



Independent
Project
Accountability
Mechanism

Compliance Review Report

Shuakhevi HPP
EBRD Project Number 45335
Case 2019/01

May 2022

NOTE ON PROCEDURE:

Section V on Transitional Provisions of the 2019 Project Accountability Policy (PAP) states that in relation to cases outstanding on the date of the PAP becoming effective, the “IPAM Head will, in her discretion, determine whether a Compliance Review commenced but not yet completed under the PCM Rules of Procedure will be completed by the assigned PCM Expert or whether they will be subject to the provisions of this Policy, taking into account, inter alia, the extent of the Review already carried out (and its duration) and whether the PCM Expert has already reached any conclusion”

In line with the above, the IPAM Head determined in July 2020 that concerning the ongoing Case 2019/01 Shuakhevi HPP (45335) that the assigned PCM Expert, Neil Popovic, should complete the compliance review process under the 2014 Rules of Procedure of the Project Complain Mechanism as at that time he had already carried out a substantive part of the review and reached conclusions. Thus, the present Compliance Review Report, its findings, and compliance determinations are in line with the 2014 Rules of Procedure and are the sole responsibility of the PCM Expert.

Notwithstanding this, the IPAM Head has asked the IPAM team to review the document and edit some of the paragraphs that referred to confidential information as per the Disclosure of Information Policy and/or the Access to Information Policy as relevant. In consequence, any errors or omissions related to this revision are the sole responsibility of the IPAM Head. Furthermore, any delays in the process from July 2020 onwards are also the responsibility of the IPAM office.

Contact information The Independent Project Accountability Mechanism (IPAM) European Bank for Reconstruction and Development One Exchange Square London EC2A 2JN Telephone: +44 (0)20 7338 6000 Email: ipam@ebrd.com	How to submit a complaint to the IPAM Concerns about the environmental and social performance of an EBRD Project can be submitted by email, telephone or in writing, or via the online form at:  https://www.ebrd.com/project-finance/ipam.html
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List of Abbreviations

AGL	Adjaristsqali Georgia LLC (“AGL” or the “Client”)
ADB	Asian Development Bank
BAP	Biodiversity Action Plan
BWS	Balkani Wildlife Society
CEMP	Construction Environmental Management Plan
CAP	Corrective Action Plan
CSO	Civil Society Organisation
EBRD	European Bank for Reconstruction and Development
ESAP	Environment and Social Action Plan
ESD	EBRD Environment and Sustainability Department
ESDD	Environment and Social Due Diligence
EHS	Environment Health and Safety
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESP	EBRD Environmental and Social Policy(2008)
EU	European Union
FAQ	Frequently Asked Questions
GIP	Good international practice
GWh	Gigawatt
HEP	Hydro Electric Project
HPP	Shuakhevi Hydroelectric Power Plant
IFC	International Finance Corporation
IFI	International Financial Institution
IUCN	International Union for the Conservation of Nature
LALRP	Land Acquisition and Livelihood Restoration Plan
LTA	Lenders’ Technical Advisor
MW	Megawatt
NGO	Nongovernmental Organisation
PCM	Project Complaint Mechanism
PIC	Public Information Centre
PIP	EBRD Public Information Policy
PR	Performance Requirements
SEP	Stakeholder Engagement Plan
SPV	Special Purpose Vehicle
SPS	Safeguard Policy Statement
TOR	Terms of Reference
UNECE	United Nations Economic Commission for Europe Convention

Executive Summary

The Project

The PCM received a complaint on 16 July 2018 from CEE Bankwatch and Green Alternative relating to the EBRD's loan to Adjaristsqali Georgia LLC ("AGL") in the Republic of Georgia of up to USD 86.5 million (EUR 63.7 million) for the financing, development, construction, and operation of Shuakhevi Hydroelectric Power Plant (HPP) (45335) on the Adjaristsqali River (the "Project"). The Project is designed as a run-of-the-river hydropower plant with an installed capacity of 185 MW and an expected electricity output of 452 GWh with a 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 loan was approved by the EBRD Board on 30 April 2014 and at the time of completion of this report, the loan was in the process of being repaid.

The Request

EBRD suspended the registration of the Complaint on 27 July 2018 because the issues raised were reasonably related to a previously submitted PCM case undergoing a Problem-Solving Initiative.¹ PCM determined that the present Complaint met the PCM's registration requirements on 18 February 2019, and the Board approved the appointment of Mr. Luc Zandvliet as the *ad hoc* PCM Expert as co-eligibility assessor jointly with the PCM Officer on 1 March 2019. In July 2019, the Eligibility Assessors found the Complaint eligible for Compliance Review. In August 2019, the PCM appointed Neil A.F. Popović as *ad hoc* PCM Compliance Review Expert.

Compliance Review Scope and Methodology

The PCM Compliance Review has included a review of public domain project information and internal documents, as well as documents provided by Complainants and AGL. The Compliance Review Expert participated in conference calls with Bank Management. The Compliance Review Expert also participated in conference calls with the Complainants and AGL. In October 2019, the Compliance Review Expert, accompanied by the PCM Officer, conducted a site visit to Georgia. The site visit included meetings with residents of Project-affected villages, meetings with the Complainant Green Alternative, and meetings with representatives of AGL.

Findings and Recommendations

Complainants alleged inadequate assessment of potential environmental and social impacts of the Project, inadequate monitoring of environmental and social components of the Project, inadequate assessment and monitoring of biodiversity conservation and sustainable management of living natural resources, and shortcomings in information disclosure and stakeholder engagement. In particular, as determined by the Eligibility Assessors, Complainants identified 16 areas of concern:

1. Whether the EBRD monitored the Project on an ongoing basis, ensuring that the environmental and social components included in project documents, such as the implementation of the Environmental and Social Action Plan ("ESAP") were being substantially met. [2008 ESP,

¹ The Complaint that requested Problem-Solving was registered in March 2018.

¶¶ 35 & 36.] **The Compliance Review Expert has concluded that the Bank's monitoring of the Project, including implementation of the ESAP, satisfies the requirements of the Bank's 2008 Environmental and Social Policy ("ESP").**

2. Whether EBRD satisfied its obligations under PR 1 (Environmental and Social Appraisal and Management) to ensure that potential environmental and social impacts were appraised in the context of the Project's area of influence. [PR 1.6.] **The Compliance Review Expert has concluded that because the ESIA and other Project documents do not clearly and consistently identify the Project's area of influence, the Bank has not satisfied its obligations to ensure that potential environmental and social impacts were appraised in the context of the Project's full area of influence.**
3. Whether EBRD confirmed that relevant stakeholder groups were identified (e.g., Project-affected women), and the ESAP included differentiated measures to protect them. [PR 1.14.] **The Compliance Review Expert has concluded that, through its incorporation of the Environmental and Social Management Plan ("ESMP"), the ESAP does include differentiated measures to protect women and other vulnerable groups.**
4. Whether EBRD ensured that the ESAP was responsive to changes in Project circumstances, unforeseen events and the results of monitoring. [PR 1.15.] **The Compliance Review Expert has concluded that the ESAP, including through its incorporation of the ESMP, is responsive to changes in Project circumstances, unforeseen events and the results of monitoring.**
5. Whether EBRD ensured that AGL established procedures to monitor and measure compliance with environmental and social provisions, including the ESAP. [PR 1.20.] **The Compliance Review Expert has concluded that the Bank did ensure that AGL established procedures to monitor and measure compliance with the environmental and social provisions, including the ESAP.**
6. Whether EBRD ensured that the results of monitoring were used to correct and/or improve AGL's performance. [PR 1.21.] **The Compliance Review Expert has concluded that the results of monitoring were used to correct and improve AGL's performance.**
7. Whether EBRD satisfied its obligations to ensure that comprehensive geological studies were undertaken by AGL during project design and construction. [PR 4.7, PR 4.10 & PR 4.11.] **The Compliance Review Expert has concluded that the Bank did not satisfy its obligations to ensure that comprehensive geological studies were undertaken by AGL during project design and construction.**
8. Whether EBRD ensured that AGL disclosed potential adverse impacts to health and safety of affected communities, including engaging affected communities on an ongoing basis and discussing material changes in advance. [PR 4.8.] **The Compliance Review Expert has concluded that the Bank did ensure that AGL disclosed potential adverse impacts to health and safety of affected communities on an ongoing basis, including with respect to changes to the Project.**
9. Whether EBRD ensured that AGL reported to affected communities on risks and potential impacts of the Project. [PR 4.9.] **The Compliance Review Expert has concluded that the Bank**

did ensure that AGL reported to affected communities on the risks, potential impacts and benefits of the Project.

10. Whether EBRD ensured that AGL took measures to minimize impacts caused by natural hazards such as landslides that could arise from land use changes due to the Project. [PR 4.15.] **The Compliance Review Expert has concluded that the Bank did ensure that AGL took measures to minimize impacts caused by natural hazards such as landslides.**
11. Whether EBRD ensured that AGL avoided or minimized adverse impacts of the Project on local water, vegetation and other natural resources used by affected communities. [PR 4.16.] **The Compliance Review Expert has concluded that the Bank did not ensure that AGL avoided or minimized adverse impacts of the Project on local water resources.**
12. Whether EBRD confirmed that AGL adequately characterized risks to biodiversity through the appraisal process. [PR 6.6 & PR 6.8.] **The Compliance Review Expert has concluded that the Bank confirmed that AGL adequately characterized the risks to biodiversity through the appraisal process.**
13. Whether EBRD effectively monitored implementation of biodiversity mitigation measures to ensure no net loss of biodiversity. [PR 6.8.] **The Compliance Review Expert has concluded that while the Bank monitored implementation of biodiversity mitigation measures, the Bank did not at all times (perhaps because it could not) ensure the Project was achieving no net loss of biodiversity.**
14. Whether EBRD ensured that AGL provided ongoing/current information regarding environmental and social impacts to stakeholders during Project implementation. [ESP #7, PR 10.3, PR 10.15 & PR 10.21.] **The Compliance Review Expert has concluded that the Bank did ensure that AGL provided ongoing and current information regarding environmental and social impacts to stakeholders during Project implementation.**
15. Whether EBRD satisfied its obligations to ensure that AGL properly identified stakeholders during Project implementation, including meaningful engagement with disadvantaged and vulnerable peoples during Project preparation and implementation. [PR 10.8, PR 10.9, PR 10.12, PR 10.13 & PR 10.15.] **The Compliance Review Expert has concluded that the Bank did satisfy its obligations to ensure that AGL properly identified affected stakeholders during Project implementation.**
16. Whether EBRD confirmed that Project-affected women were consulted in a meaningful way that was inclusive and culturally appropriate. [PR 10.11, PR 10.15 & PR 10.16.] **The Compliance Review Expert has concluded that the Bank confirmed that Project-affected women were consulted in meaningful and culturally appropriate ways.**

1. Case Introduction

1.1. The Project cited in the Request

On 30 April 2014, the Board of Directors of the European Bank for Reconstruction and Development (“EBRD”) approved financing of the Shuakhevi Hydropower Project (HPP), providing a loan of up to USD 86.5 million (EUR 63.7 million), against a total project cost of USD 417 million (EUR 307 million), for the development, construction and operation of the Project on the Adjaristsqali River in south-western Georgia. The Project is designed as a run-of-the-river hydropower plant and will have an installed capacity of 185 MW with expected electricity output of 452GWh. It will have capacity for diurnal storage in two reservoirs, allowing the Project to store water for up to 12 hours and sell electricity at peak demand periods.

Project proponent Adjaristsqali Georgia LLC (“AGL” or the “Client”) is 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 the Shuakhevi HPP. AGL is owned by Clean Energy Invest AS (40%), Tata Power (40%), and IFC Ventures (20%).

The Project has been categorised A in accordance with EBRD’s 2008 Environmental and Social Policy (“ESP”). The Project includes two dams that are 39 metres and 22 metres high, respectively, each higher than the 15-metre height cited in Appendix 1 of the ESP (2008) as indicative of meeting the threshold for Category A.²

The Project will supply the Georgian and Turkish power systems with electricity via transmission lines to be constructed as a separate project. It is anticipated that most of the electricity generated from the Project will be exported to Turkey.

1.2. The Parties to the Case

On 16 July 2018, CEE Bankwatch and Green Alternative submitted a complaint relating to the Project to the EBRD Project Complaint Mechanism (PCM). Complainants allege non-compliance with EBRD’s 2008 Environmental and Social Policy (ESP). The Complaint raises concerns regarding the robustness of the ESIA and due diligence, project implementation and project monitoring, including concerns regarding the adequacy of stakeholder engagement, measures for safeguarding women as a vulnerable group, and the adequacy of biodiversity measures.

1.3. The Request

The PCM suspended registration of the Complaint on 27 July 2018 because the issues raised in the Complaint were reasonably related to another PCM case undergoing Problem-Solving, which was submitted by Project-affected community members and registered by the PCM four months prior, in

² The Project initially contemplated a second dam scheme at Koromkheti, and a third at Khertvisi. Only the Shuakhevi scheme received financing from the Bank, and AGL has confirmed that due to significant economic and environmental risks, it will not pursue the Khertvisi scheme as part of the Project.

March 2018.³ As the Problem-Solving Initiative for Complaint 2018/03 was progressing, on 18 February 2019 PCM determined that the present Complaint met the PCM's registration requirements. On 1 March 2019, Mr. Luc Zandvliet was appointed by the Board as the *ad hoc* PCM Expert to act as co-eligibility assessor jointly with the PCM Officer. EBRD formally responded to the Complaint on 20 March 2019 and in July 2019, the Eligibility Assessors found the Complaint eligible for Compliance Review.

As per their response, the Bank maintains that all relevant Project documents and stakeholder activities were conducted and/or disclosed consistent with relevant provisions of the ESP. Bank management committed to providing documentation and supporting information as needed by the PCM to confirm compliance with the ESP.

AGL provided two written responses to the Complaint.⁴ AGL states that the Project's design, impact assessments and other due diligence were adequate and consistent with EBRD requirements. AGL further states that it engaged with various stakeholders throughout the Project, specifically including measures taken to ensure participation by women in Project-affected communities. AGL asserts that statements in the Complaint are "incorrect, false and misrepresented," and that Complainants made no effort to raise their concerns directly with AGL.

