

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM

ELIGIBILITY ASSESSMENT REPORT

COMPLAINT: TBILISI RAILWAY BYPASS 2

REQUEST NUMBER: 2011/02

EXECUTIVE SUMMARY

On 2 March 2011 the PCM received a complaint (“Complaint”) regarding Tbilisi Railway Bypass Project (“Project”). The Complaint is from ten affected families living in the Avchala settlement (“Complainants”) which is on the proposed bypass route of the project. The families are represented by Mr David Chipashvili, a representative of Georgian NGO Association Green Alternative. In their letter, the Complainants describe their fundamental concern: that because of the plan to construct a new railway section that will transport hazardous materials through their densely populated community, passing disturbingly close to their homes, they will be subject to a number of intolerable environmental and social risks related to the construction or operations of the project. The Complainants raise a number of issues related to communication with project sponsors, the safety of the local population given the route of the railway, deteriorated living conditions as a result of anticipated impacts such as smell, noise, vibrations, and concerns about their water supply. In addition, Complainants are concerned about a substantial decrease in property values as a result of the project. They have requested a Compliance Review and a Problem-solving Initiative to avoid negative impacts from the project. They would like an acceptable buffer zone to be established with resettlement and compensation provided or modifications made to the design.

The Compliance Review request relates to various aspects of the project, including: the alleged underestimation of safety issues in the ESIA, in contravention of PR 1, para. 9 and PR 4, para. 7; the alleged failure of the ESIA to address the likely deterioration of living standards of the local population and risks to the central water pipeline, in contravention of PR 1, para. 9; the alleged inadequacy of public consultation under PR 10, paras. 10 and 15; and the failure of the ESIA to examine the problem of depreciation of property values, in contravention of PR 1, para. 9. As these Compliance Review aspects correspond closely with, though do not overlap precisely with, the aspects of the Compliance Review requested under the Tbilisi Railway Bypass 1 Complaint, it makes sense in terms of procedural efficiency and consistency of outcomes for the PCM to address all these Compliance Review issues by means of a single Compliance Review process. The aim of the present Eligibility Assessment Report is to determine eligibility of the Complaint for the Problem-solving Initiative only.

Based on the evaluation of the eligibility criteria set out in the PCM RP 18, 20, 21 22 and 24 and based on the analysis of the information and documents available to the PCM team, the Eligibility Assessors determined the Complaint as **eligible for a Problem-solving Initiative** and recommend a structured, participatory Problem-solving Initiative (PSI) facilitated by the PCM Expert Susan Wildau and the PCM Officer. Considering that the other two complaints on Tbilisi Railway Bypass Project originated (Tbilisi Railway Bypass 3 Complaint and Tbilisi Railway Bypass 4 Complaint) also originated in Avchala settlement, that issues raised in all three complaints are related and interlinked and that the stakeholders in all three cases are the same, the PCM team recommends a single Problem-solving Initiative process for these three complaints, to prevent duplications and allow the problem-solving process to be performed more efficiently.

The PCM Team recommends there is need for a structured, participatory Problem-solving Initiative assisted by independent facilitation. This will improve communication among the parties and help them understand each other and support a joint search for solutions. The PCM Officer and Expert will convene and facilitate the Problem-solving Initiative and work out a course of action in consultation with the parties. The PCM also recommends that the EBRD participate as a technical resource and advisor if the parties agree. The PCM proposes to visit Tbilisi in September – October 2011 to initiate the Problem-solving Initiative. The initiative will involve several sessions focused on: 1) preparation; 2) information exchange and mutual education; and 3) problem solving and consensus building.

The Complainants are concerned that they may be left living in homes in an unsafe environment, with deteriorated living conditions and reduced property values. The Georgian Railway is convinced the location and design of the project are sound and want to complete the project as soon as possible. But Georgian Railway has also signaled some flexibility in reviewing the situation, to assess whether adjustments are still possible and to find appropriate solutions in individual cases. The EBRD wants to see the current measures being developed to prevent and mitigate impacts put in place. The EBRD also would like to see the project successfully implemented so it can deliver its benefits. These varied interests are not mutually exclusive and can form the basis for a Problem-solving Initiative to address the issues of concern to the parties. In addition, all the stakeholders agree that the project is important and welcome the project goal of improving safety within the city of Tbilisi, a number of options for reaching agreement have been mentioned, and the parties are willing to sit at the same table and discuss the issues. The obstacles that exist appear to be manageable, the time pressure is reasonable and the parties are eager to settle their problems. Finally, the parties have indicated a Problem-solving Initiative is the most compelling alternative for resolving the issues in the Complaint, compared to other procedures and recognize that the compliance audit will proceed along a separate track.

I. BACKGROUND

A. The Project

1. The railway route through Tbilisi Centre and the central railway station area are facing a major renewal over the next several years. The Tbilisi Railway Bypass Project, a Category A initiative, intends to (i) relocate a section of Georgia's main east-west railway line in order to allow hazardous freight (e.g., oil and oil products) to bypass the city centre of Tbilisi; (ii) facilitate renewal of the central railway station area and reintegration of the city-urban land, making it available for redevelopment (e.g., new offices, dwellings and commercial activities); and (iii) improve the safety and efficiency of rail operations.

2. The project calls for the construction of a 28km long double track electrified new railway that bypasses the city, as well as upgrades to the current track, among other measures. As a result of the project, the freight shipped by rail which comprises a significant amount of crude oil and oil products, in transit from Azerbaijan, Kazakhstan and Turkmenistan to the Black Sea ports, will no longer be routed through the city's centre.

3. The estimated project cost is up to EUR 300 million. On March 9, 2010, the European Bank for Reconstruction and Development (EBRD) Board of Directors approved the provision of a senior loan of up to EUR 100 million to co-finance the construction. The Project Sponsor is Georgian Railway LLC (GR), the Georgian state-owned railway company. Georgian Railway will complement the EBRD's loan with the proceeds from Euro Bonds issued by Georgian Railway, and their own funds. The Project is a key priority that enjoys strong support from the Government of Georgia and the Tbilisi municipality.

4. The Project will be implemented in two Phases. Phase I involves the construction and putting into operation of the railway by-pass. Phase 2 will focus on dismantling and cleaning up the area to be freed-up inside the Tbilisi city centre.

B. The Complaint

5. The PCM Officer received the Complaint 2011/02 on 2 March 2011. The Complaint is one of four related to the Tbilisi Railway Bypass Project, received between 28 February and 16 March 2011. The PCM Officer officially registered the Complaint on 14 March 2011 and a notification of registration was sent on the same date.¹ The PCM Officer designated one of the PCM Experts, Ms. Susan Wildau, to assist in the eligibility assessment and determine whether there were opportunities for addressing the issues through a Problem-solving Initiative.

6. The Complainants comprise ten families who are represented by Mr David Chipashvili, International Financial Institutions Monitoring Programs Coordinator with Association Green Alternative, Georgia. In their letter they state clearly that because of the plan to construct a new railway section that will transport hazardous materials through their densely populated community, passing disturbingly close to their homes, complainants believe they will be subject

¹Details of the registration were posted on the online PCM Register of Complaints and can be viewed at <http://www.ebrd.com/pages/project/pcm/register.shtml>

to a number of intolerable social and environmental risks related to the construction or operations of the project. These concerns, as well as those of the other parties, are described in more detail in the next section of the Eligibility Assessment Report, Perspectives of the Parties.

II. ELIGIBILITY ASSESSMENT FOR A PROBLEM-SOLVING INITIATIVE

A. Objectives and Methodology

7. The objectives of the Eligibility Assessment were to: (i) determine whether the complaint meets the eligibility criteria set out in Paragraphs 18, 20, 21, 22 and 24 of the Project Complaint Mechanism Rules of Procedure (PCM RP); (ii) explore the history of the Complaint; (iii) clarify the issues and concerns raised by the complainants; (iv) identify the principal stakeholders that need to be consulted on the issues raised in the complaint and gather information on their perspectives and view of the situation; (v) explore the stakeholders' willingness and readiness to engage in a joint Problem-solving Initiative; and (vi) recommend whether the complaint is appropriate for problem solving.²

8. The Eligibility Assessment included:

- (i) Review of project documents, including the Environmental Social Impact Assessment (ESIA), Resettlement Action Plan (RAP), Project progress reports, RAP framework, Stakeholder Engagement Plan, Resettlement Implementation Manual, Georgian Law on Expropriations, etc.;
- (ii) Interviews with EBRD staff and management involved in the Project;
- (iii) A field-based assessment from 9 to 13 May 2011, consisting of site visits to Tbilisi and Avchala; individual and group interviews with the Association Green Alternative (Complainants' representative) and the Complainants. An interpreter supported the PCM Team in interviewing the Complainants. Interviews with the Project Sponsor and its consultants, including the Head of the PIU, Georgian Railway Deputy Head of Procurement and Construction, GAMMA LLC, APRL, and Sponsor's in-house consultants for environment and resettlement, respectively.

