-risk locations “the client will engage one or more qualified experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, and commissioning”¹¹.

Furthermore, PR 4 requires: “The client will identify and evaluate the risks and potential impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favour the prevention or avoidance of risks and impacts over minimisation and reduction.”¹²

7 ESP 2008 #3

8 ESP 2008 #29

9 Volume II, Chapter 11

10 “Batumelebi” <http://batumelebi.netgazeti.ge/news/108711/> December 27, 2017, own translation

11 ESP 2008, PR4 #10-11 on Infrastructure and equipment safety

12 ESP 2008, PR4 #7

PR 3 on Pollution Prevention and Abatement #10 requires that "[d]uring the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider technical characteristics of the installation concerned, its geographical location and local/ambient environmental conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimise or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective."

We ask the PCM's review to take a closer look at the independence and competence of the experts responsible for project design and impact assessment, as well as the independence and competence of the authorities or professionals who approved or certified the project plans. Did the EBRD pay special attention to issues such as track record, conflict of interest or impartiality of consultants, particularly of the Georgian experts involved? Ultimately, we hope the PCM compliance review will throw some light on where did it all go wrong and can EBRD due diligence ensure good industry practice is applied that guarantees project functionality and safety?

The project impact on local communities

We ask the PCM to review the following questions:

1. How without full geological studies the company and the EBRD assessed the risks when deciding to proceed with the project in the geologically unstable area?
2. What steps did the EBRD take after it has been notified a number of the times by Green Alternative and CEE Bankwatch Network that the geological studies were not comprehensive and needed additional studies to address the issue;
3. Why despite of requirements of EBRD policy, the developer did not take these comments into account?

Particularly, in June 2014 we informed the EBRD team that the English version of the EIA did not contain the detailed geological studies, while a Georgian version of the ESIA, that has been used by the ministry of environment for permission, directly indicated on page 163: "5.3.6.5 Skhaltal Transfer Tunnel - No mapping or intrusive work has been undertaken along the Skhaltal to Didachara transfer tunnel."

It should be stressed that according to chapter 6.9.4 of the Georgian EIA report, "the geomorphologic maps and landslide hazard maps have been prepared from aerial photo interpretation supplemented by ground trothing and are not the result of detailed field mapping with full ground coverage. Both maps should therefore be used to indicate the general condition of the land surface over large areas. Detailed ground investigations may be necessary for assessment of small areas and specific sites."

Moreover, chapter 6.9.5 of the same report says that "to the extent that some of the assessment in this report is based on information gained in ground investigations, persons using or relying on this report should recognize that any such investigation can examine only a fraction of the sub-surface conditions." According to the same report, "unexpected ground conditions may be encountered during the course of the construction works".

It should be mentioned, that Green Alternative / CEE Bankwatch Network also informed the EBRD's board of directors regarding the irregularities with Shuakhevi HPP ESIA and due diligence process on 28.04.2014.

As the locals fear that the Shuakhevi HPP project site is characterized by landslides and the construction of derivation tunnels and reservoirs below the village of Ghurta, or in the vicinity of the villages Didachara or Tsalabana, may activate slides. The same conclusions were drawn by the department of Geology of the Autonomous Republic of Adjara in 2013, that has been also sent to EBRD's management on April 25.2014.

However, it should be noted that ESIA does not assess the impact of the project implementation on the adjacent villages, including ones under which company plans to drill the derivation tunnels. These villages have not been defined as the part of the project impact area by company and it was endorsed by EBRD management.

PR1 of the EBRD's ESP 2008 states that #6: "Environmental and social impacts and issues will be appraised in the context of the project's area of influence. This area of influence may include one or more of the following, as appropriate:

[...] (v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project

or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken;

(vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project."

The project implementation has caused damage for local communities, that has been disregarded in ESIA, and those impacts have been experienced not only by the PCM complainants from Makhalakidzebi, but also by other villages and damaged state infrastructure¹³

The EBRD has been keen on showing that inherently risky dam projects can be implemented in challenging environments in line with best standards, however, there have been one too many *force majeure* geology problems with its hydro projects in Georgia¹⁴. Who should be held accountable for the potentially massive waste of public money and unmitigated (and possibly unmitigatable) adverse impacts on people living in the "shadow" of hydropower projects in Georgia.

In view of the continued ambition of the Georgian government to build risky dams¹⁵ and of the lenders like the EBRD to provide public money investments for these projects, we call for transparent process of compliance review to ensure accountability and lessons learned for the institutions involved. While the geology in other places in Georgia and the proposed technologies may be different, it is no surprise that communities fear for their safety and do not trust high-quality ESIA's.

10.2. Gender impact, participation of women in decision-making

The Non-Technical Summary¹⁶ of the Shuakhevi HPP project, which is meant to inform stakeholders such as local communities, includes two pages on social impact. Section 3. The Project and People includes no information on gender impact, it mentions no special provisions for protection of women from local communities, no consideration for cultural barriers to their participation in consultations, no mention of women-headed households or opportunities for women entrepreneurs. The ESIA's Social Impact Assessment includes literally one line on 7.2.4.4. Womens Rights and Gender Equality and while the ESIA includes some information on gender and women, an assessment of impact is practically lacking. The Land Acquisition and Livelihood Restoration Plan makes a reference to the number of female-headed households, however, it does not analyse the land ownership and land use patterns or the impact on women's livelihoods if compensation is given to male property owners.

Green Alternative published in 2016 a report¹⁷ *Gender Impact of Shuakhevi HPP Project And Its Compliance With EBRD Requirements*, which presents project documentation analysis and the findings from a Fact-finding mission and 34 interviews with local people. It concludes that:

"The Shuakhevi HPP construction has revealed a lot of gender-sensitive problems, on which the project developer failed to respond adequately, as comprehensive social and environmental assessment including gender analysis and assessments has not been conducted at the stage of the project development. [...] In addition, there are no evidence that can verify the fact that the project brought sustainable benefits to the affected population and simultaneously strengthened women in Adjara." The report recommended that the lenders, in close coordination with the Georgian government, demand from the project developer to draft gender assessment and action plan, and then strictly monitor its implementation.

It appears that this recommendation was never followed, as is visible from the Shuakhevi HPP projects ESAP, which represents non-compliance with PR 1 #14: *"where stakeholder groups were identified as disadvantaged or vulnerable during the appraisal process, the ESAP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project"*.

13 Ajara TV, Harm caused by HPP, February 2018, <http://ajaratv.ge/news/ge/25734/hesebit-gamotsveuli-ziani.html.html#.WqKg2-DnIig.facebook>

14 See PCM Compliance Review on the Dariali HPP project.

15 For example Nenskra HPP and Namakhvani HPP.

16 Project NTS is available here: <http://www.agl.com.ge/upload/Adjaraistsqali%20ESIA%20NTS%20rev%20F%20September%202013%20updated.pdf>

17 Green Alternative report on Shuakhevi HPP project gender impact can be found here: <http://greenalt.org/publications/gender-impact-of-shuakhevi-hpp-project-and-its-compliance-with-ebrd-requirements/>

Regardless the high quality of impact assessments for some EBRD-financed projects, we are yet to see a good quality of gender impact assessment. It is high time that the bank takes a more ambitious approach in safeguarding women and we hope that the PCM's compliance review will provide useful recommendations in this regard.