The Eligibility Assessors issued an Eligibility Assessment Report on 23 July 2019 (publicly disclosed on 25 July 2019), in which they found the Complaint eligible for Compliance Review. On 30 July 2019, the Board appointed Neil A.F. Popović as the *ad hoc* PCM Expert to conduct the Compliance Review.

2. Case Processing and Compliance Review Methodology

Complainants requested a compliance review of the Project to assess the adequacy of stakeholder engagement and environmental and social impact assessment, including whether EBRD ensured gender equality and proper safeguarding of women as a vulnerable group. Complainants also requested review of the adequacy of biodiversity offset measures.

The PCM Eligibility Assessors determined based on analysis of the relevant documentation that the Complaint was eligible for a compliance review.

³ Complaint 2018/03, available on the PCM Register. Similar complaints were submitted to the Asian Development Bank's Office of the Special Project Facilitator (OSPF) and the International Finance Corporation's Compliance Advisor/Ombudsman (CAO). A Problem Solving initiative was co-facilitated by the CAO and PCM (the Mechanisms) with OSPF acting as an observer to the process. Case 2018/03 was closed at the end of 2020 with no agreement reached by the Parties.

⁴ Both responses are dated 14 March 2019.

2.1. Compliance Review Objectives

A. Scope of Review

The Eligibility Assessors issued an Eligibility Assessment Report with Terms of Reference establishing the scope of compliance review to address the 16 issues set forth above. The Terms of Reference implicate the Bank's obligations in the following areas:

- **General obligations under the 2008 ESP.** The sufficiency of monitoring under paragraphs 35 and 36 of 2008 ESP.
- **PR1: Environmental and Social Appraisal and Management.** The sufficiency of environmental and social appraisal and management under PR1, including the Project's area of influence (PR1.6), consideration of disadvantaged or vulnerable stakeholder groups (PR1.14), recognition of changes in Project circumstances (PR1.15), procedures to monitor and measure compliance with the Project's ESAP (PR1.20), and use of the results of Project monitoring (PR1.21).
- **PR4: Community Health, Safety and Security.** Community health, safety and security, including the adequacy of geological studies and measures taken in light of such studies (PR4.4, 4.7, 4.10 and 4.11), disclosure of relevant Project-related information to affected communities (PR4.8), reporting of risks of the Project and action plans to affected communities (PR4.9), adequacy of measures to prevent, avoid, or minimize exacerbation of impacts caused by natural hazards (PR4.15), and ensuring minimization of Project impacts on local water, vegetation and other natural resources (PR4.16).
- **PR6: Biodiversity Conservation and Sustainable Management of Living Resources.** Biodiversity conservation and sustainable management of living natural resources, including confirmation that AGL fully characterized the risks and impacts to biodiversity and identified measures to avoid, minimize or mitigate adverse impacts (PR6.6 and 6.8), and monitoring the implementation of biodiversity mitigation measures (PR6.8).
- **PR10: Information Disclosure and Stakeholder Engagement.** Information disclosure and stakeholder engagement, including AGL's provision of ongoing and current information to stakeholders (ESP #7, PR10.3, 10.15 and 10.21), ensuring that AGL properly identified and engaged with affected stakeholders (PR10.8, 10.9, 10.12, 10.13 and 10.15), and confirming that Project-affected women were consulted in a meaningful way (PR10.11, 10.15 and 10.16).

2.2. Case Processing Prior to the Compliance Review

As part of its Environmental and Social Due Diligence dated 9 August 2013 (ESDD), the Bank prepared a Gap Analysis to determine actions to be implemented to ensure that the Project would comply with the Bank's 2008 ESP.⁵ The Bank memorialized the Gap Analysis in a Performance Requirement Compliance Matrix Table included in the ESDD. As relevant to the Complaint, the Gap Analysis addresses the following subject areas:

⁵ See ESDD, § 3.6, at p. 9.

PR1: The Gap Analysis recommends development of a more structured environmental and social management system, including a change management procedure to identify, evaluate and mitigate environmental and social impacts associated with changes in the design and construction of the Project. The Gap Analysis calls for AGL to finalize development of the environmental and social management system, including a register of environmental and social aspects, development of an environmental improvement plan and development of a detailed monitoring schedule to include monitoring of social issues.

PR4: Finding no clear reference in AGL's Health, Safety and Environmental Management Plan to the need to identify and manage the risks and potential impacts to the health and safety of the community from the design, construction, operation and decommissioning of the Project, the ESDD recommends that AGL should ensure that such risks and potential impacts are identified, evaluated and disclosed to the affected local communities. The community should be consulted, and the measures reviewed accordingly.

PR6: The ESDD found the ecological data collected to be reasonably thorough, but that it was not possible to identify all potential ecological issues on the Project sites. The ESDD flagged the issue of potential impacts on threatened and protected species of flora and fauna, noting in particular the potential impacts on certain bird species. The Gap Analysis recommended that AGL develop a detailed monitoring schedule for evaluation and reporting of ecological impacts. Consistent with the ESIA and ESMP, the Bank further recommended preparation and implementation of plans aimed at protecting and conserving habitats.

PR10: The ESDD report recommends updating the ESIA to refer to all Lender requirements and performance standards, and restructuring of the Stakeholder Engagement Plan to outline stakeholder engagement throughout the lifetime of the Project, incorporating project phases, specific dates, locations, methods of information disclosure and responsible entities. The ESDD further recommends updating the Project's website and providing additional description in the Stakeholder Engagement Plan regarding channels of communication and methods for future information disclosure and consultations with women and vulnerable groups.

2.3. Compliance Review Methodology

In consideration of the nature of the Complaint, and the issues raised, the Compliance Review Expert undertook the Compliance Review using the following methodological approaches:

Step 1

- **Document review:** the Compliance Review involved an extensive, in-depth review of Project documents and secondary sources. The Project document review covered the ESIA documentation available to the public, as well as internal Bank and Client documents relating to the Project. The review of Project documents has included ongoing consideration of monitoring reports. The review of secondary sources included desktop research on relevant topics such as geological testing, historical landslide activity and gender impact of the Project, as well as media reports about the Project. Reviewed documents are referenced as

appropriate throughout the Compliance Review Report, in line with the EBRD's 2014 Public Information Policy (PIP).⁶

- **Engagement with the Parties:** the Compliance Review included numerous exchanges with the relevant Parties via written communications, in-person interviews, as well as video and telephone interviews. The Expert engaged with the Complainants; the EBRD Banking and Environment and Sustainability departments; and the Client. The Complainants and Bank Management were given equivalent opportunities to engage with the PCM Expert.
- **Field visit:** the Compliance Review included a 4 day field visit to Georgia in October 2019. The field visit involved engagement with a wide range of stakeholders: the Complainants, the Client, Project-affected community members and government representatives from various levels of government, in order to inform the review of the Complaint.

Step 2

- **Consideration of comments on the Draft Compliance Review Report:** following the issuance of the draft Compliance Review Report in March 2021, Bank Management, the Complainants and Client were provided with an opportunity to comment. All comments were carefully considered and where deemed appropriate, integrated into the final Compliance Review Report.

Through the document review, engagement with the Parties and the field visit referenced above, the Compliance Review Expert has had access to sufficient information to assess the Bank's alleged non-compliance with the 2008 ESP in respect to the Project.

The Compliance Review Report addresses each component of the Complaint from the following perspectives:

1. The Complaint
2. EBRD Policy and Performance Requirements⁷
3. EBRD Responses (including documentation provided by the EBRD)
4. Client responses (including documentation provided by the Client)

To avoid repetition, where a particular issue or document has been discussed or analyzed in connection with one element of the Complaint, only key parts are re-introduced for subsequent elements of the Complaint.

3. Compliance Review Framework

Under the PCM Rules of Procedure (2014), the objective of the Compliance Review “will be to establish if (and if so, how and why), any EBRD action, or failure to act, in respect of an approved Project has resulted in non-compliance with a Relevant EBRD Policy and, in the affirmative, to recommend remedial changes in accordance with Paragraph 44” of the PCM Rules of Procedure.

⁶ A list of materials considered by the Compliance Review Expert is set forth in Annex 2. The Compliance Review process has included review of internal EBRD documentation. Pursuant to the EBRD Public Information Policy, documents intended for internal purposes only are confidential.

⁷ Because the Project was approved on 30 April 2014, the Bank's 2008 ESP applies.

The 2008 ESP outlines the way in which the environmental and social impacts of Bank Projects should be addressed, by defining the respective roles and responsibilities of the EBRD and its clients in designing, implementing and operating projects in line with the 2008 ESP and its Performance Requirements (“PRs”). According to paragraph 3 of the 2008 ESP, “The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances: are socially and environmentally sustainable; respect the rights of affected workers and communities and are designed and operated in compliance with applicable regulatory requirements and good international practice (GIP).”

In order to help clients comply with the requirements of the 2008 ESP, and to seek to ensure that Projects meet GIP relating to environmental and social responsibility, EBRD has defined ten PRs, covering key environmental and social issues to be addressed in project development.⁸ These PRs set out detailed requirements that clients are expected to meet. Paragraph 3 of the 2008 ESP states: “In order to translate this objective into successful practical outcomes, the Bank has adopted a comprehensive set of specific Performance Requirements (‘PRs’) that clients are expected to meet, covering key areas of environmental and social impacts and issues.”

The 2008 ESP does not in all cases explicitly state the Bank’s specific commitments relative to the PRs. Nevertheless, the Bank’s commitments under paragraphs 3, 4, and 5 include, at a minimum, seeking to ensure that the Bank’s clients satisfy the PRs. To do so, Bank Management must comply with the requirements of the environmental and social assessment and monitoring processes enshrined in the 2008 ESP. The 2008 ESP details EBRD’s role and requirements for appraisal (¶¶ 14-15), including:

- “All EBRD-financed projects undergo environmental and social appraisal both to help the EBRD decide if an activity should be financed and, if so, the way in which environmental and social issues should be addressed in planning, financing, and implementation. The EBRD’s social and environmental appraisal is integrated into the EBRD’s overall project appraisal, including the assessment of financial and reputational risks and identification of potential environmental or social opportunities. This appraisal will be appropriate to the nature and scale of the project, and commensurate with the level of environmental and social risks and impacts. The appraisal will ascertain whether activities to be supported by EBRD finance are capable of being implemented in accordance with this Policy and its Performance Requirements (PRs). It is the responsibility of the client to ensure that the required due diligence studies, information disclosure and stakeholder engagement are carried out in accordance with PRs 1 through 10, and submitted to the EBRD for review as part of its own appraisal. The EBRD will review the information provided, and provide guidance to the client on how the project can meet the Bank’s requirements.”
- EBRD’s environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the proposed project; (ii) the

⁸ 2008 ESP, ¶ 3.

capacity and commitment of the client to address these impacts and issues in accordance with this Policy; and (iii) the role of third parties in achieving compliance with this Policy.

Observance of these requirements should enable Bank Management to “seek to ensure” that clients fulfil the PRs and that projects are structured to meet the requirements of the 2008 ESP. Notably, the Bank’s obligation to “seek to ensure” the client’s fulfilment of the PRs does not mean the Bank must “ensure” fulfilment of the PRs. The responsibility to “seek to ensure” reflects the Bank’s obligations, and also the reality that the Bank cannot in all cases guarantee that every client will meet the PRs in every respect. This responsibility of the Bank requires more than a superficial exercise to check that procedural and operational requirements are met in name. Rather, to “seek to ensure” implies that Bank Management must make reasonable efforts to:

- identify any gaps in the client’s environmental and social policies and practices;
- present the steps the client must take to close those gaps and fulfil the 2008 ESP requirements; and
- meaningfully review and monitor the client’s efforts and performance in meeting the 2008 ESP requirements on an ongoing basis.

Accordingly, assessment of the Bank’s compliance in this case involves the examination of the diligence employed by Bank Management in:

- identifying any gaps and corrective actions that must be undertaken by AGL in order to fulfil the 2008 ESP PRs; and
- employing ongoing, meaningful review and monitoring of the implementation of those corrective actions.

3.1 The Bank’s Obligations in the Application of the 2008 ESP and PRs

General Obligations under the 2008 ESP

ISSUE 1: 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)

a. Complaint

Complainants assert that the Bank did not monitor the Project adequately, and that the Bank did not ensure that environmental and social components of the Project, such as implementation of the ESAP, were substantially met. Complainants further assert that the Bank’s monitoring was not commensurate with the Project’s issues, impacts and compliance requirements.

b. Bank Response

The Bank states that it actively monitored implementation of the Project throughout construction, and expresses its confidence that PRs have been met.

c. Client Response

AGL asserts that it 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 further states that it conducted meetings “in all working areas” before beginning the operations phase of the Project, including informational sessions and safety awareness meetings, and that records of the meetings “are routinely verified by the Lender teams during the periodic Monitoring visits.”

AGL asserts that the Project has undergone monitoring of river habitats since 2013. According to AGL, “[m]onitoring 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.” Biodiversity monitoring includes fish pass monitoring, otter monitoring, and nest box monitoring.

d. EBRD Policy and Performance Requirements (ESP ¶¶ 35 & 36)

ESP ¶ 35 provides:

35. Monitoring is carried out by both the client and the Bank. The extent of monitoring will be commensurate with the project’s issues, impacts and compliance requirements, and with the ability of the client and/or local authorities to adequately monitor and manage these issues and impacts. For each project, the Bank will define with the client a monitoring programme in accordance with PR 1 or PR 9 respectively, specifying the appropriate monitoring tools, based upon the results of due diligence, the results of any public consultation which has taken place and within the framework of legal agreements concluded with the client.