9. The Eligibility Assessment Report seeks to present the issues as the different parties explained them to the PCM team and is intended to assist the stakeholders in better understanding each other's needs, interests and concerns, and to help them consider options to address those concerns. It does not gather information in order to make findings of fact, judge the merits of the Complaint, determine whether or not the project is in compliance with relevant

² In assessing whether a Complaint is appropriate for a Problem-solving Initiative, the PCM explores the following questions in addition to other criteria: 1) Do opportunities exist for a collaborative resolution to the Complaint through a Problem-solving Initiative? 2) Would a Problem-solving Initiative assist in resolving the dispute or likely lead to a positive result where a tangible resolution could be achieved? 3) Would the Problem-solving Initiative duplicate, interfere with, or be impeded by any other process brought by the Complainants?

policies and practices, provide judgments on any issues related to the Project, or make a set of expert recommendations on how issues should be solved.

10. The PCM's role, when a Problem-solving Initiative is recommended and approved, is to facilitate solutions to the issues as described by the different stakeholders, and to initiate and guide the problem-solving process. The PCM offers help to the parties involved in the Project to resolve their issues through a variety of processes including preparing the parties for problem-solving discussions; convening the parties; designing and facilitating mutual information exchange sessions; organizing joint fact-finding processes; facilitating consensus building, and providing other processes conducive for all parties to arrive at solutions. It is the PCM's responsibility to treat all parties with respect and to assure a fair process. It is not the PCMs' role to decide whether parties' actions, opinions or perceptions are right or wrong or to arbitrate in favor of one of the parties.

B. Overview of Stakeholders, their Views and Perspectives

1. The Ten Families and Association Green Alternative

11. The Complaint letter came from the Association Green Alternative³, a national non-governmental organization based in Tbilisi, whose mission is “to create a framework for economically viable and socially desirable alternatives to protect the environment; to protect Georgian's unique biological and cultural heritage; and to advocate for social justice and public participation.” The Association Green Alternative submitted the Complaint on behalf of ten families from the Avchala district living along the proposed railway route. The families, all signatories to the Complaint letter, requested David Chipashvili from Association Green Alternative to act as their Authorised Representative. The families are residents of Avchala district, a mixed settlement and one of the most populated communities along the proposed route. They live in single family dwellings with outdoor patios and yards, some with flourishing trees, flowers and spring gardens. Professors, doctors, retirees – these families came to Avchala to enjoy what they describe as the “rural and pastoral atmosphere” in an area very close to Tbilisi on one hand but “another world completely” on the other. As one resident explained, “We lived well and quietly in our country house. We moved to nature to avoid the overcrowding of the city. The railway will change the quality of life and character of the country setting we currently enjoy. We now face a most uncertain future.”

12. In their view, the overarching issue is the requirement that they become the hosts of an unwelcome development project in their neighborhood where the costs and impacts on them are likely to outweigh the benefits to them. While all recognize the bypass and urban regeneration project provide advantages and benefits for society as a whole, and welcome the main goal of the project to improve safety within the city of Tbilisi, they are concerned about the disproportionate costs they must bear as project hosts in terms of increased risks, decreasing property values, trash, pollution, noise, safety, and so forth, because they live close to what is being proposed. Local residents of Avchala feel they are saddled with the negative aspects of a project that yields

³ http://www.greenalt.org/en_misia.php?lng=en

them a low positive return. They are ensconced in something that is a mix of “public goods” and “private bads”. They would like to be compensated and relocated elsewhere or design the route in a way that produces fewer impacts and costs.

13. As noted above, the Complainants are concerned about a wide range of potential impacts as well as the large uncertainty they face concerning the future. Based on interviews and discussions with the families and their representative, the primary concerns underlying the complaint can be categorized into three areas - project risk; communication and information; and living conditions/quality of life.

1. Project risk concerns-safety, property values, environmental and human health impacts, water supply, uncertainty about the future

- Ensuring the final project design includes a large enough buffer zone to reduce risks from the project for residents.
- Protecting the community from environmental harm. Accurately identifying project risks and impacts; developing proven measures of mitigation and control to address impacts from construction and operations such as accidents, noise, dust, trash, and so forth.
- Receiving compensation for decreased property values if caused by the project.
- Increasing understanding and obtaining a clear explanation as to why the railway route through Avchala was selected. What were the standards and criteria underlying that decision? To what extent did the Sponsor seriously study and consider alternative routes that posed less risk for local people, including the proposal formulated by residents of Avchala. Why were these options rejected?
- Guaranteeing a predictable, uncontaminated water supply for local communities. The Complainants are worried about the antiquated water pipeline in relation to the railway route and fear it will further deteriorate and affect their water supply. “We have old, antiquated water pipes in Avchala which are precarious because of their age. The pipes are splitting, deteriorating. These are the pipes that also supply the city. How will it be to have a heavy train passing over them carrying hazardous loads?” Flooding concerns are also related to the crossing of the Tbilisi central water pipeline.
- Reducing risks from truck traffic movement, construction activities and train traffic to ensure citizen safety and prevent impacts from vibrations to housing structures.
- Protecting the ecosystem and natural resources.
- Maintaining safe and easy access from houses to the main road. The Complainants maintain the high embankment that will be built according to the project design will close the only exit road for locals from the ravine to Saradjishvili Street, the main street of Avchala.
- Providing a way to minimize the gap between “public goods” and “private bads”.
- Ensuring all agreements between Georgian Railway and the Complainants are in writing.

2. Communication and information concerns

- Keeping the residents informed (accessing and disseminating accurate information and updates about the project on an ongoing basis). The Complainants believe they are not receiving all relevant information and don’t always trust the information provided by the

Sponsor or the local authorities. “They are not telling us anything...only that you are not in the zone of destruction.” They underscored the importance of receiving information about the project in a timely manner, even if not all questions yet have answers. “Telling us what you don’t know, why you don’t know it yet and when you will know it...as well as what you do know...helps relieve some of the uncertainty.”

- Accessing trusted and reliable information. “At the beginning all the information was on the internet. Now it is difficult to find information about our concerns that is up to date on the Georgian Railway website.”
- Ensuring community concerns are taken seriously, heard and responded to by decision makers in a timely manner.
- Conducting reliable, credible, accurate and thorough environmental and social studies for public understanding and informed project design and implementation.

3. *Living conditions and quality of life concerns*

- Maintaining current country-like environment and living conditions and a calm, pastoral quality of life.
- Avoiding deteriorating living conditions caused by project impacts such as vibrations, smell, noise and unsightly visual impacts.

14. The variety of views among the residents regarding what might happen if their needs are not met include:

- Leaving the area and abandoning their homes and property as they have lost so much value. “If the project will be continued, I don’t want to live here. I don’t want to live in a hole behind a wall cut off from the natural setting. I don’t want to live behind a wall. It won’t be healthy or good place for us to live. No air, only a wall in front of me.” This was a sentiment shared by many.
- Additional hardship on those residents who remain, and further declines in property values and living conditions from project impacts;
- Continued filing of complaints;
- Possible accidents on the railway or road during construction and operations.

15. All families interviewed expressed their willingness to participate in a Problem-solving Initiative facilitated by the PCM with the Project Sponsor, the Association Green Alternative serving as their representative and other stakeholders as appropriate, to address issues and solve problems.

2. Project Sponsor and Related Organizations

16. Georgian Railway LLC, the Project Sponsor, is the national rail company of the country of Georgia, and a vital artery of the Euro-Asian Transportation corridor that links Europe with Central Asia. Founded in 1865, it boasts a rich and vibrant history and significant engineering ingenuity to negotiate the complicated geographical relief of Georgia. Founded in 1865, Georgian Railway inaugurated its first passenger train which ran on October 10, 1872, from Poti

to Tbilisi central station. Today Georgian Railway provides extensive freight and passenger services across more than 2,344,2 km of track.

17. A number of entities are involved in making decisions and/or providing input and expertise on the issues related to the complaint. Overall project management is the responsibility of Georgian Railway's Project Implementation Unit (PIU). Consultants, lawyers, engineers, and social and environmental experts support the PIU in the implementation of the Project. GAMMA LLC is providing technical assistance and advice on environmental matters, including assisting Georgian Railway with the development of detailed engineering measures to ensure adequate provisions are in place to mitigate impacts. GEOGRAPHIC LLC developed the Resettlement Action Plan. The Association for Protection of Landowners Rights (APLR), an NGO active since 1996, specializes in resettlement and land acquisition issues and has been involved in implementing the RAP- e.g., conducting negotiations with land owners and assisting with the land registration process under the direction of Georgian Railway. In addition, GEOGRAPHIC LLC and APLR drafted the ESIA along with a third firm. The Samkharauli Forensic Expertise Bureau conducted the independent land evaluations. Georgian Railway has also engaged several in-house consultants – one attached to the legal department and a specialist in resettlement; the other with knowledge of environmental issues. Other key players include the Deputy Head of Procurement and Construction for Georgian Railway, the Construction Contractor and the Supervising Engineer.