10.3. Non-compliance with PR10 on Information Disclosure and Stakeholder Engagement

The project was characterized with flawed information disclosure and public participation process, as well as public unrest and protests along the project implementation, as there were a number of protest actions in all villages impacted by the project. However, both the client and the EBRD failed to take into account those protests and to investigate the causes of the people's dissatisfaction with the project and to adequately address them.

The Shuakhevi HPP project was supported by the Georgian government on the highest level. For example on Saturday, March 8, 2014 about 500 villagers, who staged a road blockade in the Adjara region, were violently dispersed by an equal number of policemen and special forces. The Deputy Minister of Energy, [REDACTED] stood by after ordering the intervention, even though the reasons for his presence at the scene are unclear. The incident, as well as other causes for people's anger and concerns, were not properly addressed by EBRD's management and the company, refusing to connect the project with increased geological risks in the area.

Since 2014 there has been intense media reporting on damages that local communities have experienced as the Shuakhevi HPP project construction started, as well as a number of protests, however, the company's and lenders' response was inadequate and insufficient.

Therefore, the project does not support EBRD's own rational regarding Shuakhevi project loan in terms of transition impact, especially *"Setting standards for corporate governance and business conduct from the project's potential for setting improved standards for HPP implementation in Georgia through the application of international best practices"*, in terms of encouragement of public participation and treatment of locals.

There are several Stakeholder Engagement Plans (SEP) for the Shuakhevi HPP project. The September 2013 SEP-Final Report¹⁸ commits that *"AGL will ensure that stakeholders are well informed about the Project throughout its lifecycle."*

This commitment is not so clearly stated in the newest SEP for the Operational Stage released in April 2017¹⁹. It is not clear if the project is technically in the operational stage or not and if this SEP covers ongoing testing and inspections.

In this context it is unclear how a number of commitments in the SEP are met, for example those regarding *"disclosure of information regarding operations phase impacts and regular engagement with affected communities on these impacts, including the type and success of associated mitigation measures"* and *"running a company website www.agl.com.ge which will be updated regularly to ensure that the operation related documentation is available to the public"*.

The latest SEP states that it *"is a living document and will be regularly monitored, reviewed and updated on an annual basis"*, however, a May 2017 up-date was not disclosed by the EBRD client on its website in spite of uncertainty about the project status and the considerable public interest about its fate. There is a contradiction in the SEP as it finishes with the commitment of the client to *"update the SEP when needed (preliminarily, every second year)"*. The September 2017 ESAP states about the that SEP that it should cover the *"prior to commencement of operations"* and it should be *"reviewed and modified as necessary throughout operations"*, which suggests that the SEP should still be binding during the testing and inspections period, while the delay with operational phase should perhaps render modifications necessary.

The fact that impacted people had to request facilitated problem-solving by the EBRD's, IFC's and ADB's complaints mechanisms also suggests that AGL's grievance mechanism is either inaccessible or ineffective in dealing with community grievances, in spite of the claim in the 2017 SEP that *"AGL social team members have been effectively applying it"*.

18 It is no longer available on the client's web site, but still on EBRD's website: <https://www.ebrd.com/english/pages/project/eia/45335sep.pdf>

19 Can be found on the client's web site: <http://www.agl.com.ge/uploads/media/AGL-SEP-for-Shuakhevi-OP-Final.pdf>

The SEP does not acknowledge the cultural, religious and practical barriers to participation of Adjara women in decision-making and proposes no special measures to ensure that women are consulted in an informed, meaningful and culturally appropriate manner. Green Alternative published in 2016 a report *Gender Impact of Shuakhevi HPP Project And Its Compliance With EBRD Requirements*. It presented the results of 34 interviews with local women and men, that suggest the stakeholder engagement and consultations did not safeguard sufficiently the rights of women to participate in the project design and implementation. Moreover, it quotes the experience of men in consultations that were far from meaningful – for example the experience with negotiating the Memorandum of Understanding between local communities and the client.

The latest SEPs for the project from April 2017 summarises the EBRD ESP 2008 requirements in the following way: *"EBRD requires the project sponsor to provide the public, including NGOs, with information about the project during scoping stage and to prepare an SEP. The 2008 EBRD policy requires project sponsors to engage with stakeholders from the earliest stages of the project throughout the life of the project. Stakeholder engagement must be open, meaningful, and in an appropriate manner acceptable to the potentially affected communities. The engagement program must actively address the needs of vulnerable populations who may be affected by the project. The EIA documents must remain in the public domain for the life of the project, and if changes to project plans are necessary, these have to be made public as well."*

We believe that the above requirements were not met by the Shuakhevi HPP project and constitute violation of PR10 on Information Disclosure and Stakeholder Engagement. The EBRD and its client have not engaged with stakeholders throughout the life of the project²⁰.

While initial disclosure of project documentation complied with the requirements for Category A projects²¹, the EBRD and its client failed to inform stakeholders about the changes to project plans²² since the operational stage got delayed due to tunnel collapse. The consultation process has not been informed and iterative²³ and as the PCM complaint by local impacted people suggests, stakeholder engagement for the Shuakhevi HPP project has not been open, meaningful²⁴ and in an appropriate manner acceptable to potentially affected communities²⁵.

According to ESP2008 #7 *"The EBRD is strongly committed to the principles of corporate transparency, accountability and stakeholder engagement. It will disclose, on an ongoing basis, information about the Bank's performance on environmental and social issues and will engage in meaningful dialogue with the Bank's community of stakeholders. The Bank will promote similar good practices amongst its clients. In particular, the EBRD expects clients to identify and interact with their stakeholders on an ongoing basis, and to engage with potentially affected communities through disclosure of information, consultation, and informed participation in a manner deemed by the Bank to be commensurate to the impacts associated with the project."*

The lack of transparency on behalf of the bank and its client with regards to the Shuakhevi HPP project comes in stark contradiction to this commitment. In view of insufficient information in the public domain, we believe that the burden of proof should be on the EBRD and its client to demonstrate in a transparent way what measures were taken to communicate to impacted and interested shareholders the status of the Shuakhevi HPP project, changes in project implementation plans and consequences of these changes on the agreed environmental and social measures as presented in the project's ESMP, ESAP and SEP.

10.4. Non-compliance with PR 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources

EBRD's ESP 2008 #8 states that the EBRD *"supports a precautionary approach to the conservation, management and sustainable use of natural biodiversity resources (such as wildlife, fisheries and forest products) and will seek to ensure that its operations include measures to safeguard critical habitats and, where feasible, enhance natural habitats and the biodiversity they support"*.

20 PR 10 #11

21 PR10 #12-13

22 PR10 #14: *Additional information may need to be disclosed on an ongoing basis, as the project progresses, in case of any material changes in the nature of the project or its impacts, or if material new risks and impacts arise.*

23 PR10 #17: *informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.*

24 PR10 #15-16 & #20

25 PR10 #13

The Shuakhevi Biodiversity Action Plan claims that "[t]hrough wise application of the mitigation hierarchy, measurable adverse residual impacts on the critical habitat features are unlikely on this project."