ESP ¶ 36 provides:

36. In order to verify proper and timely implementation of ESAPs and adherence to agreed environmental and social covenants, the Bank will monitor projects on an ongoing basis as long as the Bank maintains a financial interest in the project, and share with the client the results of its monitoring. Monitoring mechanisms include, *inter alia*: (i) review of periodic reports submitted by the client (at a minimum, annually) on the implementation of ESAPs and any other environmental and social requirements; (ii) monitoring missions by the Bank’s environmental and social specialists or consultants to conduct a detailed review of investments with significant social and environmental issues and impacts, in order to determine whether the client is implementing the ESAP and complying with the environmental and social covenants; and (iii) periodic third party monitoring, for example, by independent specialists or representatives of the local communities, submitted to the client and the Bank.

d. Observations and Conclusions

It appears that the Bank, along with its co-Lenders, monitored the Project on an ongoing basis, during construction and continuing through the operations phase, including in the aftermath of the tunnel collapse in August 2017.⁹ The Lenders, as well as third-party consultants, regularly identified areas

⁹ Project documentation includes Monitoring Reports going back to May 2014, and continuing through September 2020. On 15 August 2017, tunnel collapses occurred in the Skhalta-to-Didachara transfer tunnel as well as Didachara-to-Shuakhevi

of concern regarding AGL's compliance with Project requirements, as documented in monitoring reports, including matters related to environmental and social management, identification of risks and impacts, organizational capacity and competency, emergency preparedness and response, monitoring and review, stakeholder engagement, pollution prevention, development of spoil management plans, community health and safety, land acquisition and livelihood restoration, biodiversity conservation requirements (including eco-flow management and implementation of the Biodiversity Action Plan), information disclosure, and implementation of the Stakeholder Engagement Plan.

The Lenders identified perceived shortcomings in AGL's performance and provided recommendations for improvement. In a letter dated 7 March 2016, the Lenders identified multiple areas of noncompliance and provided a list of corrective actions required to bring AGL into compliance with the Lenders' environmental and social performance standards. The Lenders continued monitoring the Project, and in an Environmental and Social Monitoring Report dated 4 February 2019, the Lenders found the Project non-compliant with applicable standards in relation to biodiversity monitoring. The Lenders further concluded that the Project was partially compliant with applicable standards in relation to (1) assessment and management of environmental and social risks and impacts, (2) labour and working conditions, (3) pollution prevention and control, and (4) security. The Lenders set forth a list of corrective actions for AGL to undertake, including provision of a Corrective Action Report regarding biodiversity impacts within 30 days.

e. Findings

The Compliance Review Expert has concluded that the Bank's monitoring of the Project, including compliance with the ESAP, satisfies the requirements of the ESP, and that monitoring was commensurate with the Project's issues, impacts and compliance requirements.

3.2 Overview of EBRD's Environmental and Social Due Diligence

4. Performance Requirement 1 (PR 1): Assessment and Management of Environmental and Social Impacts

ISSUE 2: 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)

a. Complaint

Complainants assert that the Bank failed to include Project-affected communities in the assessment of potential environmental and social impacts of the Project. Complainants allege in particular that the ESIA does not assess the impact of project implementation on adjacent villages, including villages under which AGL planned to drill derivation tunnels. According to Complainants, AGL did not include such villages in its definition of the Project impact area, and the EBRD endorsed AGL's incomplete definition.

Headrace Tunnel of the Project. No fatalities, injuries or environmental damage were sustained. See Monitoring Report for Period 29/05/2017 - 29/01/2018. The tunnel collapses resulted in substantial delays and additional cost.

b. Bank Response

The Bank's formal response to the Complaint does not specifically address the alleged failure to include Project-affected communities in the assessment of potential environmental and social impacts of the Project. The Bank has stated that the risks of the Project "were fully assessed and understood and monitoring during construction confirmed all the risk assessments undertaken at the time."

c. Client Response

AGL states that the ESIA (page 60 Table C.1-1) provides a detailed list of project affected villages along with the impact and activity related to these villages.

EBRD Policy and Performance Requirements (PR 1.6)

PR 1.6 provides:

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:
 - (i) The assets and facilities directly owned or managed by the client that relate to the project activities to be financed (such as production plant, power transmission corridors, pipelines, canals, ports, access roads and construction camps).
 - (ii) Supporting/enabling activities, assets and facilities owned or under the control of parties contracted for the operation of the client's business or for the completion of the project (such as contractors).
 - (iii) Associated facilities or businesses that are not funded by the EBRD as part of the project and may be separate legal entities yet whose viability and existence depend exclusively on the project and whose goods and services are essential for the successful operation of the project.
 - (iv) Facilities, operations and services owned or managed by the client which are part of the security package committed to the EBRD as collateral.
 - (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.

Based on the above, the EBRD and the client will agree on the area of influence for each project.

d. Observations and Conclusions

Table C.1-1, in Appendix III of the ESIA, comprises an Overall List of Affected Villages as of October 2012. For the Shuakhevi Scheme, the Table lists 43 Project-affected villages. For the Koromkheti Scheme (which the Bank did not finance and AGL did not implement), the Table lists 31 Project-

affected villages and for the Khertvisi Scheme (which AGL also decided not to implement), the Table lists 18 Project-affected villages. (These figures add up to 92 Project-affected villages.) The body of the ESIA states that approximately 100 different villages were identified “in the immediate area of influence and are likely to be directly affected by the key features of the Project.”¹⁰

According to the Stakeholder Engagement Plan (“SEP”), local Project-affected communities include 15 villages in three municipalities: Khulo Municipality (Didachara Community [Didachara], Lekanashvilebi Community [Diakonidzebi, Duadzebi, Tsifnari]); Shuakhevi Municipality (Chvani Community [Akhdadaba], Oldauri Community [Paposhvilebi, Makhalakidzebi]); and Keda Municipality (Makhutseti Community [Qveda Makhutseti, Qveda Bzubu], Pirveli Maisi Community [Pirveli Maisi], Qeda Community [Koromkheti], Merisi community [Sihadzebi, Inasharidzebi], Chvani Community [Dandalo, Baladzebi]).¹¹

The Biodiversity Action Plan list of stakeholders identifies two villages in Khulo Municipality (Didachara and Kvatia), and three communities in Shuakhevi Municipality (Chvana Community, Zamleti Community and Oladauri Community).¹²

In the Project ESIA’s section on Information Disclosure, Consultation and Participation, the Project identifies local project affected communities as Khulo, Shuakhevi, Keda and Khelvachauri Municipalities.¹³ In the section on Social Impact Assessment, the ESIA lists “key” Project-affected villages in Khulo Municipality, Keda Municipality and Khelvachauri Municipality. The list of key villages does not include any villages in Shuakhevi Municipality.

In conversations with the Compliance Review Expert, representatives of the Bank stated that the Project-affected area includes 17 villages. During the Compliance Review Expert’s site visit in October 2019, AGL stated there were 18 villages in the Project impact area.

e. Findings

Based on the foregoing, the Compliance Review Expert concludes that the ESIA and other Project documents do not clearly and consistently identify the Project’s area of influence. The ESIA includes overlapping lists of Project-affected villages, leaving the total number and identity of Project-affected villages unclear. Not counting the villages affected only by the Khertvisi and Koromkheti Schemes, which AGL did not pursue, the ESIA still lists 43 Project-affected villages for the Shuakhevi Scheme, which exceeds the 17 Project-affected villages acknowledged by the Bank, and the 18 Project-affected villages acknowledged by AGL. Bank management explained in comments on a draft of this Compliance Review Report that the Area of Influence for purposes of social assessment differs from the Area of Influence for biodiversity, and that while the ESIA represented the project as of 2013, the list of affected villages in the Stakeholder Engagement Plan (SEP) was continuously updated as the scope of the Project evolved. Bank management notes further that the Independent Engineer and the lenders “were satisfied that AGL knew which villages were potentially affected by the project and

¹⁰ ESIA, Vol. II, § 7.1.3, at p. 117.

¹¹ Adjariatsqali HPP SEP, 314320/PWR/EFR/2/D 04 September 2013, pp. 11-12.

¹² Biodiversity Action Plan, 290039/TRD/EFR/BBAP/01/E 22 July 2013, p. 9, Table 2.1.

¹³ Adjariatsqali Hydropower Project ESIA, 314320/PWR/EFR/1/E 11 September 2013, Vol. II, p. 91, Table 6.1.

how.”¹⁴ Nevertheless, based on the information made available in the Compliance Review process, and discussions with affected community members and relevant EBRD staff, the Compliance Review Expert cannot be certain that the Bank ensured that the potential environmental and social impacts were appraised in the context of the Project’s full area of influence.

ISSUE 3: 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)

a. Complaint

Complainants assert that the Non-Technical summary of the Project “mentions no special provisions for protection of women from local communities, no consideration of cultural barriers to their participation in consultations, no mention of women-headed households or opportunities for women entrepreneurs.” Complainants further assert that the ESIA “practically” lacks an assessment of the Project’s impact on women and gender equality, and the Land Acquisition and Livelihood Restoration Plan fails to analyse “the land ownership and land use patterns or the impact on women’s livelihoods if compensation is given to male property owners.”

Complainants assert that the Bank and the Client did not follow Green Alternative’s 2016 recommendation that the Lenders demand that AGL prepare a gender assessment and action plan, and then monitor its implementation.

b. Bank Response

The Bank’s response to the Complaint does not specifically address identification of particular stakeholder groups, including Project-affected women. The Bank states that “Stakeholder Engagement during both ESIA preparation and disclosure and during project implementation has been extensive and has been undertaken in accordance with PR10.” With respect to women, the Bank states it “is confident that the Social Impact Assessment was prepared in accordance with the relevant Performance Requirements.”

c. Client Response

AGL states that it has been committed to engaging with “all key stakeholders and vulnerable groups,” specifically including women, from the early stages of the project development. In order to strengthen women’s involvement in decision-making and distribution of cash compensation paid by the company, AGL states that it ensured that spouses attended the negotiation process and also signed Acceptance–Delivery Acts (for receiving contracts) so they are fully informed and aware of the compensation amount.

¹⁴ EBRD Management Comments on Shuakhevi HPP Draft Compliance Review Report, April 2021.

EBRD Policy and Performance Requirements (PR 1.14)

PR 1.14 provides:

14. Taking into account the findings of the environmental and social appraisal and the result of consultation with affected stakeholders, the client will develop and implement a programme of mitigation and performance improvement measures and actions that address the identified social and environmental issues, impacts and opportunities in the form of an Environmental and Social Action Plan (ESAP). Mitigation measures and actions will be identified so that all relevant stages of the project (for example, pre-construction, construction, operation, closure, decommissioning/reinstatement) operate in compliance with applicable laws and regulations and the PRs of this Policy. The ESAP should take a long-term and phased approach and also take into account expected future regulatory requirements. The ESAP shall focus on avoidance of impacts, and where this is not possible, mitigation measures to minimize or reduce possible impacts to acceptable levels. Where residual impacts affect biodiversity, environmental offsets may be required in accordance with PR 6 to promote a “no net loss” approach; compensation for involuntary resettlement and for impacts on Indigenous Peoples will be carried out in accordance with PRs 5 and 7. The ESAP will also address, where appropriate, opportunities to achieve additional environmental and social benefits of the project including, where relevant, community development programmes. **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.** Depending on the project, the ESAP may consist of a combination of operational policies, procedures, management systems, practices, and capital investments. The measures and actions to address identified impacts and risks will favour the avoidance and prevention of impacts over minimisation, mitigation, or compensation, where technically and financially feasible. (Emphasis added.)

d. Observations and Conclusions

The Project ESIA identifies local women’s groups as direct stakeholders and indirect stakeholders in the Project.¹⁵ AGL designated a community liaison officer as the main point of contact with local communities, including women’s groups. In 2013, AGL’s “key topics” for community consultation included women’s rights.¹⁶ AGL pledged that as part of its social interaction, “there will be efforts to increase women’s participation in Project activities and to assist women in taking responsibilities in equal partnership with men. Consultation activities will advise women that their opinions and ideas count in equal measure to men and that women can make a difference in local society and wider.” The ESIA states that women will be encouraged to apply their skills to jobs previously perceived as “men-only.”

¹⁵ ESIA, § 6.4.2, p. 90; Table 6.2, p. 91.

¹⁶ ESIA, § 6.5.3.2, p. 108.

The Environmental and Social Due Diligence Report (ESDD) dated 9 August 2013 notes with reference to the Stakeholder Engagement Plan, that “an additional description is required with regard to past consultations, channels of communication and ways of future information disclosure and consultations with women groups and vulnerable groups.” In September 2013, AGL conducted focus groups with women from five Project-affected communities and recorded Project-related concerns expressed by the participants. The meetings and concerns are noted in the ESIA.¹⁷

The Project ESAP incorporates the Environmental and Social Management Plan (ESMP), which includes differentiated measures so that adverse impacts do not fall disproportionately on women and they are not disadvantaged in sharing development benefits and opportunities resulting from the project.¹⁸

The Land Acquisition and Livelihood Restoration Plan (LALRP) for the Project notes that, “women in Adjara tend to have less access to resources, credit and technology and are less likely to be able to take advantage of business opportunities.”¹⁹ The LALRP further states that, “Female headed households are particularly vulnerable in the rural areas as women carry out a large share of farm work and processing work and can be put under additional pressure if male family members migrate in search of work.”²⁰ The LALRP provides that documentation of ownership and compensation should be issued in the names of both spouses or heads of household, and that “[l]and acquisition activities will be conceived and executed as sustainable development programmes and sufficient investment resources will be provided to enable the people to share in project benefits. Particular support will be provided to women, the poor and the most vulnerable people.” As noted elsewhere, AGL states that it ensured that spouses attended the negotiation process and also signed Acceptance–Delivery Acts regarding compensation.

e. Findings

The Compliance Review Expert concludes that although the ESAP for the Project does not explicitly include differentiated measures so that adverse impacts do not fall disproportionately on women and they are not disadvantaged in sharing any development benefits and opportunities resulting from the Project, women are identified as a vulnerable group in the ESIA, and the ESDD, ESMP and LALRP specify differentiated measures to protect women’s interests. In addition, the ESMP incorporates the ESAP. Among other things, AGL conducted focus groups with Project-affected women, and AGL included women in negotiations for compensation, and the LALRP. Thus the Bank did comply with PR 1.14 with respect to women.

ISSUE 4: 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? (PR 1, para. 15)

¹⁷ ESIA, Table 6.7, pp. 109-110.

¹⁸ ESMP, Table 3.1 (Plans, Policies and Procedures), p. 29 (“Special measures to promote equal employment opportunities across ethnicities and women.”), § 4.2.3.2, p. 60 (calling for Corporate Liaison Officer to arrange meetings with local women’s groups).