18. Primary interests and concerns expressed by Georgian Railway representatives include the following:

- The Project is one of the biggest and most complex projects ever undertaken by Georgian Railway. The state-owned enterprise has invested lots of hard and intensive work leading to the construction and final design stage of the project. They are interested in “getting it right” in the way they manage social and environmental issues, as well as in how they conduct overall operations and ensure a high level of performance.
- Build and maintain good relations with local communities, government agencies and the EBRD. Be available and accessible to meet with property owners at their request to discuss project related issues.
- Avoid reputational risk.
- Minimize project delays and keep to the time frame.
- Avoid creating unrealistic expectations of project affected people that could create conflict later on.
- Comply with EBRD standards and policies, the RAP, Environmental and Social Action Plan and Georgia Law.
- Be a responsive and reliable partner with the EBRD.
- Operate a safe and successful project.
- Provide reliable, efficient, environmentally sound and predictable rail transport for passengers and freight for the region.
- Strengthen Georgia's railway transportation network.
- Keep the public informed and disseminate accurate information about the project.
- Avoid problems, misunderstandings and miscommunications.
- Manage project risk effectively.

- Meet local residents' needs as much as possible according to the EBRD policies and Georgian law.

19. The Head of the PIU, the Deputy Head of Procurement and Construction and the Sponsor's consultants who were interviewed by the PCM team supported a Problem-solving Initiative and agreed to participate if one is recommended and approved by the President of the EBRD. There was also broad acknowledgement that the complaint issues and questions around environmental and social impacts, safety, design, water supply, mitigation measures, communication and so forth, are legitimate issues for discussion even if there is not yet common agreement on the solutions.

3. EBRD

20. The EBRD's team includes the Transportation Operations Leader and Team Members, the Office of General Counsel (OGC) and the Environmental and Sustainability Department staff and consultants. Issues raised in the Complaint have been discussed between the Complainant, Georgian Railway and the EBRD on several occasions including the ESIA public consultations in 2009. In addition, the EBRD is monitoring project implementation by Georgian Railway according to the EBRD policies and loan conditions. Regulatory requirements established by the Georgian regulating agencies and a number of more comprehensive and detailed mitigation measures to address specific impacts (e.g., noise, water protection, community safety and emergency response as a result of the ESIA) are among the controls monitored by the EBRD. The design and construction will also be checked by the EBRD.

21. The EBRD pointed to many positive features of the project including its compelling mission, environmental protection measures, and current initiatives that will focus on impacts and mitigation measures now that the project has entered the final design stage. They noted the company had been responsive to suggestions and standards related to stakeholder engagement and other matters but emphasized the project is a work in progress. The EBRD also believes the Bank was already in the process of dealing with many of the issues raised in the Complaint by the time it appeared. For example, as part of its monitoring activities, the EBRD recently initiated and concluded an independent audit of Georgian Railway's resettlement and compensation activities against the requirements of the EBRD PR5. The company is in the process of developing an action plan to respond to the findings of the independent audit. The action plan will be made public.⁴ The EBRD expressed optimism that many of the mitigation measures that are being planned for the project as well as actions stemming from the recent audit of resettlement practices will help to address the Complainants' concerns.

22. The EBRD's primary interests and concerns are:

- Recognition of the importance of the mission of the project. The project has international significance. Its purpose is to make a safer, quicker route around the centre of Tbilisi. It is a noble purpose that should not be lost. It will significantly contribute to the benefit of citizens.

⁴ The PCM does not foresee any problems in having the activities and action plan related to the independent audit, proceed in parallel with the PCM Problem-solving Initiative.

- Seeing the project successfully implemented so it can deliver its benefits.
- Acknowledgement of the many robust project procedures and mechanisms that have been put in place as well as the current initiatives and resources planned for mitigating impacts and dealing with many of the issues raised in the Complaint. At the same time, recognize the need to address issues appropriately when problems arise.
- Recognizing the effort made by the Georgian Ministry of the Environment (MOE) in strengthening environmental permit requirements (e.g., protection of Tbilisi Sea and community water supply) and creating understanding of what positive results this will have for local communities.
- Identifying patterns of issues or problems and find ways to address them at a systems level.
- Clarification of what factors led to the Complaint given the many stakeholder engagement activities, public involvement opportunities and local grievance mechanism that Georgian Railway made available for project affected people and the public.
- Ensuring effective monitoring in order to identify issues early and address them before they develop into problems.
- Ensuring the Complainants understand the design process, safeguard measures, comprehensive mitigation strategies and mechanisms built into the project to address risk
- Setting standards for similar projects
- Preserving a positive institutional reputation and mitigating reputation risk
- Resolving issues efficiently and in a fair, balanced manner.
- Avoiding further project delays.
- Deriving important lessons to be learned for application to future projects.

The parties' views and perspectives are further elaborated in the next section.

C. Identification of Issues

23. This section summarizes the specific views expressed by the various stakeholders and organizes them around a manageable set of the most pertinent issues that would serve as the focus for a Problem-solving Initiative. The purpose is not to validate or deny any issue but rather to describe the issues and concerns from the perspectives of the different parties.

24. The issues have been grouped into the following broad categories:

1. Communication, engagement and information-sharing
2. Compensation
3. Safe Environment

1. Communication, engagement and information-sharing

25. All families interviewed shared a desire for accurate and timely project information on an ongoing basis, over the course of project construction and operations. In the past the families claim it has been difficult to know what's going on. They have not felt adequately informed or responded to about project details. In addition their concerns and opinions were not taken seriously; for example, their opinions about impacts and their proposal concerning

alternative routes. The complainants also noted they sometimes receive different and contradicting information or no response at all. They are not sure whom to approach and who is speaking authoritatively. In an information vacuum, inaccurate data, misunderstandings and misinterpretations are often the norm, as people try to fill the vacuum with the latest reports and stories they have heard from others. Suffice it to say that many questions remain unanswered and contribute to a sense of anxiety and uncertainty. For example, the families find it perplexing that in such a large development project, there is not yet a final design despite the fact that construction has begun in their settlement. They would like to have more information and more certainty about the existing detailed bypass design and buffer zone, even if it is not yet final. (e.g., What are the basic elements of the project in Avchala as currently conceptualized – the tunnels, the connection, the route, the embankment, the buffer zone - what is and is not known; what is and is not under still under discussion?) Information issues have further promoted an erosion of trust among the parties which all acknowledge needs to be strengthened.

26. In contrast, Georgian Railway feels it has engaged in robust public involvement and stakeholder engagement since July 2009. They have worked hard to ensure their communication with the public complies with international practice, the EBRD guidelines and Georgian laws. Extensive consultation sessions were conducted all along the route, including Avchala, once the ESIA was released. In addition, local authorities, NGOs, and other civil society groups were consulted early, during the scoping phase, prior to the development of the ESIA. They also point to a variety of outreach and engagement activities with the public – e.g., press conferences, newspaper articles, website, hotline installation and suggestion boxes, a grievance mechanism, additional consultation meetings with stakeholders, information sessions with the population, public hearings associated with the ESIA, public discussions with affected communities, and other consultation activities. Georgian Railway representatives reiterated their willingness and readiness to meet with property owners at their request to discuss specific issues related to the project and referred to a meeting that was arranged specifically for the group of Complainants and their representative in early January 2011.

27. While the parties have different perspectives concerning the effectiveness of communication and engagement activities, all are amenable to participating in a facilitated, focused information exchange workshop about project issues. They are also willing to explore ideas for improving engagement, communication and information sharing between affected people and Georgian Railway in the future. The PCM team is encouraged by these signs and believes positive results can emerge from such a dialogue.

2. Compensation

28. The Complainants believe they will be so impacted by the bypass railway including environmental, health and quality of life impacts, aesthetics, safety and significant change in the character of the place where they reside, and property depreciation that they should be compensated so they can find alternatives homes in a pleasant environment similar to where they reside now but without a railway. As one resident exclaimed, “It is impossible to live here. And now who would buy my property. It is worth zero. We can’t sell it. I want to be compensated and leave.” Most prefer to leave the area and move elsewhere rather than live next to a noise wall, an 18 meter embankment or in close proximity to a track that transports hazardous materials

through the settlement. The EBRD is of the opinion that many of the mitigation measures planned for the project will address a significant number of the Complainants' concerns. They advise that if non-settled residents in Avchala or elsewhere along the railway route demonstrate they are directly affected by the construction or operations of the Project, Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and the EBRD Environmental and Social Policy requirements. Georgian Railway also noted that the design is not final which is common practice and within the EBRD's policies and procedures. However, the EBRD reiterated that until the detailed design is finalized, it is impossible to finally identify which houses will be impacted and eligible for mitigation; which will be purchased and compensated because Georgian Railway requires the land; and which are outside the zone of impact.

29. In their response to the complaint, Georgian Railway also commented on the issue concerning the depreciation of property values and the Complainants' associated request for compensation. While Georgian Railway observed that compensation for depreciated property values is not required under Georgia law or the EBRD's Social and Environmental Policy, they suggested a legal remedy. If property owners can show evidence of such depreciation they can take such claims to court and Georgian Railway will comply with the court's decision. They further explained that Section 3 of the Civil Code of Georgia (Delictual responsibilities) provides for compensation for the damage caused to the property of another person by intentional or unintentional activities. Accordingly, Georgian Railway would reimburse property owners for damage caused by the construction works or operations of the Bypass project should the court enter such a ruling. Georgian Railway also expressed its willingness to review specific cases to resolve concerns and develop appropriate remedies through a facilitated Problem-solving Initiative.

3. Safe Environment

30. The Complainants are highly concerned about the harmful impacts they will experience during the construction and operation of the Bypass Project that will compromise a safe and healthy environment. As one resident noted, "Why is this good for us if it is not good for citizens of the center? If it is ecologically bad for the city, why is it good for us?"