In 2017 Green Alternative commissioned an evaluation of impacts on biodiversity during the construction phase of the Shuakhevi HPP project. Experts of Balkani Wildlife Society carried on biodiversity surveys on fish, mammal, bird species and natural habitats in the area of Shuakhevi HPP, Adjara, Georgia in July 2017. Field surveys were complemented with literature review and questionnaires with people who visit the natural habitats regularly for determining the relative number of mammals and fish and aquatic fauna in the most favorable habitats for them and for identifying threats to their conservation.

The finding of Balkani were presented in a Report on the environmental problems of Shuakhevi HPP, Adjara, Georgia²⁶ that concluded the following:

- 93 ha of natural habitats we destroyed during construction of Shuakhevi HPP, which is several times higher than assessed.;
- With regards to habitats, offsetting or compensation was proposed only for forest habitats; the tree planting was not done before the habitats were destroyed as it is required according to EU Directives; the forest offsetting/compensation will not ever create habitats with similar ecological functions like the destroyed habitats;
- While tree planting was done poorly, not creating a natural habitat at all, the loss of key river and riparian habitats was not offset/compensated at all and grassland habitats were not restored, even worse - some additional areas were destroyed during afforestation activities;
- By the end of the construction stage of the project fish populations are almost completely extinct for several kilometers bellow the 2 dams and the weir, while the remaining fish populations above the dams/weir are in a bad state. Special conservation measures are needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that any aquatic live is left in the basin;
- With regards to the Eurasian otter, a red list species in Georgia, the Adjaristsqali basin is of great importance for the conservation of the species. Even before the Shuakhevi HPP operation starts otter is extinct bellow the 2 dams and the weir. Special conservation is needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that otter remains in the basin, however a healthy population would be unlikely, if the minimum ecological flow of 10% only remains in the rivers and if there are daily changes in the Shuakhevi powerhouse water release. Otter population surveys show very similar results to fish and aquatic fauna questionnaires as fish is the main prey of the species;
- With regards to birds and bats, the installation of bird and bat measure is totally inadequate as it can't offset the loss of natural habitats, especially riparian habitats. The natural habitat were the boxes were put in November 2016 have enough old trees with hollows so rare species of birds and bats are unlikely to occupy them. Two main impacts on bird species are not addressed adequately - the migration barrier effect and the impact on the Chorokhi delta because of changed hydrological and sedimentation regime;
- With regards to other species, in three days along the river shores traces were found of 6 different individuals of brown bear and a pack of 4 wolves; at least 3 golden jackals, 1 Eurasian nightjar and 4 Caucasian rosefinches were heard, 1 kingfisher and 1 red-breasted flycatcher were spotted; this leads to the conclusion that the river shores are a biodiversity hotspot and no offsetting is possible, as there is no "free" space for creation of new rivers.

Balkani's findings call into question the adequacy of the proposed mitigation and offsetting measures for the Shuakhevi HPP project, as well as the compliance of the project with the EBRD's PR6. The EBRD has not published any up-dates to disclosed project information in four years and the compliance review should bring to light in the public domain evidence, if it exists, that the EBRD and its clients have taken an approach to biodiversity conservation that indeed ensures no net loss of biodiversity. We ask that the Balkani report on the Shuakhevi HPP is regarded as part of this complaint – it was communicated to the EBRD as part of a complaint to the Bern Convention on the Nenskra HPP project.

11. Conclusion

In view of the considerable public resources invested in the Shuakhevi HPP project and in view of the negative impacts on local people's safety and livelihoods, as well on local resources needed for sustainable development of the Adjara region and Georgia, the status and future of the Shuakhevi HPP project is not a

26 Balkani Report on environmental problems with Shuakhevi HPP project, Adjara, Georgia, July 2017, see: http://greenalt.org/wp-content/uploads/2016/10/Report_Shuakhevi_HPP_environmental_problems.pdf

trivial matter, but one of considerable public interest. In addition, the EBRD and other public lenders are continuing to develop risky hydropower projects in Georgia, so the way the Shuakhevi HPP project is handled is a test to the banks' safeguards, while transparency is a prerequisite for ensuring public trust and support for the decisions of planners and investors in Georgia's energy sector.

We kindly ask the PCM to conduct a compliance review and to thus ensure accountability of the EBRD to its shareholders, to impacted people, to interested shareholders and to the public.

Respectfully,

Dato Chipashvili
for Green Alternative

Petr Hlobil
for CEE Bankwatch Network

ANNEX 1

Additional information to be reviewed for evidence on communication of public concerns regarding the Shuakhevi HPP project

1. Green Alternative / CEE Bankwatch Network communication with EBRD

Meetings on Shuakhevi HPP

- Meeting with [REDACTED] ESD in "Holiday Inn" regarding Shuakhevi and Dariali HPPs – **October 2013**;
- Meetings with Bank management and Executive Directors during two annual meetings of the EBRD – **May 2014 and May 2015**;
- Issue has been raised during a public consultation on the good governance policies of the European Bank for Reconstruction and Development with Bank Management in Tbilisi – **February, 2014**.

Email correspondence with the Company and the EBRD

- Comments sent to the Adjaristkali Georgia LLC – **July 29, 2013**;
- Email correspondence with Environmental and Social Advisor of EBRD – **16 and 26 September, 2013**;
- Email correspondence with Environmental and Social Department on collective letter of Ghurta and problematic issues of Shuakhevi and Dariali HPPs – **April 25, 2014; May 27, 2014; June 2, 2014; June 4, 2014**;
- Letter to Executive Directors of the EBRD regarding Shuakhevi and Dariali HPPs – **April 28, 2014**;

Comments, issue papers, reports

- Comments on ESIA of the Shuakhevi HPP in Georgian: **July 1, 2013**: http://greenalt.org/wp-content/uploads/2013/07/Shuakhevi_HPP_on_Adjaristkali_GA_comments.pdf
- Resume of the comments: <http://greenalt.org/wp-content/uploads/2013/07/reziune.pdf>
- Issue Paper: The Shuakhevi hydropower plant project, Georgia; **May, 2014**
<https://bankwatch.org/wp-content/uploads/2014/05/briefing-ShuakheviHPP-Georgia-2May2014.pdf>
- "Risky business: hydropower plant construction in Georgia" – **November 2014**:
http://greenalt.org/wp-content/uploads/2014/12/Risky_business_hydropower_plant_constructi_on_in_Georgia.pdf
- Issue Paper: "Georgia swept by protests against EBRD-backed hydropower"; **May 10, 2016**
http://greenalt.org/wp-content/uploads/2016/06/Georgian_hydro.pdf
- Balkani's Report on environmental problems of Shuakhevi Hydro Power Plant, Adjara, Georgia; **July 2017**; http://greenalt.org/wp-content/uploads/2016/10/Report_Shuakhevi_HPP_environmental_problems.pdf

2. Press releases and blog posts

- Georgian hydro projects are a test case for the EBRD's good governance policies; **12 February 2014**; <https://bankwatch.org/blog/georgian-hydro-projects-are-a-test-case-for-the-ebdgs-good-governance-policies>
- Georgian Ministry of Energy orders use of force against local protesters who fear landslides from hydro construction; **March 14, 2014**;
<https://bankwatch.org/blog/georgian-ministry-of-energy-orders-use-of-force-against-local-protesters-who-fear-landslides-from-hydro-construction>
- Georgia's hydropower revolution far from rosy for communities, the environment and the economy; **May 14, 2015**; <https://bankwatch.org/publication/georgias-hydropower-revolution-far-from-rosy-for-communities-the-environment-and-the-economy>