¹⁹ LALRP, § 2.3, p. 10.

²⁰ LALRP, § 2.9, p. 19.

a. Complaint

Complainants assert that the status of the Project has been unclear since the tunnel collapse on 15 August 2017,²¹ putting the financial prospects of the project in question, and that implementation of the Project's environmental, social and stakeholder engagement measures needs to be updated and communicated transparently to impacted people and the public.

b. Bank Response

The Bank's response to the Complaint does not specifically address the ESAP or changes in Project circumstances and unforeseen events. The Bank states that monitoring during construction "confirmed all the risk assessment undertaken at the time" of the ESIA. The Bank further asserts that stakeholder engagement during ESIA preparation and disclosure, and during Project implementation "has been extensive."

c. Client Response

AGL states that the Project design "is based on the data available and is expected to get revised if changes are observed on the parameters utilized for design," and that this method was followed in the Shuakhevi project. AGL asserts that 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."²² AGL further states that monitoring of biodiversity during the construction phase of the Project did not require any changes.

EBRD Policy and Performance Requirements (PR 1.15)

PR 1.15 provides:

15. The level of detail and complexity of the ESAP and the priority of the identified measures and actions will reflect the project's risks, impacts and opportunities. The ESAP will document key environmental and social issues, the actions to be taken to address them adequately, as well as any actions to maximise environmental or social benefits, the schedule and person/unit responsible for implementation and monitoring, and an estimate of the associated costs. The client will inform the EBRD how these costs will be met. Desired outcomes will be defined against the baseline established during appraisal as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods. Where current operations are significantly non-compliant with regulatory requirements and existing permits, the proposed actions and schedules for these areas of non-compliance should be agreed with the relevant competent authorities. Recognizing the dynamic nature of the project development and implementation process, the ESAP will be responsive to changes in project

²¹ See ante fn. 9.

²² The Technical Due Diligence Report prepared by the Independent Engineer for Lenders states: "Hence, for the present case of the 3 tunnels for the Shuakhevi HEP it must at least be ensured that an extensive testing programme during excavation works for the tunnels will be set up in order to immediately react on every possible testing result to exclude risks of tunnel collapses. Those tests should not only cover rock stability issues but also the rock behaviour in permanent contact with water." Technical Due Diligence, Final Report, September 2013, prepared for AGL by Lahmeyer Group, Independent Engineer for Lenders, § 4.2.4.5, p. 47.

circumstances, unforeseen events, and the results of monitoring. For Category A projects the Bank may agree with the client during appraisal a management of change process to govern the way in which proposed project changes or unforeseen circumstances are managed and reported.

d. Observations and Conclusions

The Project ESMP states that it “will be updated and/or revised for both construction and operation phases to make the measures bespoke to the prevailing conditions as monitored during both construction and operations periods.” The ESMP calls for adaptive management of the Project as follows—

- The ESMP will be reviewed and amended in accordance to the Project design and status as it evolves. Key information about any changes to project description will be regularly reviewed (monthly) and site visits undertaken by AGL EHS staff to identify the true impacts of the Project. For example, if the pipeline route identified in the initial design differs from the pipeline route proposed for construction, then additional habitat surveys may be required and depending on the impacts alternative ecological management techniques required.
- Ongoing evaluation of the effectiveness of measures included in the ESMP will be undertaken on a regular basis as the Project evolves and develops and throughout design, construction, operation and decommissioning of the Project. Evaluation will be undertaken through ongoing communication with, contractors, stakeholders and Lenders supplemented by site audits and monitoring data review to identify weaknesses and / or gaps in the management plan. The ESMP will be changed and / or updated accordingly to ensure appropriate, robust and effective environmental and social management commensurate to the scale of the Project through its lifetime.²³

The monitoring and reporting requirements in the ESMP include a “management of change” component, reflecting that it is intended to be a living document subject to regular review and update as the Project evolves.

The ESAP includes multiple provisions that anticipate changes in Project circumstances. These provisions include reference to the ESMP and its associated plans, as well as identification and evaluation of risks to community health and safety from construction and operation of the Project, and development and implementation of preventive measures to address the risks identified. The ESAP also includes implementation of the BAP, flow monitoring and ecological assessments “to verify flows are adequate to preserve biodiversity or to redefine minimum flows.” Finally, the ESAP calls for evaluation and updating of the SEP to “improve/refine the stakeholder list, communications methods, media, etc.”

e. Findings

The Compliance Review Expert concludes that the ESAP and specifically actions laid out in the ESMP under implementation, demonstrates responsiveness to changes in project circumstances, unforeseen events, and the results of monitoring.

²³ ESMP, § 5.2, p. 62.

ISSUE 5: 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)

a. Complaint

The Complaint does not specifically invoke PR 1.20. Complainants assert generally that the Bank failed to ensure that AGL and the Project complied with the 2008 ESP. Complainants assert more specifically that they notified AGL and EBRD that geological studies included in the ESIA were not sufficient to ensure adequacy of the Project design prior to the commencement of tunnelling, and that AGL did not take Complainants' comments into account or procure additional studies to address this issue. Complainants assert that "it is unclear how a number of commitments in the SEP are met," and that while initial disclosure of project documentation complied with the requirements for Category A projects, the Bank and AGL failed to inform stakeholders about changes to project plans since the tunnel collapse. According to Complainants, the "consultation process has not been informed and iterative."

With respect to biodiversity, Complainants assert that the findings of Balkani Wildlife Society (whom Complainants commissioned to conduct a biodiversity assessment) "call into question the adequacy of the proposed mitigation and offsetting measures for Shuakhevi HPP, as well as the compliance of the project with the EBRD's PR6." Complainants assert that the Bank has not published any updates to disclosed Project information in four years, and they cannot tell whether the Bank and AGL "have taken an approach to biodiversity conservation that indeed ensures no net loss of biodiversity."

b. Bank Response

The Bank states that Complainants may be unaware of all the activities undertaken to communicate the actual risks associated with the Project and to monitor the situation throughout the construction schedule. The Bank further states that monitoring during construction confirmed all the risk assessments undertaken at the time of the ESIA. In sum, the Bank asserts that it "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."

c. Client Response

In its response to the Complaint, AGL states that it "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 states that its stakeholder engagement activities "are routinely verified by the Lender teams during the periodic Monitoring visits." AGL further states that "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." AGL describes specific monitoring programs for riverine habitats, fish populations, otters and nest boxes for priority bird species.

EBRD Policy and Performance Requirements (PR 1.20)

PR 1.20 provides:

20. The client will establish procedures to monitor and measure compliance with the environmental and social provisions of the legal agreements including effective

implementation of the ESAP and the PRs and improvements achieved over time against the baseline established during appraisal. The extent of monitoring will be commensurate with the risks to and adverse impacts on the environment and affected communities. Monitoring will normally include recording information to track performance and establishing relevant operational controls to verify compliance and progress, as well as acting on inspection reports by the relevant enforcement authorities and feedback from stakeholders such as community members. In addition, the client may use third parties, such as independent experts, local communities or NGOs, to complement or verify its own monitoring information. For Category A projects, the client will be required to retain qualified and experienced specialists to perform periodic monitoring functions/audits throughout the life of the Bank's involvement with the project. The client will document monitoring results.

d. Observations and Conclusion

As discussed above, the Bank, along with its co-Lenders, has commissioned periodic monitoring of environmental and social performance, as called for in the Project ESAP and ESMP.²⁴ The ESMP endorses an “adaptive management” approach, pursuant to which the ESMP “will be reviewed and amended in accordance to the Project design and status as it evolves.”²⁵ Thus—

- Ongoing evaluation of the effectiveness of measures included in the ESMP will be undertaken on a regular basis as the Project evolves and develops and throughout design, construction, operation and decommissioning of the Project. Evaluation will be undertaken through ongoing communication with, contractors, stakeholders and Lenders supplemented by site audits and monitoring data review to identify weaknesses and / or gaps in the management plan. The ESMP will be changed and / or updated accordingly to ensure appropriate, robust and effective environmental and social management commensurate to the scale of the Project through its lifetime.²⁶

The ESMP requires monthly monitoring and reporting by AGL, as well as independent monitoring, including field visits by IFC and other Lenders. As discussed above, monitoring reports prepared for the co-Lenders have identified areas of non-compliance by AGL, and they have called for corrective action. In particular, monitoring reports have noted persistent shortcomings in biodiversity monitoring.

e. Findings

The Compliance Review expert concludes that the Bank did ensure that AGL established procedures to monitor and measure compliance with the environmental and social provisions, including implementation of the ESAP and PRs over time, although monitoring reports prepared on behalf of the Lenders indicate that AGL did not comply with those procedures.

ISSUE 6: 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

²⁴ The Compliance Review Expert reviewed Environmental and Social Monitoring Reports starting in 2014 and continuing through 2020.

²⁵ ESMP, § 5.2, p. 62.

²⁶ ESMP, § 5.2, p. 62.

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)

a. Complaint

The Complaint questions the Bank's ability to conduct due diligence and monitoring in accordance with the objectives of the ESP. The Complaint notes that the Project changed in light of the August 2017 tunnel collapse, but the Complaint does not specifically address how the Bank used the results of monitoring.

b. Bank Response

The Bank's response to the Complaint does not specifically address changes to the ESAP or changes in AGL's performance in response to the results of monitoring. The Bank states that it fully complied with the ESP in connection with the ESIA, and in connection with monitoring.

c. Client Response

AGL's response to the Complaint does not specifically address amendments to the ESAP. AGL does assert that the Project received ongoing monitoring, and that with respect to geological risks in particular, Project design was continually updated as new information was obtained. AGL also asserts that biodiversity monitoring did not require any changes to the Project.

EBRD Policy and Performance Requirements (PR 1.21)

PR 1.21 provides:

21. The results of the monitoring should be used to correct and improve operational performance. Similarly, monitoring activities can be adjusted according to performance experience and feedback. During project implementation, results of client self-monitoring, governmental inspection reports, third party audits/reports or monitoring by Lenders may indicate that changes are necessary to the ESAP. Based on the monitoring results, the client will identify and reflect any necessary corrective and preventive actions in an amended ESAP and/or offset programme, which will be submitted to the Bank for approval. The client will implement agreed corrective and preventive actions, and follow up on these actions to ensure their effectiveness.

d. Observations and Conclusions

As discussed above, the Project has been subject to extensive monitoring by the Bank and its co-Lenders. Based on the monitoring results, the Lenders have identified areas of noncompliance with the ESMP and the Bank's ESP. The Lenders have continued to monitor the Project, and they have prescribed corrective actions for AGL. The Lenders have followed up with AGL regarding implementation of corrective actions, and AGL has reported on its progress. AGL has not formally amended the ESAP or the ESMP.

e. Findings

The Compliance Review Expert concludes that while the ESAP has not been formally amended, the Bank has complied with PR 1.21. Based on the results of monitoring, the Bank and its co-Lenders

have prescribed corrective and preventive actions, albeit not in an amended ESAP. AGL has agreed to implement corrective actions, and to follow up on these actions to ensure their effectiveness. The Bank has monitored AGL's implementation of its recommendations, and continued to require corrective actions when AGL has not (or not timely) implemented prior recommendations.

5. Performance Requirement 4 (PR4): Community Health, Safety and Security

ISSUE 7: 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)

a. Complaint

Complainants question whether the Bank ensured the completion of adequate geological studies prior to Project approval. Complainants assert that AGL should have conducted detailed geological studies before construction started, and not in parallel with tunnelling. Complainants invite the PCM to clarify—

- Whether detailed geological studies were conducted before construction started.
- Whether pre-construction studies were sufficient to ensure that the Project design was adequate.
- What kind of geological studies were conducted during construction.
- What role the Bank played in ensuring that the geological studies and project design were robust and justified participation by public Lenders.
- Whether the Bank identified any risks with regard to geological stability and tunnel design.
- How the Bank responded to calls from local communities and interested stakeholders, like Green Alternative, to ensure proper geological studies were in place to guarantee the safety of nearby villages and prudent spending of the bank's resources.

b. Bank Response

The Bank contends that at the time of ESIA preparation, geological risks “were fully assessed and understood, and monitoring during construction confirmed all the risk assessments undertaken at the time.”

c. Client Response

AGL states that “[d]etailed 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.” AGL characterizes the Project as “[a] project of such complexity and spread out across river valley and locations which were accessible only after construction of approach roads etc.” AGL states that the geological studies comprise the following key elements—

- Borehole investigation
- Geophysical investigation
- Laboratory testing
- Geological mapping

- Geomorphological mapping
- Rock mass mapping/discontinuity survey.

AGL states that during construction of the Project, additional exploratory bore holes and relevant studies, further mapping of geological parameters and testing of rock strength from excavated areas were conducted, with the involvement of the Lenders' engineer (Lahmeyer) at all stages of the Project. AGL states that it engaged competent, qualified and experienced consultants and designers to conduct geological studies at various stages of the Project.

AGL states further that before commencement of the Skhalta – Didachara Transfer Tunnel Works in August 2014, additional studies were conducted and data were available to perform required design for the Tunnel Construction works. According to AGL, “[i]n 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.” Thus, AGL states, “[a]s 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.”

EBRD Policy and Performance Requirements (PR 4.7, 4.10 and 4.11)

PR 4.7 provides:

7. 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.

PR 4.10 provides:

10. The client will design, construct, operate and decommission the structural elements or components of the project in accordance with good international industry practice, and will give particular consideration to potential exposure to natural hazards, especially where the structural elements are accessible to members of the affected community or where their failure could result in direct or indirect injury to the community. Structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals.

PR 4.11 provides:

11. When structural elements or components, such as dams, tailings dams or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the safety of communities, 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. For projects that operate moving equipment on public roads and other

forms of infrastructure, the client will seek to prevent the occurrence of incidents and accidents associated with the operation of such equipment.

d. Observations and Conclusions

The Feasibility Study Report²⁷ dated March 2012 confirms that pre-Project site inspection between June 2011 and January 2012 included—

- an intrusive borehole investigation;
- geophysical investigation at the main dam sites and powerhouse sites using seismic refraction techniques;
- geological mapping of the structure sites;
- geomorphological mapping of all the structure sites and landslide mapping of other relevant sections of the valley using aerial photography;
- landslide hazard mapping involving assigning each landslide feature a risk rating;
- rock mass mapping;
- laboratory testing of samples.²⁸

In addition, AGL's engineers conducted geomorphological and landslide mapping," due to concerns over the presence of landslides.