31. In the Complainants' opinion, living conditions in their neighborhood have already deteriorated since the initiation of nearby construction. According to the Complainants, heavy machinery passes along the dirty road close to the residents' homes, kicking up dust and noise. The construction takes place 24-7, disturbing locals without relief even on evenings and weekends. The families feel stress and under pressure from these changes and the uncertainty of the future. They would like the current, inconvenient situation to end as soon as possible.

32. In addition, they are concerned about anticipated impacts (noise, vibrations, smell of oil, air pollution), risks to human health and the environment, and the specific mitigation measures that are planned to address the impacts during construction and operations. Part of the stressful environment is related to uncertainty. To address these issue, the families would like clarification regarding the final design or at least the current plan even if it is still a work in progress; the definition of the buffer zone; compensation and resettlement – who is eligible, according to what

standards and criteria; who is eligible for mitigation and what specific and appropriate mitigation and control measures will be in place so that the risk associated with the project is minimized; what is the status of the project with Georgian Water and Power Company to relocate the Tbilisi water pipeline? Other issues related to ensuring a safe environment for residents concern potential impacts of freight train derailments, evacuation routes, plans for managing emergencies, and so forth. The Complainants claim an embankment of 18 meters across the settlement may be dangerous, carrying the risk of trains derailing and spilling their hazardous contents into the Avchala settlement. They are interested in understanding how the design of the railway will address such risks and what emergency response plan will be put in place in case of an upset event. It may be useful to hold conversations on what the community can expect from Georgian Railway in the event of an accident or oil spill, what role the community would play, and so forth.

33. Each party has a different assessment of the risks. The EBRD emphasized that the project is a work in progress and that many of the issues identified in the Complaint are continuing to be addressed and managed. They stressed their commitment to continued compliance and monitoring. In EBRD's view, the mechanisms and procedures that have been built into the project should deal with many of the issues raised in the Complaint, over time. These include the more stringent environmental measures required by the Ministry of the Environment, specific design plans and other action plans to deal with specific impacts and mitigations, the local grievance mechanism, monitoring measures put in place by the Bank and the action plan Georgian Railway will develop and implement in response to the recently conducted independent audit related to resettlement. Georgian Railway also highlighted the importance of the detail design which is almost finalized and the numerous technical solutions being elaborated to address issues related to the Tbilisi water reservoir, the Tbilisi central water pipeline, measures to prevent accidents, ongoing efforts to identify and evaluate risks and potential impacts to health and safety of the affected community during the construction and operation, and initiatives to address other environmental impacts such as noise, vibrations, and so forth.

34. All agreed they could benefit from sitting down and discussing the specifics including technical solutions, in language and details that can be broadly understood.

D. Options Identified

35. During the Eligibility Assessment, stakeholders expressed a number of suggestions and options, both procedural and substantive in nature, which might begin to address the issues raised in the Complaint. The PCM team summarizes the suggestions that we heard below, but emphasizes that there is not yet agreement or consensus on any of these options. Indeed, there may well be other options that emerge from discussion among the parties. The options are listed here only as a possible starting point for discussions:

1. Facilitate an information exchange session between Georgian Railway and the Complainants to clarify views and perspectives regarding: a) most current thinking on project design in Avchala – the route and the buffer zone; b) alternatives considered; how they were considered and why not feasible; c) the rationale behind the decision for

selecting the current design as the preferred alternative; d) expected impacts and detailed mitigation measures, and so forth

2. Understand the buffer zone – where is it, what standards or guidelines were used to determine it, how does it align with the EBRD guidelines, how does it compare to practice in Netherlands, Germany, etc.
3. Discuss details related to impacts, how they will be measured, what mitigation strategies are planned, etc. Explore other activities that can be put in place to minimize project risk.
4. Conduct a baseline study of housing cracks in residents' homes prior to construction and operations in case of issues in the future.
5. Enhance understanding and knowledge of the overall monitoring program – the EBRD's role, Georgian Railway's role, independent monitor's role, and so forth.
6. Discuss relevant aspects of an emergency response (or contingency) plan that includes definition of worst and interim case scenarios and establishes clear criteria that would trigger a specific response and action. Further clarify what the community should expect from the company in the event of an accident, what role they can play, etc.
7. Review the Complainants' cases again for compensation or mitigation measures, in light of most recent/final design conditions.
8. Set up a single point of contact within Georgian Railway with authority to make decisions, who serves as the "face" of the project whom community members can contact for questions and concerns.
9. Determine how to improve engagement, communication and information sharing between affected people and Georgian Railway in the future, to ensure that the project information is accessible, concerns are raised and addressed in a satisfactory manner for both parties, and trust is increased.

F. Assessment of Problem-Solving Probability

36. A problem-solving dialogue cannot proceed without willingness from the parties to sit down and talk. In addition, a number of other conditions can increase the probability for a successful result, even if not all issues can be settled through dialogue. A number of factors are present in the Tbilisi Railway Bypass Project that indicate a Problem-solving Initiative could likely lead to a positive result.

1. *Varied interests among the parties that are not mutually exclusive.* The parties each have underlying concerns that influence their views and approaches but that also offer scope for problem solving. The Complainants are concerned that they may be left living in homes in an unsafe environment, with deteriorated living conditions and reduced property values. The complainants would like the bypass to be built elsewhere or be compensated and move from the area. The Georgian Railway is convinced the location and design of the project are sound and want to complete the project as soon as possible. But Georgian Railway has also signaled some flexibility in reviewing the situation, not to move the route entirely but to assess whether adjustments are still possible and to find appropriate solutions in individual cases. They are also ready to participate in a targeted information sharing session to discuss the questions and concerns raised in the complaint, including the impacts people can expect if compensation is not an option and the specific mitigation measure that will be put in place to make a safe environment for people. Georgian Railway also wants to construct and operate the project in a safe and sustainable way that meets requirements of the EBRD and Georgian

law. The EBRD wants to see the current measures being developed to prevent and mitigate impacts put in place. The EBRD also would like to see the project successfully implemented so it can deliver its benefits. These varied interests are not mutually exclusive and can form the basis for a Problem-solving Initiative to address the issues of concern to the parties.

2. Common ground including a willingness to participate in a Problem-solving Initiative. There appears to be some common ground among the stakeholders. All three parties are convinced that the project is important and welcome the project goal of improving safety within the city of Tbilisi. For different reasons, they are also interested in solving the problems as soon as possible and—to varying degrees—have thought about options that could be the starting point for a problem-solving process. They have indicated their willingness to sit around the same table and discuss the issues, the options and the possibilities for resolving the issues. They also agreed on a general framework for problem-solving if a recommendation to go forward is approved by the President of the EBRD. The framework includes three phases – 1) preparation; 2) information exchange; and 3) facilitated negotiation and consensus building.

3. Manageable obstacles. Obstacles to the problem-solving process include the lack of a final design plan to share with the parties so some uncertainty may continue to be a factor and contingency agreements may be called for. In addition, the PCM was unable to meet the General Director of Georgian Railway due to his heavy schedule and will need to confirm his willingness to support and participate in a Problem-solving Initiative. The PCM was encouraged by the response of the Head of the PIU and does not anticipate the General Director's support to be a hindrance. If the Problem-solving Initiative does go forward, it will be important to consider how to ensure decision making authority at the table. There are a variety of ways to do this and the PCM facilitators will consult with the stakeholders on questions of representation and decision-making authority.

4. Less compelling alternatives to resolve the problems compared to a Problem-solving Initiative. If the Problem-solving Initiative does not lead to a solution, the Complainants would consider leaving on their own. In addition the Complainants have requested the PCM to undertake a Compliance Review of the project. A separate Eligibility Assessment will be undertaken by a PCM Expert concerning the Compliance Review. A law suit is a third option should the Problem-solving Initiative be unable to resolve all the issues. However, before resorting to other approaches, the parties prefer to engage in a facilitated Problem-solving Initiative. If the complaint is also deemed eligible for a compliance review, it will proceed on a parallel track.

Reasonable time pressure exists. A major concern is the timing. The construction has begun and the Complainants are not certain about their future. The patience of the Complainants is wearing thin. Patience may also be an issue for the EBRD who feels there are solutions that are being designed to resolve many of the Complaints and the families need to have a little bit more patience to allow these initiatives to be established. The PCM team feels that the sense of urgency to settle these matters is actually a positive dynamic and can work in favor of problem solving as all sides are eager to find a solution.

III. DETERMINATION OF THE STATUS OF THE COMPLAINT

37. As a result of the Eligibility Assessment, the Assessors are satisfied that the Complaint complies with the requirement of the PCM RP 18, i.e.,
- a. it is filed by an individual or individuals as referred to in Paragraph 1 of PCM RP;
 - b. it relates to a Project where: (i) the Bank has provided – and not withdrawn – a clear indication that it is interested in financing the Project; and (ii) the Bank maintains a financial interest in the Project;
 - c. it describes the harm caused, or likely to be caused, by the Project; and
 - d. it describes the good faith efforts the Complainant has taken to address the issues in the Complaint, including with the Bank and the Client, and a description of the result of those efforts.
38. In conformity with the requirement of the PCM RP 20 the Complaint also:
- a. contains an indication of which PCM function the Complainant expects the PCM to address, a Problem-solving Initiative and a Compliance Review;
 - b. offers an indication of the outcome sought as a result of use of the PCM process;
 - c. provides copies of previous communications with the EBRD.
39. In determining the Eligibility, the Eligibility Assessors also have, in line with PCM RP 21 considered:
- a. whether a Problem-solving Initiative may assist in resolving the dispute, or is likely to have a positive result; and
 - b. whether a Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process brought by the same Complainant, regarding the same Project and/or issues pending before a court, arbitration tribunal or review body.