3. Additional information: TV Media and response of the company on Geology:

- Adjara TV; "Part of the tunnel of Shuakhevi HPP collapsed"; **September 2, 2017**;
<http://www.ajaratv.ge/share.php?id=3590&lang=ge>
- 1TV "Shuakhevi HPP livelihood of village Chanchkhala"; **November 20, 2014**; <https://www.youtube.com/watch?v=ZCSNDgAP-RA>

- 1TV; "Construction of Shuakhevi HPP"; **November 20, 2014**; <https://www.youtube.com/watch?v=hjl-GuPc1V4>
- 1TV; "In Khulo village Kinchauri protest HPP construction"; **November 14, 2016**; <https://www.youtube.com/watch?v=0z7De0hjpg>
- AdjaraTV; **December 21, 2017**; http://www.ajaratv.ge/_share.php?id=4042&lang=ge
- Batumelebi; "Shuakhevi HPP after the tunnel collapse"; **December 27, 2017**; <https://bit.ly/2KY40BG>
- Adjara TV; "Harm caused by the HPP-Changed livelihood in 12 villages"; **February 6, 2018**; <http://ajaratv.ge/news/ge/25734/hesebit-gamotsveuli-ziani.html.html#.WqKg2-DnLig.facebook>

ANNEX 2: Bank Management Response

The Complainant makes the below points and EBRD management has provided a brief summary outlining the position of the Bank with regard to each of these issues. All documents and supporting information that confirms that the EBRD's Performance Requirements have been met will be provided to the PCM office and EBRD welcomes a review of the Project under the PCM.

1. *Complaint Preamble:* The Complaint starts with a long preamble regarding the status of the Project, Project justification / costs and repeats some information about the Project technical description and implementation arrangements. EBRD management will not respond to this part of the Complaint as it is not relevant to the 2008 E&S Policy and associated Performance Requirements and therefore not subject to PCM review. The EBRD Management Response therefore starts with Item 10 of the Complaint.

2. *Item 10.1, PR1 – Geological Conditions:* The Complainant has indicated that the issues associated with the structural integrity of the tunnels during commissioning are somehow linked to landslide risk for Project Affected People residing within the Project footprint. EBRD management disagrees with this correlation as the two issues are unrelated. EBRD will not comment on the technical considerations of the tunnels as part of the PCM review other than to say that remedial works are progressing. With regard to potential for (surface slip) landslide risks to be exacerbated by the Project, there has been substantial amount of correspondence on this issue prior to the request for a Compliance Review and the Project Company has invested significant resources to engage with actual Project Affected People who have voiced concerns to explain the technical considerations of the Project. The Complainant has not been subject to much of this discussion and is perhaps unaware of all the activities that have been undertaken to communicate the actual (rather than perceived) risks and to monitor the situation throughout the construction schedule. At the time of ESIA preparation, the risks were fully assessed and understood and monitoring during construction confirmed all the risk assessments undertaken at the time. EBRD is supportive of the Problem-Solving Initiative involving local communities that is ongoing in relation to this subject.

3. *Item 10.2, PR1 – “Gender Impact”:* This section of the complaint is contradictory and EBRD is confident that the Social Impact Assessment was prepared in accordance with the relevant Performance Requirements.

4. *Item 10.3, PR10 – Stakeholder Engagement:* EBRD Management refutes the accusation that the project was “characterized with flawed information” which forms the basis of this element of the complainant. Stakeholder Engagement during both ESIA preparation and disclosure and during project implementation has been extensive and has been undertaken in accordance with PR10.

5. *Item 10.4, PR6 – Biodiversity:* The majority of this section of the complaint is based Upon a statement that has been made by an anti-HPP campaign group that was commissioned by the Complainant. At no stage was there any consultation with the Project Company or the Lenders and it is unclear how a biodiversity assessment of a Project could be completed without having an understanding of the Project under consideration. The Biodiversity Action Plan developed as part of the ESIA was prepared by an independent consultancy and has been updated throughout the construction period with field-based data that has been collected and analysed in accordance with Good International Practice and PR6 over many seasons. Reliance on “literature review” for biodiversity surveys is not recognized as Good International Practice. EBRD is confident that the BAP and resulting management plans will meet the requirements of PR6 and this is being monitored by EBRD very closely.

6. Annex 1 – Previous Communication. The Complainant has omitted to include the focused consultations that were held face to face (or via Skype) in Batumi on 17th and 18th February 2014 (before EBRD Board Approval and before Project mobilization) when an opportunity for 1:1 feedback was provided to a number of NGOs. The Lenders initiated this additional consultation in parallel to the Company's disclosure and stakeholder engagement. The Complainant was included in these consultations, partly in anticipation of a PCM review being requested at some stage. During this consultation (which was also attended by other Project Lenders) many of the items raised in the Complaint were not highlighted by the Complainant and the feedback received was that the ESIA was "good". It would of course have been preferable that the points in the Complaint were raised at that specific time and not during the on-going Problem-Solving Initiative.

7. Previous Complaints. The Complainant rightly points out that many other PCMs have been raised by the same organization and that the Complainant is a joint signatory to the ongoing Problem-Solving Initiative for the same project. EBRD management notes that the actual Project Affected People that signed the request for a Problem-Solving Initiative are not signatories to this request for a PCM Compliance Review by a non-local group.

EBRD closely appraised the preparation of the Project ESIA and has been actively monitoring the implementation throughout construction and is confident that the PRs have been met. All relevant documents and reports will be made available to the PCM office confirming the above EBRD Management Response.

ANNEX 3: Client Response

AGL Comments / Geological Safety & Bio-diversity conservation / Green Alternative (GA) / Request for Compliance Review (EBRD PCM) / July 18, 2018

Further to our comments on the Social issues referred by Green Alternative (**Gender impact, participation of women in decision making and Non-compliance with PR10 on Information disclosure and Stakeholder engagement**) in its Complaint to EBRD from July 2018 requesting the Bank to review the compliance of Shuakhevi HPP, we are providing our comments on the following issues that are yet to be addressed by us:

- o Geological safety – Design, assessment, verification and mitigation in high risk areas
- o Non-compliance with PR 6 on Bio-diversity conservation and sustainable management of living resources

First and foremost, AGL contends that the statements made in the complaint from Green Alternative are incorrect, false and misrepresented. Secondly, at no stage, Green Alternative have approached AGL directly or otherwise, seeking clarifications on the allegations and concerns raised by them or the communities, nor have they made any attempt to approach AGL for seeking information that would have clarified most of their allegations.

We present below a summary of AGL's position on the issues referred to in the complaint letter by Green Alternative.

10.1 Geological Safety:

In Para 1, Green Alternative has commented on the ESIA document only briefly comments on the geological assessment. We haven't understood the concern from this statement as the ESIA primarily focusses on the Environmental and Social Impact and refers to the Geological aspects only to the extent of any mitigation measures that are required to offset any potential adverse environmental and social impacts on account of the project activities.