The Independent Engineers for the Lenders reported in 2013 that because no detailed geological cross-section was available to assess all rock types in the tunnel, additional tests would be required to obtain information on the behaviour of the rock when permanently in contact with water. The Independent Engineers recommended a comprehensive investigations programme in parallel with the tunnelling works to allow quick reaction to underground conditions and exclude the risk of tunnel collapses. This recommendation was particularly relevant because the Independent Engineers identified the choice to use unlined tunnels as their main concern.

As part of the Compliance Review process, the Compliance Review Expert requested that Bank Management and AGL provide evidence of the recommended testing programme undertaken during excavation works. Bank Management referred the Compliance Review Expert to monitoring reports from the construction phase, and an investigation report regarding the tunnel collapse. The monitoring reports raise questions about rock quality, including rock mass classification, as well as the quality of tunnelling and rock support measures. The Independent Engineers reported a partial tunnel collapse occurred on 28 February 2016, which they attributed to the "weak and soft rock material of the fault zone." The Independent Engineers included a list of problems they observed during their tunnel inspections, including recommended remedial measures, as well as further inspections by qualified experts. AGL provided the Compliance Review Expert with a Slake Durability Test Register prepared by Mott MacDonald (instructed by AGL), which includes the results of tests carried out during the excavation phase.

²⁷ As per the Environment and Social Compliance Audit dated June 2013, the Geological Report and the Feasibility Study are readily available upon request (see page 5 <https://www.adb.org/sites/default/files/project-document/77225/47919-014-geo-escar-01-draft.pdf>)

²⁸ Feasibility Study Report (16 March 2012).

Ultimately, in the post-collapse Repair Works Inspection, the Independent Engineers note the presence of rock types that do not interact well with shotcrete, and rock samples that, when submerged in water, would quickly disintegrate. According to the Independent Engineers' Preliminary Assessment of the Causes for the Tunnel Damages, the behaviour of the variable rock mass was not sufficiently known or considered to establish effective preventative measures.

Based on the foregoing, it does not appear to the Compliance Review Expert that the recommended testing was carried out during the excavation phase, or if it was, that the results were not effectively reported or acted upon.²⁹

e. Findings

The Compliance Review Expert concludes that the Bank did ensure that extensive geological studies were undertaken by the Client during Project design, although the Engineers Reports referenced above indicate that contrary to the recommendations of the Independent Engineers for the Lenders, the Bank permitted AGL to move forward without ensuring adequate testing during Project construction of the behaviour of variable rock mass when immersed in water.

ISSUE 8: 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)

a. Complaint

Complainants raise questions about compliance with PR 4 in connection with the adequacy of geological studies. Complainants also assert that the Bank and AGL failed to inform stakeholders about changes to Project plans, including changes resulting from the tunnel collapse. (Complainants cite PR 10.14 on this issue.)

b. Bank Response

The Bank's response to the Complaint does not specifically address PR 4. The Bank states that relevant risks were properly addressed in the ESIA, and that AGL has engaged with Project-affected people who have voiced concerns and explained the technical considerations of the Project. As noted above, the Bank states that Complainants might be unaware of at least some of the communications between AGL and Project-affected people.

²⁹ Bank management noted in comments on the Draft Compliance Review Report that it considers geological surveys and tunnel rock testing are "technical issues," unrelated to the ESP, because landslide risks due to surface slippage were mitigated, and the tunneling took place in deep rock formations, with only a tenuous link to community health and safety. Although the collapse of tunnels did not result in any injuries or deaths, that does not mean the Project design was adequate from both functionality and health and safety perspectives, as the issue is framed in the Terms of Reference for this Compliance Review.

c. Client Response

AGL states that it 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.” AGL states it has been actively collaborating with major media outlets in local municipalities throughout implementation of the Project. AGL states that it held regular briefings for major media outlets at Khichauri main camp, and for information disclosure, AGL elaborated Frequently Asked Questions (FAQ) in Georgian and English, and kept the company’s website data regularly updated.

EBRD Policy and Performance Requirements (PR 4.8)

PR 4.8 provides:

8. Where the project or stage of the project poses material risks to or potential adverse impacts on the health and safety of affected communities, the client will disclose relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and potential impacts, as well as the client’s proposed prevention, mitigation and emergency response measures, as appropriate. The client will consult with affected communities and relevant government agencies about the proposed measures before they are finalised and take their concerns and comments into account. The client will review the measures regularly, and engage 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. Information disclosed may be summarised (maintaining a sufficient level of detail to allow stakeholders to fully understand the risks, potential impacts and measures to be taken) and/or redacted to remove confidential information.

d. Observations and Conclusions

The ESIA describes multiple meetings with Project-affected communities at which community members raised concerns about the Project leading to landslides.³⁰ Monitoring by the Lenders throughout the Project has included assessment of AGL’s compliance with the SEP, including recommendations for improving and refining the stakeholder list and other aspects of the SEP.

Subsequent to the August 2017 tunnel collapse, monitoring called for AGL to identify and evaluate risks to community health and safety for the operational phase of the Project, develop and implement preventive measures and plans to address the risks, including, assessment of risks to the public, communication mechanisms and emergency measures. In addition, it was recommended that AGL’s Environmental and Social teams coordinate more closely in order to pre-empt local community concerns about the Project, and that the Environmental and Social teams review and/or contribute to public communications (such as communications about the tunnel failure) in order to ensure that such communications respond to community concerns.

³⁰ E.g., ESIA, Table 6.4, pp. 96-98, Table 6.5, pp. 100-101.

However, during the Compliance Review Expert's site visit in October 2019, local villagers stated that they had difficulty accessing information regarding the progress of remedial measures taken in response to the tunnel collapse.

e. Findings

The Compliance Review Expert concludes that the Bank did ensure that AGL disclosed relevant Project-related information to enable the affected communities and relevant government agencies to understand (a) potential impacts, and (b) AGL's proposed prevention, mitigation and emergency response measures, including with respect to changes to the Project. Monitoring reports prepared on behalf of the Lenders regularly assessed AGL's communications with stakeholders, although the reports do not assess stakeholder access or reactions to such communications. The Compliance Review Expert does not express an opinion about whether AGL's communications to stakeholders regarding health and safety impacts of the Project did or did not adequately apprise local communities.

ISSUE 9: 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)

a. Complaint

Complainants assert that the Project "was characterized with flawed information disclosure and public participation process." According to Complainants, the SEP issued in September 2013 commits that "AGL will ensure that stakeholders are well informed about the Project throughout its lifecycle." Complainants contend this commitment is not clearly stated in the September 2017 SEP for the Operational phase of the Project. According to Complainants, "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'." Complainants assert that a May 2017 update to the SEP was not disclosed on the Bank's website "in spite of uncertainty about the project status and the considerable public interest about its fate."

b. Bank Response

As noted, the Bank's response does not specifically address PR 4. In connection with PR 10, the Bank states that "Stakeholder Engagement during both ESIA preparation and disclosure and during project implementation has been extensive and has been undertaken in accordance with PR10."

c. Client Response

As noted in Issue 8, AGL states it has been actively collaborating with major media outlets in local municipalities throughout implementation of the Project, that it held regular briefings for major media outlets at Khichauri main camp, and that it elaborated FAQs and kept the company's website data regularly updated. AGL states that it was committed to engaging with various stakeholders from the early stage of the project development, and conducted informational meetings with groups in Project-affected communities.

According to AGL, beginning in 2012, prior to the commencement of construction, AGL held multiple meetings with various stakeholders in the two municipalities affected by the Project (Khulo and Shuakhevi), including meetings with community leaders, local authorities, NGOs and media representatives. AGL states that the objectives of the meetings were “general updates about the projects’ preliminary studies (Environment and Social Impact Assessment), as well as 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.”

EBRD Policy and Performance Requirements (PR 4.9)

PR 4.9 provides:

9. The client will report on the risks, potential impacts and benefits of the project and implementation of any action plans on a regular basis (for example, annually) to the EBRD and, as part of its reporting to stakeholders in accordance with PR 10, to the affected community(ies).

d. Observations and Conclusions

As mentioned above, the Lenders have monitored the Project since inception. The ensuing Monitoring Reports consistently address stakeholder engagement, including public disclosure of information and communication with Project-affected communities. Monitoring reports identify multiple ways that AGL communicates with the local community, including: public information centres; regular meetings with community members; information pages in local media; and pamphlets and fliers distributed at local municipality offices, public information centres and the local university.

Those same reports, provide a series of recommendations to improve communication and disclosure of information to communities. The suggestions include—

- Involving AGL’s Environmental and Social team in reviewing and/or contributing to all press releases and company statements to ensure they are sensitive to community concerns;
- Revamping the Environmental and Social page on AGL’s website to make it more user friendly and to reflect the current Project phase;
- Preparing a ‘Frequently Asked Questions’-style leaflet or similar for local and website distribution, covering key Environmental and Social issues and concerns being raised by local people and by civil society;
- Making environmental flow measurements publicly accessible via AGL’s website in real time and an explanation of how environmental flow commitments are delivered and measured.

e. Findings

The Compliance Review Expert concludes that the Bank did ensure that AGL reported on the risks, potential impacts and benefits of the Project and implementation of any action plans on a regular basis to Project-affected communities. As with Issue 8 above, the Compliance Review Expert does not express an opinion about whether AGL’s reporting to stakeholders regarding risks, potential impacts and benefits did or did not adequately apprise local communities. However, based on the Compliance

Review Expert's meetings with Project-affected people in October 2019, the Compliance Review Expert concludes that some Project-affected people felt that AGL's reporting to stakeholders did not adequately apprise them regarding risks, potential impacts and benefits of the Project.

ISSUE 10: 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)

a. Complaint

Complainants assert that while the Project ESIA acknowledges the Adjara region is highly sensitive to natural hazards, the ESIA improperly "claims there would be no remaining significant risks of landslide from the project's activities after mitigation."

b. Bank Response

The Bank asserts first that issues associated with structural integrity of the tunnels during commissioning have no link to landslide risk. The Bank states further that with respect to the potential for Project activities to exacerbate the risk of landslides, AGL has invested significant resources to engage with Project-affected people who have expressed concerns in order to explain the technical considerations of the Project. The Bank states that the risks were fully assessed and understood at the time of the ESIA, "and monitoring during construction confirmed all the risk assessments undertaken at the time."

c. Client Response

AGL asserts that "it has taken all the necessary steps for mitigating any risks of landslides on account of the project activities." AGL states further that "[t]here has been no information or incidence that suggests that the project construction activities have triggered any landslides." AGL asserts there has been no landslide activity reported in the affected areas above the tunnel alignment, and that "[t]his is sufficient evidence that the project has not contributed to any landslide activity and has addressed all potential risks adequately."

EBRD Policy and Performance Requirements (PR 4.15)

PR 4.15 provides:

15. The client will prevent and avoid or minimise the exacerbation of impacts caused by natural hazards, such as landslides or floods that could arise from land use changes due to project activities.

d. Observations and Conclusions

The Project ESMP includes multiple mitigation measures to reduce the risk of landslides, including measures related to road and dam construction, tunnel excavation, erosion of access roads and fluctuation of reservoir levels during operation.³¹

³¹ ESMP, Table 2.2.5 (Geology, Landslides and Seismic Risks), pp. 15-17.

During the Compliance Review Expert's site visit, community residents expressed concerns about the vulnerability of Project-affected areas to landslides, repeatedly referencing a report prepared by Taniel Tuskia, former Head of the Geology Department within the Department of Environment and Natural Resources Protection of the Autonomous Republic of Adjara. Complainants subsequently provided copies of Tuskia's reports. He notes that in 1989, a devastating landslide occurred in the vicinity of the planned construction, killing 24 people. Tuskia further notes that landslide processes and ruptures had been observed in the area planned for the Didachara dam, as well as the route of the derivation tunnel. According to him, the territory of the Shuakhevi power unit is suitable for construction, whereas—

all other sites are the areas of avalanches and constructing the planned dams or tunnels will cause the activation of geological processes, which pose a threat to local residents and the environment, the climate characteristic of high mountainous Adjara will be modified, the accumulation of rivers Chirukhistkali, Skhalta and Adjaristskali through tunnels will impede the hydrological conditions of all three gorges.³²

The ESIA for the Project recognized that “[a] number of project activities during the construction phase have the potential to increase the risk of landslides,” including “blasting for tunnels.”³³ According to the ESIA, the risk of landslides was “the primary consideration in the location of Project structures during the feasibility and design stages” of the Project.³⁴

Full geological risk assessments were undertaken during the feasibility stage and were used by the design team to ensure that the Project does not increase landslide risks. The reduction in risk has been primarily achieved by moving the location of structures, including weirs, dams, powerhouses and reservoirs away from potentially large landslides to areas of negligible or low landslide risk. It is therefore considered that the project is unlikely to result in a significant additional risk of landslide.³⁵

Following the adoption of mitigation, the ESIA found no remaining significant risks of landslide from the Project's activities.

e. Findings

The Compliance Review Expert concludes that the Bank did ensure that AGL took measures to prevent, avoid or minimise the exacerbation of impacts caused by natural hazards, such as landslides that could arise from land use changes due to Project activities. The Compliance Review Expert notes further that this finding does not bear on the legitimacy of fears and concerns regarding landslides expressed by Project-affected community members.

ISSUE 11: 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)

³² Explanatory Note of Taniel Tuskia, Head of the Department of Geology, dated 17 July 2013, p. 2 (English translation).

³³ ESIA, Vol. I, Non Technical Summary, September 2013, § 6.1, p. 20.

³⁴ ESIA, Vol. I, Non Technical Summary, September 2013, § 6.1, p. 20.