In relation to the point “a” the Assessors believe that varied interests of the stakeholders described in this Report are not mutually exclusive and can form the basis for a Problem-solving Initiative to address the issues of concern to the parties and have a positive result. In addition, all the stakeholders agree that the Project is important and welcome the project goal of improving railway safety within the city of Tbilisi. The obstacles that exist appear to be manageable, the time pressure is reasonable and the parties are eager to settle their problems. Finally, the parties have indicated a Problem-solving Initiative is the most compelling alternative for resolving the issues in the Complaint, compared to other procedures.

In relation to “b”, the PCM team is satisfied that the Problem-solving Initiative would not duplicate, interfere or otherwise negatively affect any process brought by the Complaint.

40. Furthermore, in line with the PCM RP 22, in determining whether the Complainant has made good faith efforts to address the issues in the Complaint per Paragraph 18(d), the Eligibility Assessors considered the information provided by the Complainants regarding their previous appeals to the Client and the Bank and are satisfied that the Complainant made a good faith effort to address the issue with the Bank and the Client.

41. The Eligibility Assessors are satisfied that the Complaint does not fall under any of the points listed in PCM RP 24.

42. Therefore, based on an evaluation of the eligibility criteria set out in the PCM RP 18, 20, 21, 22 and 24 and based on the analysis of the information and documents available to the PCM team, the Eligibility Assessors determined the Complaint as eligible for a Problem-solving Initiative.

43. Considering that concerns and issues raised in the Complaint are similar to those raised in Complaints 3 and 4 on the same Project, and that they include the same stakeholders, the Eligibility Assessors believe that it can be addressed through a single Problem-solving Initiative. This will allow the use of the capacities and the time of the PCM team more efficiently and avoid any duplication that would be inevitable in the case of multiple parallel Problem-solving Initiatives on the same Project.

IV. RECOMMENDATIONS

44. After checking the various exclusions of the PCM Rules of Procedure (Paragraph 24), reviewing the eligibility requirements for a Problem-solving Initiative and assessing the probability of resolving the complaint through facilitated dialogue and negotiation, the PCM team concludes that the Complaint is eligible for a Problem-solving Initiative. The PCM accordingly recommends a facilitated Problem-solving Initiative where the parties seek collaborative opportunities to address the issues raised in this Complaint for the consideration and approval of the President of the EBRD.

45. Considering that concerns and issues raised in the Complaint are similar to those raised in the Complaints 3 and 4 on the same Project, and they also include the same stakeholders, the Eligibility Assessors believe that it can be addressed through the same Problem-solving Initiative process. Thus, the Eligibility Assessors recommend one joint Problem-solving Initiative process for the Complaint 2, Complaint 3 and Complaint 4 on the Tbilisi Railway Bypass Project. That would allow for a more effective Problem-solving Initiative process, more efficient use of the PCM team’s time and capacities and will avoid any duplication that would, otherwise be inevitable.

46. The PCM team suggests that representatives from each of the ten families along with their official representative from the Association Green Alternative and Georgian Railway decision makers and their technical consultants participate in the Problem-solving Initiative. The

PCM team also suggests that the ESD participate as an encourager, witness and technical expert and advisor with regard to the EBRD policies and standards.

47. As part of its due diligence monitoring responsibility, the EBRD has undertaken an audit of the resettlement activities and practices conducted by Georgian Railway and its consultants to date. The EBRD is also involved in supporting the development of a number of initiatives to identify detailed impacts and design mitigation and control measures. The PCM believes that the Problem-solving Initiative can build on and strengthen some of the action points underway, particularly those that may relate to issues presented in the Complaint. In order not to duplicate efforts or create diverging or overlapping processes on the ground, the PCM will exchange information and updates with the EBRD about the progress of each process, meeting dates, etc. Furthermore, as noted above, the PCM seeks to include the participation of the EBRD as a technical resource to the Problem-solving Initiative, if the parties agree. As the PCM maintains full discretion in managing the Problem-solving Initiative in response to the complaint, the PCM believes these efforts do not compromise its independence in any way.

V. TERMS OF REFERENCE (TOR) FOR PROBLEM-SOLVING INITIATIVE

48. Considering the recommendation in paragraph 33, the proposed Terms of Reference is identical to the one proposed in the Eligibility Assessment Report for the Complaints 3 and 4 on the Tbilisi Railway Bypass Project. The term “Complainants” in this Terms of Reference refers to the 10 residents of Avchala district represented by Mr. David Chipashvili (Complainants of the Tbilisi Railway Bypass 2 Complaint), Mr Aleksandre Asatiani also represented by Mr. Chipashvili (Complainant of the Tbilisi Railway Bypass 3 Complaint), and Mrs Nino Saginashvili (Complainant of the Tbilisi Railway Bypass 4 Complaint).

49. Despite the positive factors we have identified that lead us to recommend a Problem-solving Initiative we have no illusions about the difficulties that will accompany the convening and implementation of a collaborative process. We believe, however, that the opportunities justify a guarded optimism. With the interviews, issues, and analysis in mind, we offer a Terms of Reference which describes how an independent facilitation team composed of the PCM Officer and a PCM Expert will convene and facilitate a Problem-solving Initiative. The ToR, in accordance with PCM, RP 28, sets out the methods to be used, the time frame for the initiative, and the type of expertise required. The proposed process is drawn from a combination of stakeholders’ suggestions and the PCM team’s experience in conflict resolution and management and is offered as a process proposal to the parties for their review and input.

A. Objectives of the Assignment

50. The objectives of the assignment are to (i) design the manage the dialogues and meetings required in the problem-solving process; (iii) help the parties generate options and make decisions, and (iv) help the parties develop agreements that satisfy their key interests and concerns.problem-solving process with its steps and activities, (ii)

B. General Methods to be Used in the Problem-solving Initiative

51. In the Problem-solving Initiative, the Facilitation Team will:

- (i) Act as the convener of the talks – identify the parties and bring them to the table, recognising a Problem-solving Initiative is a voluntary process;
- (ii) Initiate the process, provide an opportunity for meaningful dialogue, and supply logistical support for the organisation of the dialogues;
- (iii) Facilitate discussions between parties involved with the objective of finding common ground and mutually acceptable solutions;
- (iv) Re-assure that ground rules are understood;
- (v) Determine areas of agreement between the parties;
- (vi) Clarify the parties' expectations regarding individual activities in the process;
- (vii) Encourage honest, good faith efforts of the parties for the implementation of the course of action;
- (viii) Assure that views of all parties are heard, respected and taken into consideration in the facilitation process;
- (ix) Use methods (individual interviews, focus group discussions, small workshops, etc.) appropriate for heterogeneous groups of stakeholders, taking into consideration the widely diverging views and possible polarisation;
- (x) Use any other method appropriate and recognised as a facilitation tool to support the parties in carrying the negotiation process forward;
- (xi) Provide timely information to and closely cooperate with the EBRD on the developments in the facilitation process;
- (xii) Prepare a settlement agreement agreed to by the Complainants and Georgian Railway; and
- (xiii) Prepare a completion report on the Problem-solving Initiative and any other documentation as needed and deemed necessary by the PCM.

C. Specific Tasks

52. The problem-solving road-map is proposed as follows:

I. Stakeholder Confirmation to Participate in a Problem-solving Initiative facilitated by the PCM Officer and the PCM Expert

The Complainants and Georgian Railways have confirmed their willingness to engage in a PCM problem-solving process with the PCM Officer and Expert serving as the convener and facilitation team. Exact roles, participants, representation and protocols governing the Problem-solving Initiative will be worked out once the Problem-solving Initiative is approved by the President.

A set of proposed Discussion Principles and Ground Rules will be discussed and agreed to by the parties. The main objective of the Ground Rules is to create common rules that apply to both parties in all further jointly developed activities. These rules will apply whether parties meet to exchange information or engage in a session to discuss or negotiate solutions. For all

participants to be able to engage in a meaningful way and to enhance opportunities to build trust and respect, preparation is required. The PCM team will provide necessary support and guidance in this effort as well.