AGL had engaged an internationally reputed Consultant Mott Macdonald, UK as the Owner's Engineer responsible for carrying out feasibility studies and detailed design of the entire project scope. AGL strongly believes, that once all remedial measures are designed by the Project Designer taking into consideration various parameters and are implemented on site, the risks are substantially reduced. Detailed technical studies of the Project areas were undertaken at various stages of Project implementation, all such remedial measures have now been completed, wherever excavations or slope cutting is undertaken as part of Project Works.

The surface works such as approach road, dam foundations, Tunnel Adit locations etc. and investigations associated with surface works have been carried out. Results of such studies were considered by Project Designer while designing the Supporting / Stabilization works. Recommended arrangements were completed on site during project implementation. These remedial measures have been able to withstand and are expected to be fit for purpose during the life cycle of project works with necessary routine maintenance works. During construction phase of such surface works adequate precautions were taken to prevent uncontrolled slips / activation of landslide to the extent possible. As such, it is AGL's position that there it has taken all the necessary steps for mitigating any risks of landslides on account of the project activities.

In Para 2 of Green Alternative's letter, reference is made to a media interview by the Dy. Project Director to a local newspaper Batumelibi linking the statement in the ESIA regarding geological risk assessments and the incidence of tunnel collapse. We do not understand in what manner the statement to the media is in contradiction to the comment in the ESIA. It is a well-known fact that despite extensive geological assessments, projects do face geological risks and surprises as it is practically impossible to predict geological behavior based on sampling approach or

methodology usually adopted in the feasibility stage. Detailed studies are carried out as construction progresses.

There is absolutely no merit in the suggestion that activation of landslide could have resulted in the rock fall inside Skhalta – Didachara Tunnel. The ground cover over the collapsed section is more than few hundred meters and has no relation to any landslide activity which could have been triggered due to construction activities.

The stability of the tunnels after construction was established as the collapse has occurred only after the tunnels were filled which suggested a linkage with unforeseen behaviour of the rock mass when exposed to water. Further, it is noteworthy, that in the entire tunnel length of the Skhalta Didachara tunnel totalling more than 9 km, the fall has been experienced across only a few meters.

The letter further raises several questions to EBRD and we are providing our comments on the same as below:

Adequacy of Geological studies:

Detailed geological studies for the Project were conducted in various stages. These study stages were based on the finding / observations gathered during planning, feasibility and Project implementation period. A project of such complexity and spread out across 3 river valley and locations which were accessible only after construction of approach roads etc.

Detailed geological studies and results as necessary to commence construction was available. The investigation comprises the following key elements (Volume VI 1a)

- Borehole investigation
- Geophysical investigation
- Laboratory testing
- Geological mapping
- Geomorphological mapping
- Rock mass mapping / discontinuity survey.

Adequacy of Project design:

Project structure design is based on the data available and is expected to get revised if changes are observed on the parameters utilized for design. This is universally accepted method of construction. The same was also followed in Shuakhevi Project.

The observations and results of preliminary and subsequent investigations were sufficient to ensure project design is adequate and fit for purpose.

Studies during Construction stage:

During construction stage additional Exploratory Bore Holes and relevant studies, further mapping of geological parameters, testing of rock strength from the excavated areas were conducted.

Involvement of EBRD during project design and construction

The lender's Engineer was totally involved at all stages of the project. Progress updates were regularly made available to Lender's Engineer (LAHMEYER) in addition to periodic site visits to various site locations during construction at regular intervals.

Engagement of competent, qualified and experienced professionals

Consultants and designers engaged at various stages of project development are reputed and offer their professional services in just manner. Designer for the project M/s Mott MacDonald is an International Consultant with expertise with establishment over more than 100 + years and 16000+ employees operating in 150 Countries worldwide. The consulting company has been engaged for Shuakhevi Project over the past 7 years from feasibility and design stage and is also the Owners Engineers for Supervision of works at site.

Georgian Consultants which were also engaged at many stages of Project development are some of the Best and reputed firms operating in Georgia and also engaged with many project taken up

by Government of Georgia. Considering above AGL has complete confidence on the Professional deliverables by consultants being Independent, unbiased & Competitive.

Reference to adequacy of Geological studies:

The letter refers to some lines from the EIA (incorrectly referred as dated June 2014) which mentions on *“page 163 5.3.6.5 regarding Skhalta Transfer Tunnel – No mapping or intrusive work has been undertaken along the Skhalta to Didachara transfer tunnel. “*

Green Alternative is referring to a document (version dated August 2012) on which Ministry of Environment issued positive Ecological expertise report on 18th July 2013. Before commencement of Skhalta – Didachara Transfer Tunnel Works in Aug 2014, additional studies were conducted and data was available to perform required design for the Tunnel Construction works. In any project, detailed design is done on a progressive basis and in phases as per the sequence of activities in the project schedule of works. AGL wishes to submit that reference to arbitrary sentences from any report if not interpreted properly (depending upon the stage of the project) is a motivated attempt to mislead any reader. As is done in all projects, detailed investigations are undertaken at various stages of Project Implementation and necessary modifications in design, layout or construction methods is adopted which was done for Shuakhevi project as well.

In view of all the above, It is incorrect to conclude that Shuakhevi Project proceeded without full geological studies. If necessary it can be proved that adequate and sufficient Geological studies / Investigations were carried out and results available for the designer to prepare project documents and release for construction.

Risk of landslides

Although the Adjara region is prone to landslides, to earmark it as geologically unstable is not appropriate when adequate mitigation measures are recommended for the Project structures and implemented successfully.

During construction of Didachara and Skhalta dam no major landslides were activated due to Project works. Many smaller landslides were active along the Batumi – Akhaltsikhe road before project works commenced. After completion of Project Construction works survey of reservoir area was carried out to ascertain any supporting works requirements before water storage commenced. One such identified area on the Right Bank of Adjaristsqali River within reservoir area was adequately supported with Gabion Baskets. Other protected areas and construction slopes where mitigation measures have been installed are stable and have not shown any movement or instability over the past 3 years since the construction is completed.

There has been no information or incidence that suggests that the project construction activities have triggered any landslides. The relevant project construction was completed in 2016 and there has been no landslide activity reported in the affected areas above the tunnel alignment. This is sufficient evidence that the project has not contributed to any landslide activity and has addressed all potential risks adequately.

Coverage of affected villages in the ESIA

The letter further states that *“the ESIA does not assess the impact of the project implementation on the adjacent villages including ones under which company plans to drill the derivation tunnels. “*

This is a completely incorrect statement. Page 60 Table C 1-1 in the ESIA, provides a detailed list of project affected villages along with the impact and activity related to these villages. The same can be accessed with the following link.

<http://agl.com.ge/new/wp-content/uploads/2018/09/Adjara%20ESIA%20Volume%20III%20-%20Appendices%20REV%20B%20-%20FINAL.pdf>

Project implementation has enhanced many infrastructure facilities in cooperation with local communities and Govt authorities, like upgrading Village Road, building new drinking water pipe line, widening & stabilizing land slide in Chanchkhalo Village as part of its CSR activities with the objective of building good community relations between the project and any affected villages.