³⁵ ESIA, Vol. I, Non Technical Summary, September 2013, § 6.1, p. 20.

a. Complaint

Complainants assert that, as alleged in the Complaint in PCM Request No. 2018/03, construction of the Project has “left no drinking water in the village” and has caused “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.”

b. Bank Response

As noted above, the Bank’s response to the Complaint does not specifically address PR 4. Nor does the response address local water, vegetation or other natural resources. The Bank specifically denies that the Project exacerbated landslide risk for Project-affected people.

c. Client Response

AGL’s response to the Complaint does not specifically address the Project’s impact on local water, vegetation and other natural resources in use by the affected communities. AGL states that as part of its CSR activities, it is building a new drinking water pipeline in Chanchkalo Village.

EBRD Policy and Performance Requirements (PR 4.16)

PR 4.16 provides:

16. The client will also avoid or minimise adverse impacts due to project activities on air, soil, water, vegetation and fauna and other natural resources in use by the affected communities.

d. Observations and Conclusions

The Project ESMP calls for establishment of a water use baseline prior to tunneling, and requires AGL to “[p]rovide temporary and permanent community water solutions if ground water and wells are affected.”³⁶ The ESMP also calls for protection of ground water, including annual monitoring of spring water flows and compensation for reduced availability of drinking water through an alternative drinking water source.³⁷ During the Compliance Review Expert’s site visit in October 2019, Project-affected people stated that the flow of spring water was disrupted during construction of the Project. AGL and the Bank deny that construction activities affected the flow of spring water. The Lenders’ Monitoring Consultant includes as a “priority action” that AGL engage “an independent hydro-geological review of the claims that have been made by community members relating to disappearing and reappearing springs since the start of tunneling and then following tunnel filling.”³⁸ The ensuing hydro-geological review concluded, based on a desktop analysis of data provided by AGL and Arup (engaged by the Lenders), that the Project did not affect the hydrogeological system feeding the springs in the villages of Ghorkanauli, Kinchauri, and Makhlakidzebi. An Executive Summary of the hydro-geological review identifies activities undertaken by AGL in response to complaints by villagers, and notes limitations in the review, including the absence of baseline data, and the inability to validate inferences and conclusions because of incomplete information.³⁹ The Compliance Review Expert does not express

³⁶ ESMP, § 2.2, Table 2.2.2 (Summary for Social Management), p. 7.

³⁷ ESMP, § 2.2.4, Table 2.4 (Water Resources and Water Quality), p. 14.

³⁸ Lender Group (EBRD, IFC, ADB); Shuakhevi Hydropower Project, Georgia; Environmental and Social Monitoring Reports

³⁹ The full review was not available as of the date this Compliance Review was completed.

an opinion about whether construction activities in fact interfered with community access to spring water, except to note that a desktop analysis based on incomplete information does not seem to warrant a definitive conclusion to the contrary.

In response to a Draft of this Compliance Review Report, Bank management directed the Compliance Review Expert to a series of documents that reflect spring water monitoring on a monthly basis starting in 2014. Bank management also notes that the Project's ESIA found the risk of changes in hydrogeology to be negligible, and on that basis insufficient to justify the "significant" cost of additional surveys to characterise the groundwater regime. Bank management notes further that the final report commissioned by the lender group in 2020 did not find a linkage between the tunneling works and the spring water issues identified by the Complainants. The Compliance Review Expert welcomes that finding, and notes that a post hoc finding of no impact does not determine the sufficiency of pre-Project baseline data. Indeed, the precautionary approach counsels against moving forward with potentially harmful activities in the face of uncertainty. The Compliance Review Expert agrees with Bank management that the adoption of precautionary measures during construction can and did mitigate the risk of harm.

To minimize loss of aquatic habitat and protect aquatic ecology, the ESMP requires river construction to provide minimum working areas, pollution prevention measures, sediment control, a fishing ban on the construction workforce, and a prohibition on construction works during peak migration/spawning periods on the Machakhlistsqali River.⁴⁰ The ESMP further calls for AGL to minimize the clearing of vegetation around construction sites, and to provide appropriate re-vegetation and reforestation during construction and continuing into operation.⁴¹

With respect to protection of fauna, the ESMP calls for AGL to engage a local ecologist to assist in the implementation of mitigation measures, including checking for nesting birds, mammals, amphibians and reptiles prior to vegetation clearance, imposition of a hunting and fishing ban, and installation of bat and bird boxes.⁴² The Biodiversity Action Plan includes a range of enhancement and biodiversity offsetting measures to protect fish, reduce habitat loss, minimize construction traffic, inspect forest areas for rare plant species, and protect and preserve seeds and live plants.⁴³

e. Findings

The Compliance Review Expert concludes that the Bank did not take adequate measures to 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. Given the data gaps acknowledged in the independent hydro-geological review, the absence of baseline data (notwithstanding the ESMP's call to establish a water use baseline) and confinement of the review to a desktop analysis, the Bank should have taken additional steps to confirm that the Project did not affect the availability of spring water. This is important not just because of the risk of disrupting community water sources, but also to provide timely information to potentially affected communities. The Compliance Review Expert recognizes the value of monthly monitoring of groundwater springs

⁴⁰ ESMP, § 2.2, Table 2.2.2 (Summary for Social Management), p. 11.

⁴¹ ESMP, § 2.2.12, Table 2.12 (Landscape and Visual Amenities), p. 26.

⁴² ESMP, Table 3.3 (Summary of Biodiversity and Ecosystem Services Mitigation Measures), p. 50.

⁴³ ESMP, § 3.5.1.6, p. 44.

near Project locations, although such monitoring does not eliminate the need for baseline data prior to construction.

7. Performance Requirement 6 (PR6): Biodiversity Conservation and Sustainable Management of Living Natural Resources

ISSUE 12: 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)

a. Complaint

Complainants contend that a biodiversity assessment they commissioned by Balkani Wildlife Society (“BWS”) calls into question “the adequacy of the biodiversity offset measures for the Shuakhevi HPP project, as well as the compliance of the project with the EBRD’s PR6.” Complainants state that the BWS report concluded—

- The Project destroyed 93 ha of natural habitats during construction of The Project, which exceeds the amount assessed;
- Habitat offsets and compensation were proposed only for forest habitats, and contrary to EU Directives, the tree planting did not occur until after the destruction of habitats;
- Tree planting was done poorly, not creating a natural habitat at all;
- The loss of key river and riparian habitats was not offset or compensated;
- Grassland habitats were not restored;
- 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 kilometres below the 2 dams and the weir, while the remaining fish populations above the dams and weir are in a bad state.
- Special conservation measures are needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries to ensure that some aquatic life remains in the basin;
- The Adjaristsqali basin is of great importance for the conservation of the Eurasian otter. Special conservation is needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that the otter remains in the basin, and a healthy population would be unlikely if the minimum ecological flow is 10%;
- The installation of bird and bat boxes cannot offset the loss of natural habitats, especially riparian habitats. The natural habitat where the boxes were put in November 2016 has enough old trees with hollows, so rare species of birds and bats are unlikely to occupy the nesting boxes.
- The ESIA does not adequately address two main impacts on bird species – the migration barrier effect and the impact on the Chorokhi delta because of the changed hydrological and sedimentation regime;
- In three days along the river shores, BWS found traces of six different individuals of brown bear and a pack of four wolves, at least three golden jackals, one Eurasian nightjar and four Caucasian rosefinches were heard, one kingfisher and one red-breasted flycatcher were

spotted, which together indicate that the river shores are a biodiversity hotspot and no offsetting is possible.

Complainants assert that the Bank has not published any updates to Project biodiversity information in four years, and they request consideration of the BWS report, prepared in 2017, as part of the Complaint.

b. Bank Response

The Bank states that “[t]he 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.” The Bank asserts that the biodiversity assessment prepared by BWS was not prepared in accordance with “Good International Practice.”

c. Client Response

AGL asserts that the biodiversity assessment prepared by BWS “cannot be accurate or convincing,” because 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.”

According to AGL, calculations of land-take areas for the ESIA were based on the design at the feasibility stage and therefore included conservative options. AGL states that while the total land area of the Project exceeds 93 ha, the area where natural habitats were affected is approximately 75.40 ha. AGL states that the BAP available on AGL’s website includes the recalculated actual habitat affected areas.⁴⁴ AGL states that natural habitats temporarily affected by construction will be restored at the end of construction, and areas of permanent forest loss will be compensated by off-site planting.

EBRD Policy and Performance Requirements (PR 6.6 and PR 6.8)

PR 6.6 provides:

6. Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders. Suitably experienced and qualified experts may need to be engaged in this process. In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on integrating biodiversity into impact assessments.⁴⁵ The appraisal also needs to take into account climate change and adaptation issues. When requirements of paragraphs

⁴⁴ The Compliance Review Expert attempted to access the BAP on AGL’s website, but the link did not work. The BAP can be accessed on the Bank’s website at <https://www.ebrd.com/english/pages/project/eia/45335bap.pdf>, although not the revised version.

⁴⁵ Best practice guidelines on integrating biodiversity into impact assessment include:

- *Voluntary Guidelines on Biodiversity-inclusive Environmental Impact Assessment* (Contained in the CBD Decision VIII/28 from COP8 in 2006).
- *Biodiversity in Impact Assessment* (IAIA Special Publication Series No. 3).
- Various products of *The Energy and Biodiversity Initiative*.

13, 14 and 15 apply, the client will retain qualified and experienced external experts to assist in conducting the appraisal.

Biodiversity Mitigation Hierarchy ⁵⁶	
Action	Response
1. Avoid	The client will seek to avoid adverse impacts on biodiversity.
2. Minimise	Where significant impacts on biodiversity cannot be avoided, the client should identify ways in which project can be modified to minimise impacts on biodiversity.
3. Mitigate	Where significant impacts on biodiversity can neither be avoided nor minimised, the client should identify measures to mitigate those impacts.
4. Offset	Where significant residual impacts on biodiversity remain, in spite of all reasonable attempts to avoid, minimise and mitigate those impacts the client will identify actions or projects to offset those impacts. Any offset projects must be structured and agreed with EBRD.

PR 6.8 provides:

8. The client will need to identify measures to avoid, minimise or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity. See table above.⁴⁶

d. Observations and Conclusions

The Compliance Review Expert observes first that the quality of the biodiversity assessment prepared by BWS does not determine whether the Bank confirmed that AGL fully characterised the risks and impacts to biodiversity through the appraisal process, in a manner consistent with a precautionary approach, and identified measures to avoid, minimise or mitigate potentially adverse impacts. That question turns on whether the biodiversity materials presented to the Bank by AGL, including the ESIA and the BAP, satisfy the relevant standards.

The ESIA states:

The Project will result in a loss of habitat, primarily through the construction of access roads, laydown areas and site worker accesses. Further habitat will be lost through the creation of reservoirs. Of those habitats that will be affected, the most significant effects will be on the deciduous forests affected by the Koromkheti scheme. This is due to the sensitive nature of the habitats, the high conservation value and the size of area affected.

A large number of protected and notable plant species are present in the deciduous forest habitats in the Project Area. The impact on these species due to habitat loss and degradation from the construction activities, particularly access routes and working areas, would be considered significant in the absence of mitigation.⁴⁷

⁴⁶ The table above PR 6.8 provides:

⁴⁷ ESIA – Volume I, Non-Technical Summary, § 1.2, p. 10. As noted above, AGL did not proceed with the Koromkheti scheme.

The ESIA reports the recordation of 161 bird species in the Project Area, of which 75 are protected or threatened, noting that prior to mitigation, “potential effects on all species of high conservation value were considered significant.”⁴⁸ The ESIA identifies two globally threatened mammal species – the Eurasian otter and Mehely’s horseshoe bat.⁴⁹ The ESIA also addresses potential impacts on fisheries and aquatic habitats, during construction and during operation.⁵⁰ “Taken as a whole, without mitigation the Project is considered to have a very significant effect on fish populations and aquatic ecology, largely as a result of changes to river flows.”⁵¹

The ESIA recognizes that without mitigation, the Project would be expected to have “very significant effects” on biodiversity and ecosystem services along affected stretches of the Adjaristsqali River. Accordingly, the ESIA and the BAP incorporate an ambitious program of mitigation measures, including—

- Reduction of the scheme design, with removal of Project components on smaller tributaries of higher conservation value and high sensitivity;
- Site selection based on the least likely areas to cause ecological impacts;
- Measures to control the potential spread of alien, invasive plant and animal species;
- Habitat clearance and working areas will be kept to a minimum;
- Illumination of construction sites at night will be limited to avoid disturbance to mammals and in particular bats;
- Noise disturbance and vibration levels will be kept to below national standards;
- All Project workers to be made aware of the ecological sensitivities and works will stop if any rare or protected species (notably mammals, including bats, birds, reptiles and amphibians) are found. In this event a qualified ecologist will be consulted and will identify mitigation measures to be applied;
- Construction Environmental Management Plans (CEMPs) will be adopted by AGL and requirements imposed on contractors;
- Tree and rare plant inventories will be taken prior to removal of high conservation value forest. Each tree lost as a result of the Project will be replaced with two trees of the same species and native origin;
- A Habitat Removal and Reinstatement Plan will set out the minimum requirements in relation to the clearance and re-instatement of natural forest habitats;
- Habitat clearance will take place where possible outside the bird nesting period, and checks for nesting bird, bats, otters, reptile and amphibians will be carried out prior to any habitat clearance;
- Ban on hunting and fishing by Project workers;
- Fish passes to be installed on the Chirukhistsqali, Chvanistsqali, Khichauri and Khertvisi dams/weirs;
- Sediment release will be minimised during construction activities, especially during spawning periods;

⁴⁸ ESIA – Volume I, Non Technical Summary, § 1.3, p. 11.

⁴⁹ ESIA – Volume I, Non Technical Summary, § 1.3, p. 11.

⁵⁰ ESIA – Volume I, Non Technical Summary, § 1.3, pp. 13-14.

⁵¹ ESIA – Volume I, Non Technical Summary, § 1.4, p. 15.