II. Stakeholder Preparation

53. The PCM team will support and work with the Complainants, the Client and the EBRD to prepare for effective and constructive engagement with one another. This support may take a variety of forms including but not limited to:

- Planning for internal (“intra-stakeholder”) decision-making and representation
- Finalising ground rules
- Clarifying roles
- Defining outcomes and agendas for information exchange and problem solving meetings
- Identifying and addressing data and information needs
- Defining goals and strategies
- Ensuring information is being shared by parties in a satisfactory, understandable and constructive manner
- Providing capacity-building or training (in communication, negotiation, consensus “interest-based problem solving”, etc.)
- Addressing logistical matters
- Preparing effective presentations
- Developing understanding of the other side

III. Information Exchange for Mutual Understanding and Public Learning

54. The PCM will convene and facilitate an information-sharing session for Complainants, their representative, Association Green Alternative, Georgian Railways, their consultants, and with the EBRD participating as a resource and technical support. The goal of this session is NOT to resolve the issues or negotiate. The purpose is to provide parties with the opportunity to:

- Exchange and share relevant data
- Engage in public learning through joint inquiry facilitated by a neutral facilitation team
- Obtain information that is credible in an open forum where questions can be asked of experts and proponents in a problem-solving format
- Gain a better understanding of technical data, the situation overall and what has happened to date
- Hear how everyone has been affected
- Clarify areas of agreement and differences
- Agree on any additional data needs
- Understand the various roles, opportunities and limitations of other stakeholders in addressing the issues

55. Some of the specific topics that could be included in an information exchange workshop include the following:

- What is the current design according to what Georgian Railways knows today, recognising that the design is not yet final
- Feasibility of alternative routes for the bypass – how was the Avchala citizens’ alternative considered? How was it studied? Why was it rejected? What other alternatives were looked at for the Avchala section?
- Rationale for deciding on the bypass route as the preferred alternative. Why is the current route through the Avchala settlement considered the best approach to reroute the railway around Tbilisi Centre?
- Buffer zone – current thinking and rationale; how developed; based upon what standards; how design and buffer compares to practices in Netherlands, Germany, France?
- Clarity regarding expected impacts, specific mitigation measures and other safeguards with focus on property values, living conditions, quality of life – what are the impacts, how can impacts be prevented; what measures will be put in place to mitigate and protect; what other safeguards are possible?
- Timing for final design, construction, project implementation

56. This session will provide the Sponsor with the opportunity to explain, clarify and address questions and concerns from Complainants and will equip Complainants with information and knowledge they can use during the problem-solving and consensus building decision to develop informed agreements and choices.

IV. Problem-solving and Consensus Building

57. Building on the prior information exchange session, the PCM will convene and facilitate a problem-solving session between the parties to:

- (i) Review each family’s situation in light of understanding the most recent design, buffer zone, impacts and mitigation elements;
- (ii) Where residents in Avchala along the railway route, which have not been re-settled or compensated demonstrate that they are directly affected by the construction or operations of the Project, the parties will engage in problem-solving to reach an agreement on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements.
- (iii) Where eligible for impact mitigation, explore and review impacts in the context of the specific circumstances of each complainant, and agree upon a mitigation strategy. In addition, look more broadly at the dynamic of “public good/private bad” and explore whether there might be other creative adjustments where possible.
- (iv) Discuss the process that will be followed to communicate with the community and make further changes in the area of compensation and mitigation should the final detailed design change in any way from the current plan.
- (v) Develop contingency agreements as required. For example, spell out in writing what will be done in case of accidents, interruption of service, changes in standards, emergence of new scientific information about risks or impacts, and so forth.
- (vi) Discuss approaches for improving communication, engagement and information exchange between Georgian Railways and the families as well as other stakeholders going forward. What would meaningful engagement look like in tangible terms? What

does each group expect of the other going forward in the context of communication and information requirements? Who in Georgian Railways will serve as the single point of contact for the community in the event of questions or concerns?

58. The PCM team proposes that the preparation work take place in August 2011, followed by information exchange meetings and a follow-up problem solving session(s) in September 2011.

D. Reporting

59. The various written outputs should be submitted as follows:

- (i) The proposed problem-solving process including its steps and activities, the draft agreement and the final agreement within a time frame agreed by the parties and the PCM; and
- (ii) The Problem-solving Completion Report describing the issues raised in the Complaint; the methods used in the Initiative; and the results of the Initiative including any issues that remain outstanding. The Report will also specify the issues and points of the achieved agreement for the follow-up monitoring and reporting by the PCM Officer.

E. PCM Expert Requirements

60. The PCM Expert should have extensive experience conducting problem-solving initiatives, have at least 10 years of experience in facilitation or mediation, in particular in conducting dialogue processes across cultures using culturally appropriate structures and strategies. The PCM Expert should have experience in resolving site specific conflicts as well as managing complex organisational and public policy issues, and should have an excellent capacity to analyse complex problems involving diverse groups of stakeholders and the ability to deal with complex facts. Knowledge of the EBRD's project cycle, understanding of the EBRD safeguard policies and exposure to EBRD-assisted projects or other IFI assisted development projects is also helpful.

F. Time Requirement and Schedule

61. The assignment will require approximately 15 days each for the PCM Expert and PCM Officer to prepare and facilitate problem-solving meetings beginning in September 2011. The tasks, including monitoring by the PCM Officer, if relevant, and preparation of the final report will be performed intermittently between September 2011 and December 31, 2011 with the goal of completing the Problem-solving Initiative as efficiently and quickly as is feasible. The PCM team proposes that the preparation for the Problem-solving Initiative take place in August 2011 and information exchange meetings and a follow-up problem-solving session(s) in September – October 2011. Subsequent sessions would be scheduled if required, providing progress was being made and all parties as well as the PCM believed a Problem-solving Initiative would be able to achieve a positive outcome. This is a tentative timeline. Actual dates may vary.

PSI Activity/Event	Date
Preparation of Stakeholders	August 2011
Information-sharing and mutual education session	September 2011 (2-day session)
Problem-solving dialogue	September – October 2011 (3-5 days)

G. Proposed Discussion Principles and Ground Rules

62. The following principles and ground rules are intended to govern and guide the Problem-solving Initiative and the interaction of the parties. It is also the expectation of the PCM that such agreed to guidance can govern the relation between the communities and the company in the long run, once the PCM exits. The proposed principles and ground rules follow:

Principles

- (i) Parties will communicate in the language of their choice and agree to the use of interpreters, if necessary.
- (ii) Parties will be clear about their decision-making authority. If required to consult internally, representatives must have direct access to decision makers who should be on ready alert in case a decision is required.
- (iii) Participants will engage actively and constructively.
- (iv) Honesty and transparency characterize the discussions.
- (v) Parties demonstrate mutual respect and acknowledgement.
- (vi) Parties commit to making a good faith effort to the Problem-solving Initiative.
- (vii) Parties are willing to listen, learn and ask constructive questions.
- (viii) The Problem-solving Initiative is a safe space where people can voice their opinions and concerns and people take responsibility for the impact of what they say.
- (ix) Parties agree to be bound by the agreements reached by means of the process.

Ground Rules

- (i) Only one person will speak at a time and no one will interrupt when another person is speaking;
- (ii) Each participant will wait to be recognized by the facilitator before speaking;

- (iii) Each person will express his or her own views, or the views of his or her organization rather than speaking for others;
- (iv) In view of time constraints and in order to allow for maximum participation, the participants will keep their comments short and to the point;
- (v) All cell phones must be switched off or put on silent mode;
- (vi) Disagreement is inevitable, but must be focused on the issues, not on one another; the participants will not make personal attacks and will respect each other's views;
- (vii) Participants will address one another in respectful ways, avoid side conversations and keep the discussion focused and constructive;
- (viii) It is important to find creative, innovative solutions that also meet the other sides' interests and concerns; therefore, the participants should avoid judging ideas prematurely, look for ways to improve proposals and try to remain open minded;
- (ix) No party will give interviews or make statements to the media or try to get messages across using the media;
- (x) The facilitators will help implement the ground rules once they are accepted by all participants.