10.4: Non-compliance with PR 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources

First of all, it is important to note that Green alternative's claim that Shuakhevi HPP is not compliant with PR 6 is based on the Report provided by the Balkani Wildlife Society (Bulgaria), whose method of assessing environmental problems of Shuakhevi HPP through several days' field survey, literature review and interviewing people cannot be accurate and convincing. They did not make contact with the Project to guide them through sites, arrange meetings with local NGOs and specialists involved in biodiversity surveys since 2013 for professional discussions. Some of their statements are fully ungrounded and incorrect.

Allegation: 93 ha of natural habitats were destroyed during construction of Shuakhevi HPP, which is several times higher than assessed.

Areas owned by the project or having any type of legal right is higher than 93 ha. Though, actual ha where natural habitats were affected is lesser, around 75.40 ha.

Project re-calculated actual habitat affected areas in October 2016 and the results are presented in Biodiversity Action Plan (MML, 2016) disclosed on AGL website. A habitat classification for the areas under the footprint of the Project has been prepared through interpretation of satellite imagery and ground truthing. The total and actual area to be affected by the Project is 75.40 ha and is much smaller compared to the calculation included in the ESIA (Mott MacDonald, 2013a). The calculations of land-take areas for the ESIA were based on the design at the feasibility stage and therefore included conservative options that have been refined for now.

Restoration of any natural habitats that are affected temporarily by construction will be implemented at the end of construction. On small unforested areas, it is expected that the vegetation will gradually establish its own on the reinstated top soils (after a number of years). According to calculation approximately 23.63 ha of natural forest are affected by the Project. Due to the permanent loss of natural forest habitats, and the objective to achieve net gain in critical habitat, compensatory forest habitat creation will be undertaken off-site. The forest creation will include the following:

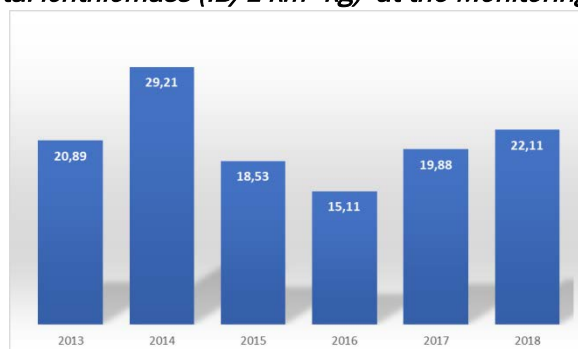
- Off-site planting of the difference between the total forest loss of 23.63 ha and the forest area that can be replanted on the Project affected sites
- Off-site planting of an additional 4.73 ha of forest, which represents 20% of all forest affected by the Project.

Allegation: By the end of Constriction stage of the project fish populations are almost completely extinct for several Kilometers below 2 dam and the weirs, while the remaining fish populations above the dams/weirs are in a bad state. Special conservation measures are needed for the unconstructed middle sections of Adjarstqali river and remaining tributaries so that any aquatic live is left in the River basin

We fail to understand the factual basis of the above statement especially if it is noted that the Shuakhevi hydropower project has not been into operations yet and consequently the project cannot have any impact on the reduction of the number of fish.

Further, right from the pre-construction stage in 2013, the Project been conducting research and monitoring of river habitats, in particular fish and water micro-invertebrates since 2013. Monitoring has been conducted on 15 locations 4 times a year during low and high flood periods. Monitoring covers desktop analysis, field surveys, laboratory analysis and anamnesis. Based on the monitoring results, we can confidently state that there have been no significant changes in the structure of fish population of the Adjaristsqali river. The difference between the data of 2013-2017 is within the annual fluctuation of the rivers typical for the Kolkheti Mountainous rivers. Monitoring is conducted by one of the qualified and experienced ichthyologist of Georgia. Monitoring results are shared with the Ministry of Environment twice in a year.

Diagram 1. Average Total ichthiomass (IB/L-km*kg) at the Monitoring Stations in 2013-2018



In 2017, when Balkani concluded extinct of fish downstream the dams and weir, the Project was not into operations. This itself show deprives credibility to the report prepared by NGO Balkani and raises question on their intention.

Moreover, to ensure that Project is not expected to cause significant irreversible damage to the local ecosystem during operational phase, the following activities have been carried out:

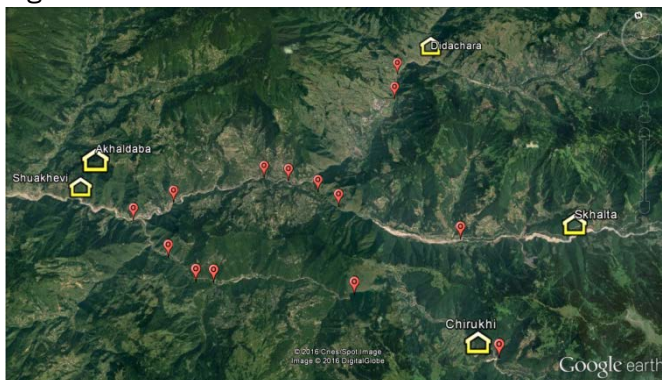
- **Low Flow Mitigation Strategy including Ecological Baseline Review** (MML 2016) has been developed. The development of the mitigation strategy has been informed through comprehensive appraisal of the pre-construction and construction aquatic ecology surveys undertaken for the Project through to the end of the summer 2016. The purpose of the report is to set out a strategy to mitigate the potential impacts caused by reduced flows downstream of the dams and weirs. It is concluded through the report that with all mitigation measures successfully implemented, the project is not expected to cause significant irreversible damage to the local ecosystem over the long term and eventually after decommissioning the river will be able to return to its unmodified state. Report focusses on how the minimum standard of no residual adverse impact to biodiversity can be achieved for each river system.
- Fish pass and fish pass monitoring system has been installed.
- In addition to local NGOs engaged in the Project since 2013, the Project involved additional expertise for operational phase including fluvial geomorphologist through environmental company “Blue Rivers” (Ukraine) in order to implement low flow mitigation strategy requirements and ensure all mitigation measure are implemented properly and net loss is achieved.
- AGL is currently working on Fish Stocking Plan to stock fish in case monitoring results will who decrease of population

Allegation: With regards to the Eurasian otter, a red list species in Georgia, the Adjaristsqali basin is of great importance for the conservation of the species. Even before the Shuakhevi HPP operation starts otter is extinct below the 2 dams and the weir. Special conservation is needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that otter remains in the basin, however a healthy population would be unlikely, if the minimum ecological flow of 10% only remains in the rivers and if there are daily changes in the Shuakhevi

powerhouse water release. Otter population surveys show very similar results to fish and aquatic fauna questionnaires as fish is the main prey of the species

The statement that “even before the Shuakhevi HPP operation starts otter is extinct below the 2 dams and the weir” is completely groundless. Surveys conducted during the years 2015-2018 shows that otter footprints were recorded along the river Adjarsqali and its tributaries. Also the dynamic is very persistent and there is no trend of decrees. The red points on the map (Figure 1) below indicates potential locations of otter holts - in and around these areas tracks and excrements of otter. Depending on weather and water flow level, otter tracks may be found all along the river banks, as they have to travel long distance for food.