- The Project will release a constant ecological flow of 10% of the average multiannual flow, except in situations where the natural flow in the rivers is less than 10 % of average multiannual flow, at which times no storage of water will occur and the full available flow will be released as ecological flow;
- Long-term baseline monitoring (in addition to that carried out for the ESIA) of the biological environment in the river Adjaristskali and its tributaries will be undertaken directly alongside monitoring of flow. Monitoring will confirm the aquatic ecological effects of the Project and the effectiveness of the mitigation measures implemented; and
- Based on the findings of additional surveys and long term monitoring activities, AGL will review the suitability of the mitigation and management measures implemented and take into consideration requirements for additional mitigation or offsetting measures.⁵²

The BAP includes extensive and detailed action plans for the potential adverse impacts on biodiversity identified in the ESIA. The BAP also includes provisions for implementation, monitoring and reporting with respect to mitigation measures.

e. Findings

The Compliance Review Expert concludes that the Bank confirmed that AGL fully characterised the risks and impacts to biodiversity through the appraisal process, in a manner consistent with a precautionary approach, and identified measures to avoid, minimise or mitigate potentially adverse impacts, although monitoring reports prepared on behalf of the Bank indicate that AGL did not implement all of the recommended measures in the requested timeframe. Issue 13 Findings below provide further insights regarding the actions of the Bank.

ISSUE 13: 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)?

a. Complaint

Complainants assert that the results of biodiversity surveys conducted by Balkani Wildlife Society “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.” Complainants further assert that the Bank “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.”

b. Bank Response

The Bank states that the BAP and resulting biodiversity management plans “will meet the requirements of PR 6 and this is being monitored by EBRD very closely.”

c. Client Response

AGL states that the Project has conducted monitoring of river habitats since 2013, on 15 locations four times per year during low and high flow periods. AGL states that monitoring results show no

⁵² ESIA – Volume I, Non Technical Summary, § 1.5, pp. 16-17.

significant changes in the structure of fish populations in the Adjaristsqali River. AGL notes further that a fish pass and fish monitoring system have been installed. With respect to the Eurasian otter, AGL states that otter population surveys show similar results to fish populations, and that monitoring will continue for ten years of the Project's operational phase. For birds and bats, AGL asserts that nest boxes have shown a high level of successful nesting, and that monitoring will continue for ten years of the operational phase of the Project.

EBRD Policy and Performance Requirements (PR 6.8)

PR 6.8 is set forth above in Issue 12.

d. Observations and Conclusions

As discussed above, the Lenders (including EBRD) engaged Arup and Partners to conduct environmental and social monitoring as the Project progressed. The Lender Group Monitoring Report dated 31 October 2014 includes a section on implementation of the BAP, as well as a Summary Table that addresses the status of the Project's compliance with environmental and social parameters. The Summary Table also addresses implementation of the BAP, noting that the BAP was revised in 2014, and that NGOs are monitoring construction activities, including monthly surveys.⁵³

In March 2016, the Lenders presented AGL with a corrective action plan to address a range of deficiencies, including with respect to implementation of the BAP. The corrective action plan focused on how the findings from biodiversity monitoring would be addressed during operations and how to ensure that the environmental flow regimes will be acceptable from a biodiversity perspective. AGL committed to undertaking river flow surveys during the summer of 2016.

In November 2016, the Lenders' Independent Environmental and Social Consultant ("LIESC") followed up on AGL's river flow survey commitment, reporting that there had been no progress on addressing some key outstanding questions regarding the biodiversity impacts associated with the operation of the Project and how these impacts would be mitigated.⁵⁴ As of 16 December 2016, the required surveys had been conducted, and an Ecological Baseline Review Report had been produced.⁵⁵

The Lender Group's Monitoring Report dated 1 December 2017 includes a positive report on implementation of the BAP, stating that the "Operational phase BAP has been completed and provided to Lenders," and that "[a] detailed monitoring schedule and tracker which will enable AGL to deliver the BAP commitments is being finalised."⁵⁶

Reporting in early 2019, the LIESC stated that, at that time, the Project was not in compliance with applicable standards because AGL was not able to demonstrate the impact of the Project on the

⁵³ Lender Group – EBRD, IFC, ADB; Shuakhevi HPP; Monitoring Report, prepared by Ove Arup & Partners Ltd, dated 31 October 2014, ESAP Summary Table, pp. 40-41.

⁵⁴ Lender Group – EBRD, IFC, ADB; Shuakhevi HPP, Adjaristsqali River, Georgia; Monitoring Report Q2 2016, prepared by Ove Arup & Partners Ltd, dated 14 November 2016, § 4.2.1, p. 20.

⁵⁵ Lender Group – EBRD, IFC, ADB; Shuakhevi HPP, Adjaristsqali River, Georgia; Monitoring Report Q4 2016, prepared by Ove Arup & Partners Ltd, dated 15 March 2017.

⁵⁶ Lender Group (EBRD, IFC, ADB); Shuakhevi Hydropower Project, Georgia; Environmental and Social Monitoring Report for Operations #1, prepared by Ove Arup & Partners Ltd in association with Ecoline International, dated 1 December 2017.

biodiversity baseline and how adaptive management was being used. The LIESC noted past failures to address shortcomings in biodiversity monitoring, and the Lenders thus required AGL to provide a comprehensive corrective plan within 30 days.

Bank management has made available the Biodiversity Action Plan for the Operation Phase of the 184 MW Shuakhevi Hydropower Project, Republic of Adjara, Georgia, Final Report, dated 7 April 2021, prepared by ERM India Private Limited (“Operations BAP”). According to the Operations BAP, all construction phase actions save one have been completed, in some cases subject to future action during the operations phase. The lone uncompleted construction phase action is to “[r]aise awareness of the local communities on the importance of protected amphibian, fish and otter species.”⁵⁷

e. Findings

The Compliance Review Expert concludes that while the Bank has diligently monitored AGL’s implementation of biodiversity mitigation measures, such monitoring initially did not ensure the Project was achieving no net loss or a net gain of the affected biodiversity. Although called to AGL’s attention in monitoring reports and communications from the Lenders going back to 2015, AGL failed to timely address identified deficiencies in its biodiversity reporting, and the Bank failed to ensure timely compliance by AGL, and no remedies were applied regarding non-compliance. Based on the Operations BAP, it does appear that AGL ultimately achieved substantial compliance with the BAP.

8. Performance Requirement 10 (PR10): Information Disclosure and Stakeholder Engagement

ISSUE 14: 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)

a. Complaint

Complainants assert the Project “was characterized with flawed information disclosure and public participation process, as well as public unrest and protests along the project implementation,” and that “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.” Complainants assert that although initial disclosure of project documentation complied with EBRD requirements, the Bank and AGL failed to inform stakeholders about changes to Project plans resulting from the tunnel collapse. Complainants contend that stakeholder engagement for the Project “has not been open, meaningful and in an appropriate manner acceptable to potentially affected communities.”

⁵⁷ Biodiversity Action Plan for the Operation Phase of the 184 MW Shuakhevi Hydropower Project, Republic of Adjara, Georgia, Final Report, dated 7 April 2021, Appendix A, Action C.2.2.

b. Bank Response

The Bank asserts that “Stakeholder Engagement during both ESIA preparation and disclosure and during project implementation has been extensive and has been undertaken in accordance with PR10.”

c. Client Response

AGL states that it “continues to demonstrate commitment to delivering on its social commitments into its day-to-day activities after beginning of rehabilitation activities.” AGL states that it redeveloped a stakeholder engagement strategy to adapt to the new working environment and at the same time, complied with the guidelines from the construction phase SEP approved by the Lenders. Social, safety and technical teams from AGL and its main contractor claim they conducted multiple informational meetings with key stakeholder groups with the objective of providing details about ongoing repair work and other aspects of the project.

AGL states that it continues to publish an informational page in the regional newspaper Ajara, providing Project news, updates and information to local communities on a monthly basis, as it began doing during the construction phase of the Project.

EBRD Policy and Performance Requirements (ESP ¶ 7, PR 10.3, PR 10.15, PR 10.21)

ESP ¶ 7 provides:

7. The EBRD is strongly committed to the principles of corporate transparency,⁵⁸ 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. Such stakeholder interaction should be consistent with the spirit, purpose and ultimate goals of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,⁵⁹ the EU Environmental Impact Assessment Directive and, for projects with the potential to have significant environmental impact across international boundaries, the UNECE Convention on Environmental Impact Assessment in a Transboundary Context,⁶⁰ regardless of the status of ratification.

PR 10.3 provides:

3. Stakeholder engagement is an ongoing process involving (i) the client’s public disclosure of appropriate information so as to enable meaningful consultation with

⁵⁸ The Bank has specific requirements related to good governance, money laundering, bribery and corruption, revenue transparency and disclosure of tariffs which are described in other Bank policy documents.

⁵⁹ “Aarhus Convention”: www.unece.org/env/pp/.

⁶⁰ “Espoo Convention”: www.unece.org/env/eia/.

stakeholders, (ii) meaningful consultation with potentially affected parties, and (iii) a procedure or policy by which people can make comments or complaints. This process should begin at the earliest stage of project planning and continue throughout the life of the project.

PR 10.15 provides:

15. The need for and nature of any specific consultation will be agreed with the EBRD based on the stakeholder identification, analysis and detailed project description, and depending on the nature and magnitude of current and potential adverse impacts on workers and affected communities. Where workers and/or affected communities are, or may be, subject to significant risks or adverse impacts from a project, the client will undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them.

Meaningful consultation:

- should be based on the disclosure of relevant and adequate information including, where appropriate and relevant, draft documents and plans, prior to decisions being taken when options are still open
- should begin early in the environmental and social appraisal process
- will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these
- will be carried out on an ongoing basis as the nature of issues, impacts and opportunities evolves.

PR 10.21 provides:

21. Throughout the life of the project, the client will provide ongoing information to identified stakeholders, commensurate to the nature of the project and its associated environmental and social impacts, and the level of public interest. This ongoing engagement should build upon the channels of communication and engagement established during the due diligence process. In particular, clients should use appropriate community engagement practices to disclose information and receive feedback on the effectiveness of the implementation of the mitigation measures in the ESAP as well as the affected communities' ongoing interests and concerns about the project. Additional information may need to be disclosed at key stages in the project cycle, for example before construction commences, or prior to start-up of operations.

d. Observations and Conclusions

As discussed above in Issue 8, the ESIA describes multiple meetings with Project-affected communities at which community members raised concerns about the Project leading to landslides.⁶¹ In addition, monitoring by the Lenders throughout the Project has included assessment of AGL's compliance with the SEP.

⁶¹ E.g., ESIA, Table 6.4, pp. 96-98, Table 6.5, pp. 100-101.

Subsequent to the August 2017 tunnel collapse, the Lenders' Monitoring Report for Operations called for AGL to identify and evaluate risks to community health and safety for the operational phase of the Project, develop and implement preventive measures and plans to address the risks, to include: "identification and assessment of risks to the public; a map indicating the community risk profile; mechanism of communication of public safety risks; and definition of the mitigation measures that are to be put in place (e.g. emergency preparedness signing, fencing, community engagement / information)."⁶² The same Monitoring Report states the need for AGL's environmental and social teams to coordinate more closely together, so as to address community concerns more effectively.

During the Compliance Review Expert's site visit in October 2019, local villagers stated that they had difficulty accessing information regarding the progress of remedial measures taken in response to the tunnel collapse.

As discussed above in Issue 9, and as discussed directly above, the Lenders have monitored the Project since inception. The Lender Group's Monitoring Reports consistently address stakeholder engagement, including public disclosure of information and communication with Project-affected communities. The Lender Group Monitoring Report dated 31 October 2014 identifies multiple ways that AGL communicates with the local community, including: public information centres; regular meetings with community members; information pages in local media; and pamphlets and fliers distributed at local municipality offices, public information centres and the local university.

The Lender Group Monitoring Report dated 1 December 2017 includes a separate section on Information Disclosure. The Report states that "[r]ecent community grievances, Project news reports and the issue of reports about the Project from civil society groups prompted us to review the way in which AGL is sharing and disclosing information with its stakeholders." The Report goes on to suggest improvements to the ways in which AGL provides Project news, updates and information to local communities and via the internet. The suggestions include—

- Involving AGL's Environmental and Social team in reviewing and/or contributing to all press releases and company statements to ensure they are sensitive to community concerns;
- Revamping the Environmental and Social page on AGL's website to make it more user friendly and to reflect the current Project phase;
- Preparing a 'Frequently Asked Questions'-style leaflet or similar for local and website distribution, covering key Environmental and Social issues and concerns being raised by local people and by civil society;
- Making environmental flow measurements publicly accessible via AGL's website in real time and an explanation of how environmental flow commitments are delivered and measured.⁶³

e. Findings

The Compliance Review Expert concludes that the Bank did ensure that AGL provided ongoing/current information to identified stakeholders during Project implementation, disclosing information

⁶² Lender Group (EBRD, IFC, ADB), Shuakhevi Hydropower Project, Georgia, Environmental and Social Monitoring Report for Operations #1, (1 December 2017).

⁶³ Lender Group (EBRD, IFC, ADB), Shuakhevi Hydropower Project, Georgia, Environmental and Social Monitoring Report for Operations #1, § 3.5.3, p. 21.

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).

ISSUE 15: Did the Bank satisfy its obligations to ensure that AGL 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)

a. Complaint

Complainants assert that the Bank and AGL did not take into account protests and investigate the cause of people's dissatisfaction with the Project. Complainants contend it is unclear how some commitments in the Project SEP are met, including "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."*

Complainants assert that the Bank and AGL did not engage with stakeholders throughout the life of the Project. According to Complainants, "[w]hile initial disclosure of project documentation complied with the requirements for Category A projects, the EBRD and its client failed to inform stakeholders about the changes to project plans since the operational stage got delayed due to tunnel collapse." Complainants further assert that "[t]he consultation process has not been informed and iterative and as the PCM complaint by local impacted people suggests, stakeholder engagement for the Shuakhevi HPP project has not been open, meaningful and in an appropriate manner acceptable to potentially affected communities." (Footnotes omitted from quotes.) Complainants contend the Bank and AGL lacked transparency, with insufficient information in the public domain regarding "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."

b. Bank Response

The Bank's response to the Complaint does not specifically address the identification of Project-affected stakeholders in the context of PR 10. The Bank does state, in the context of PR 1 and geological risks, that AGL "has invested significant resources to engage with actual Project Affected People who have voiced concerns to explain the technical considerations of the Project."

c. Client Response

AGL states that beginning in 2012, prior to the active construction phase, it held multiple meetings with stakeholders in both municipalities where the Shuakhevi scheme is located, including meeting with community leaders, local authorities, NGOs and media representatives. After commencing construction in 2013, AGL states that it 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." In 2014, after consultations with local stakeholders, the company opened an additional PIC in Skhalt Valley to engage actively with the villages in this area of Khulo municipality.