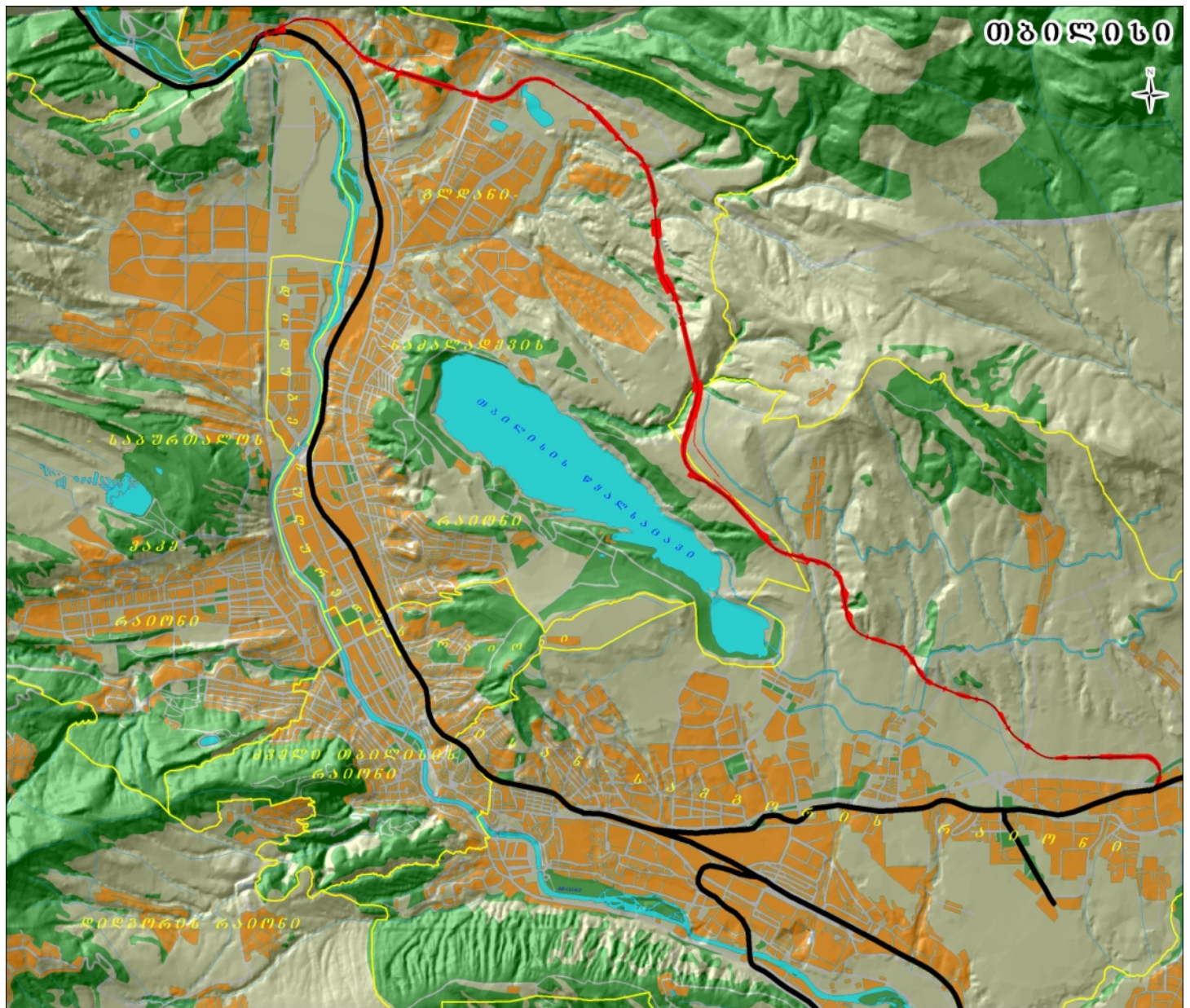
63. The parties should discuss and agree on discussion principles and ground rules, and add, remove or change them as they work out the course of action. Principles and ground rules can always be revised if and when the parties consider that changes are necessary.

VI. CONCLUSION

64. Conducting the Eligibility Assessment has been a challenging and important professional experience. We have gained a strong respect for the many individuals who are working to make this a successful project as well as a fuller appreciation of the numerous social, environmental and development issues faced by the residents of the Avchala settlement. Without predicting the future, we believe that there is a solid opportunity at this moment to improve understanding among the parties, and begin the task of working toward collaborative solutions to the issues that concern them.

MAP of Chosen Route of Tbilisi Railway Bypass Project

(New line in red, existing line in black)



Annex 1 - Complaint

To:

Ms. Anoush Begoyan

PCM Officer

Project Complaint Mechanism

European Bank for Reconstruction and Development

One Exchange Square

London EC2A2JN

United Kingdom

Fax: +44 20 7338 7633

Email: pcm@ebrd.com

Subject: Complaint on Tbilisi Railway Bypass Project (Georgia),

2 March, 2011

Dear Ms. Begoyan,

We would like to submit this complaint regarding the Tbilisi Railway Bypass project (approved by the EBRD board on March 9, 2010¹ and signed on March 17, 2010²) regarding the inadequate appraisal of social impacts and mitigation measures on local people of Avchala in the final version of Environmental and Social Impact Assessment (ESIA) and Environmental and Social Action Plan, that will have a significant negative impact on the value of our property, and on our safety and living conditions.

According to the final ESIA of the project in order to avoid the transit of hazardous freight such as oil and oil products through the middle of the city for safety reasons it is planned to construct a new section of the railway route bypassing the city centre, part of which will be located in the densely populated Avchala district.

¹ The EBRD approved 100 million EUR for the project: <http://www.ebrd.com/pages/project/psd/2009/40173.shtml>

² Originally together with the EBRD, the European Investment Bank (EIB) also planned to finance the project. On April 13, 2010 the EIB approved 100 million EUR for the project. However, several months later the Association Green Alternative was informed by the EIB that the Bank cancelled its participation in the project following a request by the Georgian Railway Company.

While the main goal of the project to improve safety within the city of Tbilisi is welcome we are concerned about our own safety: The projected railway will pass near our property located only 30-150 metres away along the projected railway route. In addition because of the hazardous freight the project will deteriorate living conditions in this area (smell, vibration, noise) and as a result it will cause depreciation of our property value (the value of our property has already decreased more than 3 times because of the project).

Communication with project sponsors

Before approaching the EBRD we made several attempts to solve our problems with the Georgian Railway Company, the project consultants and the Tbilisi City Hall but we found it extremely hard to even meet with them and discuss our problems. All our efforts to obtain information about the project or its components such as for example the exact out of the planned railway route in Avchala district failed (We did not receive either any letter from the Georgian Railway Company and Tbilisi City Hall or they even did not meet with us). As a last resort in December 30, 2010 when preparation works started we sent a collective letter to the EBRD in which we described our concerns regarding the project and asked for detailed explanations. On January 6, 2011 because of our letter to the EBRD we managed to meet with representatives of the Georgian Railway Company where the problematic issues were discussed. Unfortunately the results of the meeting were quite vague: on one hand the Georgian Railway Company stated that they had hired another consultant company, "GAMMA", who would study these issues but on the other hand they refused to change anything in the project design, thus the problems for us remain unsolved. If they are not going to change the design of the route then it is unclear what will change in the new project that this new consulting company is preparing). On January 13, 2011 we sent another letter to EBRD (E-letter was sent to the representative of the Georgian Railway Company too) asking for a response in written form to our 30 December letter but we did not receive any written explanations.

Below we would like to describe our problems in more detail:

Safety of local population

According to the final ESIA of the project the Georgian Railway Company plans to construct a new railway section through the densely populated Avchala district using 18-20 metre high embankments without adequate safeguard measures. In case of accidents there are no adequate safeguard measures - this was also mentioned in the requirements of the environmental permit issued by the Ministry of Environment of Georgia on April 22, 2010.

In case of an accident, the destruction radius will be at least 100 metres and the relief of the area is hilly. However making one additional artificial hill (a high embankment with a height of 18-20 metres) for the project closing the only exit road for the locals³ (alternative communication sources were not determined in the final ESIA), making the situation even worse from the evacuation point of view.

At the same time, the underestimation of safety issues violates PR 4 (point 7) on Community Health, Safety and Security of the Environmental and Social Policy of EBRD:

³ This is the only exit from this ravine to main street of Avchala (Saradjishvili str.)

"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 minimization and reduction."

In addition it is noteworthy to mention that during the public consultation meetings we suggested to the Georgian Railway Company an additional alternative route using a tunnel that bypasses the Avchala settlements but the Railway Company refused to study this option with because it would increase project costs by 30 mln USD.

Deterioration of living conditions

Apart from the safety issues the project will also have a significant negative impact on the living conditions of those people who are living 30-200 metres away from the planned railway. Because of the hazardous freight (oil and oil products from Azerbaijan) the smell of oil will be disseminated at least in a radius of 500 metres⁴ from the projected railway. This was not studied by the ESIA.

As well as the smell, living conditions in the settlement will also deteriorate because of the vibrations (the radius of the vibrations is 100 metres) and noise (the radius of noise dissemination is 600-700 metres) that will be caused by trains running on the high embankment.

In addition the final ESIA of the project does not describe the implications of the new railway route on the central water pipeline for Tbilisi which is located directly under the proposed new route. The pipeline is in very poor condition and from time to time it bursts and as a result floods the nearby houses. If the project is implemented (Construction, Exploitation) it may worsen the condition of the pipeline and cause drastic negative impacts on people who are living along the route. Unfortunately the ESIA has not studied this issue - a violation of PR 1 para. 9 on Environmental and Social Appraisal of the EBRD's Environmental and Social Policy:

"Greenfield developments, or major expansions of activities, with potentially significant and diverse adverse environmental or social impacts, such as those listed in Appendix 1, will require a comprehensive environmental and/or social impact assessment, to identify and assess the potential future environmental and social impacts associated with the proposed project, identify potential improvement opportunities, and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts. This assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed."

The abovementioned problems together with safety issues were also highlighted during the public consultation meetings, private meetings with Georgian Railway Company, project consultants and also in the letter sent to the EBRD on December 30, 2010.

⁴ We received the information about the radius of the smell from a representative of the consultant company GAMMA informally;

Depreciation of property

Taking into account the abovementioned problems it is not surprising that the value of our property especially the property (private houses with land plots) of those families who are living 30-150 metres away from the railway route has significantly deteriorated after announcing the project and the process is continuing (the value of our property has already decreased more than 3 times since the project was announced because no one wants to live near a railway route transporting oil).

Unfortunately the ESIA does not address property depreciation or corresponding compensation measures caused by the project for those people living along the railway route. This represents, in our view, non compliance with the Environmental and Social Policy of the EBRD:

"to identify and assess the potential future environmental and social impacts associated with the proposed project, identify potential improvement opportunities, and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts." (PR 1, para 9).