Figure 1: Otter tracks



We also cannot agree with allegation regarding the extinction of Otter during operational phase. The Local experts involved in the project are confident that implementation of all mitigation measures presented in Low Flow Mitigation Strategy including Ecological Baseline Review (MML 2016) will ensure healthy sustenance of river ecosystem and this will be beneficial for Eurasian otter as well. Installation of fish pass at Chirukhistqali weir and fish stocking (if required) will ensure sufficient fish supply in the river for Eurasian Otter. Thus, their allegation related to otter extinction during operation does not have valid ground.

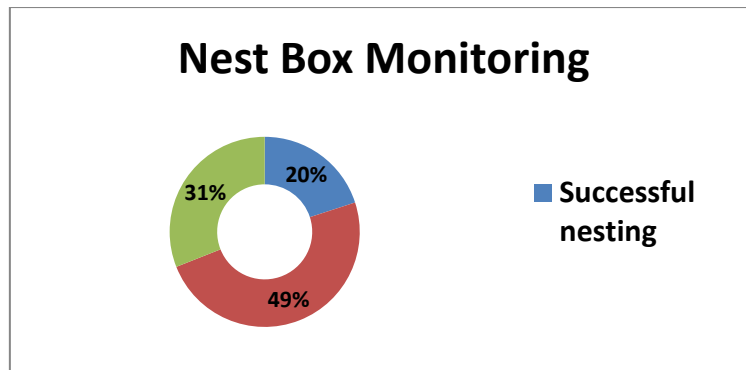
Moreover, to ensure that there is no residual adverse impact on otter, monitoring will continue during 10 years of operational phase (August and September) on known nesting locations. If any decreasing trend is noticed, however unlikely as it may seem, appropriate conservative measures will be developed by relevant experts.

Allegation: Regards to birds and bats, the installation of bird and bat measure is totally inadequate as it can't offset the loss of natural habitats, especially riparian habitats. The natural habitat where the boxes were put in November 2016 have enough old trees with hollows so rare species of birds and bats are unlikely to occupy them

Providing artificial nesting opportunity is one of the internationally recognizes offsetting Practice. Project cannot agree that installation of bird and bat boxes together with planting around 28 ha forest is inadequate compensate measure for lost habitat of breeding birds.

Installation of boxes also shown the high level of successful nesting already for the first year:

Diagram 2: Nest Box Monitoring



As the Diagram 2 shows, there were attempts for nesting in the 51% of total boxes, and overall ratio of successful nesting was 20%.

Monitoring will continue during 10 years of operational phase.

Figure 2: Nesting birds



As for the impact of the Shuakhevi HPP project on migratory birds within the project area, in 2013 and 2014 the monitoring of autumn migration was conducted from 3 points in the project areas. The surveys showed very few migratory birds pass over Shuakhevi HPP project area (much less than 3000 as indicated in the report). The birds pass on a high altitudes and the HPP doesn't make any negative impact on the migratory birds.

AGL Comments / Social Performance / Green Alternative (GA) / Request for Compliance Review (EBRD PCM) / July 18, 2018

In the Complaint to EBRD from July 2018, Green Alternative request the Bank to review a compliance of Shuakhevi HPP on the following fields related to the social performance of the Project:

- o Gender impact, participation of women in decision-making
- o Non-compliance with PR10 on Information Disclosure and Stakeholder Engagement

First and foremost, AGL contends that the statements made in the complaint from Green Alternative are incorrect, false and misrepresented. Secondly, at no stage, Green Alternative have approached AGL directly or otherwise, seeking clarifications on the allegations and concerns raised by them or the communities, nor have they made any attempt to approach AGL for seeking information that would have clarified most of their allegations.

Notwithstanding the same, contrary to the Green Alternatives claims, AGL has executed the project in compliance with the Applicable Standards and with strong social performance, that was developed and monitored in partnership with the lenders during the implementation of the Project. AGL has been very strong on delivering social requirements, particularly on stakeholder engagement involving all key stakeholders and vulnerable groups, as well information disclosure, land acquisition procedure and grievance mechanism throughout the Project implementation period. In addition to this, AGL implemented an ambitious set of social responsibility programs to benefit local communities and to support development of the region.

We present below a summary of social team's arguments to the incorrect statements presented by the Green Alternative in the complaint from July 18, 2018 to EBRD regarding social performance of the Project.

Section 10.2. in the Complaint: Gender impact, participation of women in decision-making

The Complainants, while referring to NTS and the ESIA's Social Impact Assessment Chapter 7.2.4.4, claim that information on gender and women, and assessment of impact on women is practically lacking. Besides, they also refer to Green Alternative's report of 2016 *on Gender Impact of Shuakhevi HPP Project and Its Compliance with EBRD Requirements*, which states that there is no evidence that can verify the fact that the project brought sustainable benefits to the affected population and simultaneously strengthen women in Adjara.

In response to the above, it should be noted that the above mentioned report was written solely based on the interviews given by 34 respondents and no contact was made to AGL for obtaining further information pertaining to local women's participation and consultations, women employment figures, etc. AGL was committed to engaging with various stakeholders including women from the early stage of the project development. **AGL commenced informational meetings during the scoping phase in June 2011 while it was not required by the Georgian legislation and it became part of the EIA permit from 2018.** These field meetings were conducted with mixed groups **including female residents. Besides, AGL undertook separate meetings with women in 2013 (prior to commencement of active construction activities) and 2016 (discussion of general problems of women in the valley and social projects).** Minutes of Meetings are available in AGL office upon request.

In order to strengthen women's involvement in decision-making and distribution of cash compensation paid by the company, as advised by ARUP in 2016, AGL followed principles of Appendix F for all land acquisition and compensation transaction. In particular, *Item 6: Ensure gender-sensitive procedures are used during the compensation process. For example, spouses of compensation recipients should be duly informed about the amount and timing of compensations paid to their households.* **Spouses attended negotiation process and also signed**

Acceptance –Delivery Acts (for receiving contracts) as evidence that they are fully informed and aware of the compensation amount.

AGL provided additional measures to Female Headed Households (FHHs) affected by the construction of the 35kV Skhalta-Shuakhevi Transmission Line based on their individual needs.

In addition to the above mentioned, AGL has implemented wide range of awareness raising programs targeting local women and strengthening their participation in educational programs. For instance, in 2015-2017, AGL launched healthcare awareness meetings in Khulo and Shuakhevi municipalities with a goal to raise awareness on public health related information, **separate meetings were conducted only with women on topics such as: Breast Cancer, Contraception and Abortion, Gender in Georgian Reality, HIV and Hepatitis, etc.**

Section 10.3. in the Complaint: Non-compliance with PR10 on Information Disclosure and Stakeholder Engagement

The Green Alternative claim, “the project was characterized with flawed information disclosure and public participation process”. In particular, according to the complainant the project does not support EBRD’s own rational regarding Shuakhevi project loan in terms of encouragement of public participation and treatment of locals”, “stakeholder engagement for the Shuakhevi HPP project has not been open, meaningful and in an appropriate manner acceptable to potentially affected communities”. Further, Green Alternative insists, “AGL’s grievance mechanism is either inaccessible or ineffective in dealing with community grievances”. In addition to this, Green Alternative allege, “the EBRD and its client have not engaged with stakeholders throughout the life of the project and violated EBRD’s PR10 on Information Disclosure and Stakeholder Engagement”.