Prior to completion of the active construction phase, AGL developed an SEP for the operation phase of the Project in cooperation with the lending partners and in active consultation with major stakeholders. AGL asserts that informational meetings took place in all working areas before beginning the operation phase.

EBRD Policy and Performance Requirements (PR 10.8, PR 10.9, PR 10.12, PR 10.13, PR 10.15)

PR 10.8 provides:

8. The first step in successful stakeholder engagement is for the client to identify the various individuals or groups who (i) are affected or likely to be affected (directly or indirectly) by the project (“affected parties”), or (ii) may have an interest in the project (“other interested parties”). Resources for public information and consultation should focus on affected parties, in the first instance.

PR 10.9 provides:

9. As part of the stakeholder identification process, the client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. The client will also identify how stakeholders may be affected and the extent of the potential (actual or perceived) impacts. Where impacts are perceived, additional communication may be required to provide information and reassurance of the assessed level of impacts. An adequate level of detail must be included in the stakeholder identification and analysis so as to enable the Bank to determine the level of communication that is appropriate for the project under consideration. Employees are always considered stakeholders.

PR 10.12 provides:

12. Disclosure of relevant project information helps stakeholders understand the risks, impacts and opportunities of the project. If communities may be affected by adverse environmental or social impacts from the project, the client will disclose to them the following information (“the Information”):

- the purpose nature and scale of the project
- the duration of proposed project activities
- any risks to and potential impacts with regard to environment, worker health and safety, public health and safety and other social impacts on communities, and proposed mitigation plans
- the envisaged consultation process, if any, and opportunities and ways in which the public can participate
- time/venue of any envisaged public meetings, and the process by which meetings are notified, summarised, and reported.

PR 10.13 provides:

13. The Information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any vulnerable people (for example ethnic groups or displaced persons). For projects with potentially significant

adverse social or environmental impacts, disclosure should occur early in the environmental and social appraisal process.

PR 10.15 is set forth above in Issue 14.

d. Observations and Conclusions

As discussed in Issue 2 above, according to the Stakeholder Engagement Plan (“SEP”), local Project-affected communities include 15 villages in three municipalities: Khulo Municipality (Didachara Community [Didachara], Lekanashvilebi Community [Diakonidzeebi, Duadzeebi, Tsifnari]); Shuakhevi Municipality (Chvani Community [Akhaladaba], Oldadauri Community [Paposhvilebi, Makhalakidzeebi]); and Keda Municipality (Makhutseti Community [Qveda Makhuntseti, Qveda Bzubzu], Pirveli Maisi Community [Pirveli Maisi], Qeda Community [Koromkheti], Merisi community [Sihadzeebi, Inasharidzeebi], Chvani Community [Dandalo, Baladzeebi]).⁶⁴

The Biodiversity Action Plan list of stakeholders identifies two villages in Khulo Municipality (Didachara and Kvatia), three communities in Shuakhevi Municipality (Chvana Community, Zamleti Community and Oladauri Community).⁶⁵

With respect to vulnerable groups, as discussed above in Issue 3, the ESIA identifies local women’s groups as direct stakeholders and indirect stakeholders in the Project.⁶⁶ In 2013, AGL’s “key topics” for community consultation included women’s rights.⁶⁷ AGL pledged that as part of its social interaction, “there will be efforts to increase women’s participation in Project activities and to assist women in taking responsibilities in equal partnership with men. Consultation activities will advise women that their opinions and ideas count in equal measure to men and that women can make a difference in local society and wider.” The ESIA states that women will be encouraged to apply their skills to jobs previously perceived as “men-only.”

The ESDD notes with reference to the SEP that “an additional description is required with regard to past consultations, channels of communication and ways of future information disclosure and consultations with women groups and vulnerable groups.” In September 2013, AGL conducted focus groups with women from five Project-affected communities and recorded Project-related concerns expressed by the participants. The meetings and concerns are noted in the ESIA.⁶⁸

The Project ESAP does not specifically address women or other vulnerable groups. Nor does the ESAP itself “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.” However, the ESMP does include differentiated measures to protect women.⁶⁹

⁶⁴ Adjaristsqali HPP SEP, 314320/PWR/EFR/2/D 04 September 2013, pp. 11-12.

⁶⁵ Biodiversity Action Plan, 290039/TRD/EFR/BBAP/01/E 22 July 2013, p. 9, Table 2.1.

⁶⁶ ESIA, § 6.4.2, p. 90; Table 6.2, p. 91.

⁶⁷ ESIA, § 6.5.3.2, p. 108.

⁶⁸ ESIA, Table 6.7, pp. 109-110.

⁶⁹ ESMP, Table 3.1 (Plans, Policies and Procedures), p. 29 (“Special measures to promote equal employment opportunities across ethnicities and women.”), § 4.2.3.2, p. 60 (calling for Corporate Liaison Officer to arrange meetings with local women’s groups).

e. Findings

The Compliance Review Expert concludes that the Bank did satisfy its obligations to ensure that AGL properly identified affected stakeholders, including disadvantaged or vulnerable peoples and other interested parties, meaningfully engaging with them during the Project preparation and implementation.

ISSUE 16: 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)

a. Complaint

Complainants assert that the Non-Technical Summary of the Project does not include any information on gender impact, mentions no special provisions for protection of women from local communities, lacks consideration of cultural barriers to women's participation in consultations, and makes no mention of women-headed households or opportunities for women entrepreneurs. Complainants assert that the ESIA lacks sufficient assessment of the Project's impact on women's rights and gender equality, and the Land Acquisition and Livelihood Restoration Plan does not analyse land ownership and land use patterns or the impact on women's livelihoods if compensation is given to male property owners.

Complainants reference a 2016 report prepared by Green Alternative titled *Gender Impact of Shuakhevi HPP Project And Its Compliance With EBRD Requirements*, and they assert the Bank and AGL did not follow the report's recommendation that Bank "demand from the project developer to draft gender assessment and action plan, and then strictly monitor its implementation."

b. Bank Response

The Bank's response to the Complaint does not specifically address consultations with Project-affected women. More generally, the Bank states it "is confident that the Social Impact Assessment was prepared in accordance with the relevant Performance Requirements."

c. Client Response

AGL asserts it has been committed to engaging with various stakeholders including women from the early stage of Project development. AGL states that it commenced informational meetings during the scoping phase in June 2011. The field meetings were conducted with mixed groups including female residents. In addition, AGL states that it 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).

In order to strengthen women's involvement in decision-making and distribution of cash compensation, AGL asserts that it followed gender-sensitive procedures during the compensation process, such as making sure that spouses of compensation recipients were informed about the amount and timing of compensations paid to their households. Thus, according to AGL, "spouses attended negotiation process and also signed Acceptance –Delivery Acts (for receiving contracts)." In

addition, AGL states that it implemented a “wide range of awareness raising programs targeting local women and strengthening their participation in educational programs.”

EBRD Policy and Performance Requirements (PR10.11, PR 10.15, PR 10.6)

PR 10.11 provides:

11. The client will inform the EBRD how communication with the identified stakeholders will be handled throughout project preparation and implementation, including the type of grievance procedure (see paragraphs 24–26) envisaged. Different levels of engagement and consultation might be appropriate for affected parties and other interested parties. The client should develop separate processes for worker engagement and engagement with affected communities; engagement with workers about working conditions, including occupational health and safety, and the workplace relationship must follow the requirements of PR 2 at a minimum. Where stakeholder groups are identified as disadvantaged or vulnerable, dedicated approaches and an increased level of resources may be needed for communication with such stakeholders so that they fully understand the issues that are potentially affecting them. Clients should also inform the EBRD of any information provided or consultation activities conducted prior to approaching the EBRD for financing.

PR 10.15 is set forth above in Issue 14.

PR 10.16 provides:

16. The consultation process will be undertaken in a manner that is inclusive and culturally appropriate. The client will tailor its consultation process to the language preferences of the affected parties, their decision-making process, and the needs of any disadvantaged or vulnerable groups. The consultation will also include, beyond the affected parties, any groups or individuals who have been identified as other interested parties. The consultation process will be documented as part of the public commitment of the client. The client will inform those who have participated in the public consultation process in a timely manner of the final decision on the project, associated environmental and social mitigation measures and any benefits of the project for the local communities, along with reasons and considerations on which the decision is based, and the grievance or complaint mechanism or process available.

d. Observations and Conclusions

AGL designated a community liaison officer as the main point of contact with local communities, including women’s groups. In 2013, AGL’s “key topics” for community consultation included women’s rights.⁷⁰ AGL pledged that as part of its social interaction, “there will be efforts to increase women’s participation in Project activities and to assist women in taking responsibilities in equal partnership with men. Consultation activities will advise women that their opinions and ideas count in equal measure to men and that women can make a difference in local society and wider.” The ESIA states that women will be encouraged to apply their skills to jobs previously perceived as “men-only.”

⁷⁰ ESIA, § 6.5.3.2, p. 108.

During due diligence, the consultants identified the need for further detail on both past consultations and future plans of engagement and information disclosure in relation to women and vulnerable groups.⁷¹ According to the ESIA (2013), this was then addressed through the organisation of focus groups with women from five Project-affected communities and recorded Project-related concerns expressed by the participants. The meetings and concerns are noted in the ESIA.⁷²

The ESMP includes differentiated measures to protect women.⁷³ The LALRP states that “Female headed households are particularly vulnerable in the rural areas as women carry out a large share of farm work and processing work and can be put under additional pressure if male family members migrate in search of work.”⁷⁴ The LALRP provides that documentation of ownership and compensation should be issued in the names of both spouses or heads of household, and that “[l]and acquisition activities will be conceived and executed as sustainable development programmes and sufficient investment resources will be provided to enable the people to share in project benefits. Particular support will be provided to women, the poor and the most vulnerable people.” As noted elsewhere, AGL states that it ensured that spouses attended the negotiation process and also signed Acceptance–Delivery Acts regarding compensation.

e. Findings

The Compliance Review Expert concludes that the Bank did 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.

⁷¹ Environmental and Social Due Diligence Report (ESDD), 9 August 2013.

⁷² ESIA, Table 6.7, pp. 109-110.

⁷³ ESMP, Table 3.1 (Plans, Policies and Procedures), p. 29 (“Special measures to promote equal employment opportunities across ethnicities and women.”), § 4.2.3.2, p. 60 (calling for Corporate Liaison Officer to arrange meetings with local women’s groups).

⁷⁴ LALRP, § 2.9, p. 19

9. Compliance Review Conclusions and Recommendations

Conclusions. As set forth above, the Compliance Review Expert has concluded that the Bank did not comply with the ESP in the following four respects:

- The Bank did not comply with PR 1 because the ESIA and related Project documentation do not clearly and consistently identify the Project's area of influence.
- The Bank did not comply with PR 4, because the Bank did not ensure that an extensive testing programme during excavation works for the tunnels was set up, including tests to cover rock stability issues and rock behaviour in permanent contact with water, in order to sufficiently mitigate the risk of tunnel collapses.
- The Bank did not comply with PR 4.16 because it did not take measures to ensure that AGL avoided or minimised adverse impacts on local water resources, including the establishment of baseline data regarding spring water and validation of inferences and conclusions.
- The Bank did not comply with PR 6 because the Bank's monitoring of AGL's implementation of the BAP did not ensure on an ongoing and consistent basis that the Project was achieving no net loss of biodiversity.

The Compliance Review Expert has concluded that the Bank otherwise complied with the ESP.

Recommendations. Pursuant to Paragraph 44 of the PCM Rules of Procedure—

44. If the Compliance Review Expert concludes that the Bank was not in compliance with a Relevant EBRD Policy, the Compliance Review Expert will issue a Compliance Review Report which will include recommendations to:
- a) address the findings of non-compliance at the level of EBRD systems or procedures in relation to a Relevant EBRD Policy, to avoid a recurrence of such or similar occurrences, and/or
 - b) address the findings of non-compliance in the scope or implementation of the Project, taking account of prior commitments by the Bank or the Client in relation to the Project
 - c) monitor and report on the implementation of any recommended changes.

The Compliance Review Expert makes the following recommendations:

Recommendations at the Level of EBRD Systems or Procedures

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

adequate opportunities to learn about potential project impacts and provide input to the Bank and project sponsors.

2. In order to enhance compliance with PR 4, the Bank should ensure that in situations where independent technical experts identify the need for further testing to manage risks in connection with the construction, operation or decommissioning of structural elements or components of a project, Bank Management follows up with the project sponsor to confirm that the recommended testing has occurred within a specified timeline, and that test results are both documented and made available to all interested parties, and acted upon.
3. In order to enhance compliance with PR 4.16, the Bank should ensure that baselines are established regarding the availability and use of natural resources prior to Project construction and that subsequent review of potential adverse impacts on natural resources is not confined to desktop analysis.
4. In order to enhance compliance with PR 6.8, the Bank should act expeditiously and decisively if the Bank's monitoring of a client's implementation of a project BAP fails to demonstrate that the project is achieving no net loss of biodiversity. The Bank must ensure that clients prioritize implementation of the BAP and that they do so in ways the Bank can verify, on a specified timeline, with concrete consequences for failure to comply.

Recommendations Specific to the Project

5. In connection with the Project, the Bank should work with AGL to compile a definitive list of Project-affected communities, including how the Project affects each such community. The Bank should take particular care to obtain input from affected communities, including women and other vulnerable members of those communities.
6. In connection with the Project, the Bank should work with AGL to ensure public access to the results of geological testing (without disclosing legally protected confidential information), including slake durability tests and to document actions taken by AGL to address the result of such tests.
7. In connection with the Project, the Bank should work with AGL to arrange a thorough hydro-geological review (or to augment existing reviews) that includes gathering historical information regarding water availability and use, as well as proper validation of inferences and conclusions based on physical analysis, not confined to desktop analysis.
8. In connection with the Project, the Bank should work with AGL to establish a protocol for systematic biodiversity monitoring and reporting, including timelines and content requirements, which enables AGL, the Bank and other interested parties to determine during all phases of the Project whether the Project is achieving no net loss of biodiversity.