AGL social team’s position to these statements are as follows:

Stakeholder Engagement

Preliminary stage (2011-13)

Since 2011, **in the earliest stage of the project development, AGL started the stakeholder engagement activities in the Shuakhevi and Khulo municipalities.** From 2012, prior to beginning the active construction phase, AGL held multiple meetings with various stakeholders in both municipalities, including community leaders, local authorities, NGOs and media representatives. The objectives of these meetings were general updates about the projects’ preliminary studies (Environment and Social Impact Assessment), as well details about project implementation and planned construction activities such as environmental and social impact (local Environment Impact Assessment), land acquisition procedure and future employment perspectives. **All records of the meetings are kept in the Public Information Centres and summaries are available in the Company’s Communication Logbook.** These are routinely verified by the Lender teams during the periodic Monitoring visits.

Active construction stage (2013-2017)

AGL was implementing the relevant sections of the SEP for construction stage (revision G for construction/ Shuakhevi HPP). **After commencing construction works, in 2013, AGL opened Public Information Centres (PIC) in both municipalities to facilitate daily communication with key stakeholder groups and strengthen social team’s efforts in responding grievances and concerns from all the Project-affected communities.** Recognizing, positive impact of the Public Information Centres, in 2014 after consultations with local stakeholders, **the company opened additional PIC in Skhalta valley** to engage actively with the villages in this area of Khulo municipality.

At the same time, during the active construction stage, construction labour policies and procedures were in place and a worker grievance procedure was established at AGL and the

constructor company AGE. Implementation of labour policy were closely monitoring by AGL and AGE social teams throughout the project implementation period. AGL stakeholder engagement specialist and AGE community liaison officer conducted informational meetings with AGE workers on regular bases. In general, as construction works progressed, coordination between AGL and AGE has improved, contributing to more effective communication with workers and redress of their concerns.

Further is important to note that, prior to completion of active works, AGL designed a retrenchment plan in consultation with the lending partners. Objective was to let the workers go in such a way as to minimize the negative effects of the layoffs, to help make a smooth transition for our workers and those of our contractors and to provide them with ongoing support as they re-enter the job market. Timely notification, productive grievance system during demobilization period were established by AGE and closely monitored by AGL and lenders. At the same time, job and financial counselling, as well retraining and requalification were offered all more than 700 local workers within Skills Development Program developed in cooperation with local NGO institute of Democracy and Regional government (note: more than 100 local workers, including female workers benefited from the Skills Development Program).

Pre-Operational Stage

Prior to completion of active construction phase, AGL developed SEP for operation phase in cooperation with the lending partners and in active consultation with major stakeholders in the Project. Informational meetings took place in all working areas before begin the operation phase. In these informational sessions, AGL delivered safety awareness meetings to each communities affected by operation of the plant e.g. Khulo municipality on April 11, 2017, in Shuakhevi municipality on April 21, 2017 and in Skhaltva region (Khulo municipality) May 17, 2017.

All the records of the meetings are kept in the Public Information Centres. In addition, summaries are available in the Company's Communication Logbook. All documentation is verified by the lender teams during their Monitoring visits regularly for any specific concerns and the steps taken by AGL for their respective addressal.

Rehabilitation stage (2017- present)

AGL continues to demonstrate commitment to delivering on its social commitments into its day-to-day activities after beginning of rehabilitation activities. In particular, AGL redeveloped stakeholder engagement strategy to the new working environment and at the same time, the Company returned to the guidelines from the construction phase SEP approved by lenders (revision G for construction/ Shuakhevi HPP). AGL and AGE social, safety and technical teams conducted multiple informational meetings with key stakeholder groups with the objective to provide details to ongoing repair works and other aspects of the project. The fact that there have been no agitations or blockages during this period is ample evidence of AGL's effective management of stakeholder concerns and information dissemination despite the adverse setback faced by the project due to the collapses in the tunnels.

At this stage of the Project, Public Information Centre (PIC) is reopened in Didachara working camp to cover Khulo municipality. Khichauri main camp serves as another public information point for Shuakhevi municipality. AGL keeps publishing an informational page in the regional Newspaper Ajara which provides the Project news, updates and information to local communities on monthly bases. Grievances in the Community Grievance Log-Book are registered (AGL Stakeholder Engagement Specialist). The Workers Grievance Log-Book is in place by contractor (AGE Community and Liaison Officer) AGL operates according to the construction stage labour management policies.

Information Disclosure

AGL has been actively collaborating with the major media outlets in both municipalities throughout of implementation of the Project. The Company strived to effectively share

information with media organizations such as the Adjara TV and TV 25 television stations and the *Adjara*, *Khulo*, and *Shuakhevi* regional newspapers.

AGL has been publishing an informational page in the regional *Newspaper Ajara* which provided the Project news, updates and information to local communities on monthly bases during the active construction phase. In addition to this, company held multiple briefings for major media outlets at Khichauri main camp regularly. Finally, for information disclosure, AGL elaborated Frequently Asked Questions (FAQ) in Georgian and English, as well kept the company's website data regularly updated.

Grievance Mechanism

The Company established a grievance mechanism early in the preparatory stage prior to construction activities. All grievances were acknowledged within 10 days. If immediate corrective action was available, it took in the shortest period. If no immediate corrective action was required, a written response was provided within 21 days. AGL Stakeholder Engagement Specialist (SES) and AGE Community Liaison Officer (CLO) have been the point of contacts for grievances and comments for all stakeholder groups during the implementation of the project. In overall, AGL social team registered and responded more than 1500 grievances from all stakeholder groups throughout implementation of the Project. **The Community Grievance Log-Book is being kept by AGL and the Workers Grievance Log-Book by contractor.**

Livelihood Restoration

AGL had instituted a robust livelihood restoration program for those affected by land acquisition. In addition to purchasing the land well above market rates, the Company collaborated with local NGO to provide former landowners with alternate sources of continuing income. Important to point out that, during the execution of land acquisition, AGL promoted ethical business practices to support positive changes in quality of life in the local communities. For instance, the question of who, exactly, owns the land and was due compensation was a tricky one. Because of informal land ownership, AGL decided to not only compensate legal owners, but also land users such as farmers and shepherds who use the land but who do not have a legal right. This was unique among companies in Georgia who typically only compensate legal owners and it set an important precedent in equitable businesses practices for other companies operating in Georgia.

CSR Programs

In addition to these activities, AGL implemented a wide-ranging and ambitious set of social responsibility programs. AGL's social responsibility efforts included voluntary corporate responsibility initiatives as well as programs developed in cooperation with the lending partners. In addition to the direct impact, the company has been making to the local economy through investment, employment, and local property taxes, AGL chose to direct its social responsibility efforts in three directions: **infrastructure, community development, and education and awareness raising**. Some of the projects the Company done included road building, supplying villages with drinking water, community and small business financing and development, scholarships education projects for local teachers and students, road safety and health awareness trainings. In all of social projects, AGL had actively collaborated with local NGOs and local government to develop and implement the projects. AGL CSR programs clearly demonstrated the positive impact that international finance can make on promoting ethical business practices in Georgia.