Alarming, however, the compensation process has started and Georgian Railway Company are giving compensation only to those families whose property is located within the red line⁵ (Railway route corridor) of the construction (however it is not clear in the ESIA exactly what is the width of the red line).

Desired outcomes

With this complaint, we expect the EBRD Project Compliance Mechanism experts to perform a Compliance Review and a problem solving initiative for the Tbilisi Railway Bypass project regarding the abovementioned problematic issues, in order to avoid drastic negative impacts of the project on local population living along the proposed railway route in the Avchala district.

In order to ensure the safety of local people we expect from the project sponsor either to determine an acceptable buffer zone along the projected railway route in the Avchala district and carry out resettlement of those people who will be living within the buffer zone or conduct additional studies of alternative routes that will bypass the Avchala district (E.g. Constructing a tunnel as was suggested by us during the public hearings).

Thank you very much in advance.

Best regards,

From:

Affected inhabitants of Avchala district living along the proposed Tbilisi railway route

⁵ The ESIA did not determine the width of the yellow lines (Construction corridor), which makes the situation even worse for locals.

Annex 1:

1. Collective Letter to Georgian Railway and Tbilisi City Hall; December 2, 2009;
2. Collective letter to Georgian Railway; June 6, 2010;
3. Collective letter to the EBRD; December 30, 2010;
4. Second e-letter to the EBRD and a representative of the Georgian Railway Company from the authorized representative of the inhabitants of Avchala district; 13 January, 2011;

Annex 2:

Proof of Authorization of David Chipashvili from local inhabitants of Avchala district;

Annex 3:

Photos of Avchala district with indication of planned railway route (3 Photos);

Name and signature of Authorised Representative:

David Chipashvili



E-mail: datochipashvili@caucasus.net , dchipashvili@greenalt.org

Tel: (+995 32) 292773; Fax: (+995 32) 223874

Mob. Phone: (+995 58) 277283

Names and signatures of affected inhabitants of Avchala district:

1. გზონიძევილი დიმიტრი სიმონის ძე №01019028008 ავჭალის რაიონის მოსახლე-საქართველოს მ-ის ავჭალის მუნიციპალიტეტის სოფ. ავჭალაში ტელ. +995 90509490
2. ქაჩიკაძე დიმიტრი ივანის ძე №01030013707 ავჭალის რაიონის მოსახლე-საქართველოს მ-ის ავჭალის მუნიციპალიტეტის სოფ. ავჭალაში ტელ. +995 99110843
3. შალვაშვილი დიმიტრი ივანის ძე №0104001013549 ავჭალის რაიონის მოსახლე-საქართველოს მ-ის ავჭალის მუნიციპალიტეტის სოფ. ავჭალაში ტელ. +995 90916265

4. გელაშვილი გელა შიშ. 01004007000831
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
ნაწ. №111 სკოლა+995 99623804.
5. გელაშვილი გელა შიშ. 010040028935
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
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6. შიხიძე გელა შიშ. 01001073912
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7. დიმიტრი გელა შიშ. 01024053845
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
ნაწ. №272 სკოლა+995 7721-26-72.
8. გელაშვილი გელა შიშ. 01004008598
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
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9. გელაშვილი გელა შიშ. 01004009688
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
ნაწ. №325 სკოლა+995 55907362.
10. გელაშვილი გელა შიშ. 01024013760
გელაშვილი ნატარევის ხ-ის ავტორი მეზღო
ნაწ. №276 სკოლა+995 99963394

Annex 2 – Bank Response

Bank Response to EBRD Project Complaint Mechanism

<u>EBRD Project Complaint Mechanism</u>	
Project	Tbilisi Railway Bypass Project (OpID: 40173)
Project Team	Operation Leader: Elena Gordeeva Operation Team Members: Nino Marshania OGC: Stephanie Wormser ESD: Frederic Giovannetti (currently a consultant to the Bank), Mikko Venermo, Dariusz Prasek, Alistair Clark
Date of issue to ExCom	28 April 2011
Date of approval by ExCom	5 May 2011
To: PCM Officer	Anoush Begoyan
Date of Issue to PCM Officer	6 May 2011

Thank you for your email dated 11 March 2011, regarding the request for a compliance review and problem-solving initiative of the Tbilisi Railway Bypass Project (the “Project”) under EBRD Project Complaint Mechanism (PCM) by the Association Green Alternative. The three complaints introduced by the Association Green Alternative were officially registered on 14 March 2011. Reference is also made to your email dated 17 March 2011, regarding another complaint in respect of the Tbilisi Railway Bypass Project was officially registered on 24 March 2011. This document is ‘the Bank Response’ to the complaints as outlined in PCM: Rules of Procedure (Clause 15).

There are a number of issues raised in the complaints. ‘The Bank’s Response’ is structured to address each complaint separately.

Complaint: Tbilisi Railways Bypass 1. Request number: 2011/01. By the Association Green Alternative

As stated by the Complainant, issues raised in the complaint have been discussed between the Complainant, Georgian Railway and EBRD on several occasions starting with the ESIA public consultation exercise from July to December 2009. EBRD has already taken consideration of the Complainant’s views as well as of other views expressed during public consultation in (i) the guidance to the ESIA consultant, and (ii)

setting conditions to EBRD financing for the Project. It is worth noting that the Georgian authorities have also taken consideration of these concerns in the environmental permit issued to Georgian Railway. EBRD is monitoring the implementation of the Project by Georgian Railway in compliance with these requirements and conditions, including the regulatory obligations set by the Georgian regulating agencies.

The ESIA was developed and published in 2009 at a stage in the Project development where a concept design was available at a level of detail sufficient to assess key environmental and social impacts. However, for an infrastructure project of this magnitude, it is a normal process that technical design proceeds in successive refinements from concept to detailed design. Amongst other outcomes, the ESIA identified several key impacts that had not sufficiently been taken into account in the initial concept design. As a result of the ESIA both the Georgian regulator and EBRD have imposed onto Georgian Railway the development of more comprehensive and detailed mitigation measures to address, amongst others, noise, water protection, community safety and emergency response. Together with the construction contractor and a specialised environmental consultant hired late 2010 specifically for that purpose, Georgian Railway is now in the process of developing detailed engineering measures ensuring that adequate provisions are in place to mitigate these impacts. The implementation of this obligation is monitored by EBRD and both the design and the construction of these mitigations will be checked by EBRD. Georgian Railway is required to keep local affected communities informed as the project progresses.

For an infrastructure project of this magnitude, the technical development takes several years. A number of detailed environmental action plans, such as waste management or quarrying, depend on the actual construction work plan that can only be finalised by the construction contractor once the contractor has been selected. Not uncommonly, this happens well after the ESIA is developed. The construction contractor is obligated to develop such action plans prior to commencing the work. EBRD is monitoring this process. Therefore, some detailed mitigation plans are still in progress.

The resettlement and compensation process carried out by Georgian Railway has recently (March 2011) been subject to an independent audit commissioned by EBRD as part of routine monitoring requirements. The results of this audit are currently being reviewed by EBRD and Georgian Railway. The substance of the Green Alternative complaint was brought to the auditors' attention by EBRD prior to their site visit. The auditors amongst others assessed the adequacy of public consultation and information disclosure. If the independent audit demonstrates that corrective measures are needed, these will be discussed between EBRD and Georgian Railway in order to define an implementation plan. EBRD will expect Georgian Railway to make such plan public.

If the non resettled residents in Avchala or elsewhere along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of monitoring reports submitted by Georgian Railway to EBRD and periodic monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Funding from the EU Neighbourhood Investment Facility (NIF) has been obtained for a detailed investigation of the contamination of the land in Tbilisi centre currently used by the railroad. The consultant for this assignment is currently being appointed and the investigation will be conducted in accordance with the Terms of Reference agreed with EBRD. The cost of physical clean-up activities (which activities will only be undertaken once the new route becomes operational and when the redevelopment commences) will be estimated as a result of the aforementioned detailed investigation and an ongoing detailed master planning exercise which is also funded by NIF. Georgian Railway undertook to finance the clean-up activities unless additional grant funding can be obtained.

Complaint: Tbilisi Railways Bypass 2. Request number: 2011/02. Joint by ten PAPs, via the Association Green Alternative

As stated by the complainants, issues raised in the complaint have been discussed between the complainants, Georgian Railway and EBRD on several occasions starting with the ESIA public consultation exercise from July to December 2009. Georgian Railway and EBRD have already taken consideration of the views expressed during public consultation in (i) EBRD guidance to the ESIA consultant and (ii) setting conditions to EBRD financing for the Project.

The ESIA was developed and published in 2009 at a stage in the Project development where a concept design was available at a level of detail sufficient to assess key environmental and social impacts. However, for an infrastructure project of this magnitude, it is a normal process that technical design proceeds in successive refinements from concept to detailed design. Amongst other outcomes, the ESIA has identified several key impacts that had not sufficiently been taken into account in the initial concept design. As a result of the ESIA, both the Georgian regulator and EBRD have imposed onto Georgian Railway the development of more comprehensive and detailed mitigations addressing, amongst others, noise, water protection, community safety and emergency response. Together with the construction contractor and a specialised environmental

consultant hired late 2010 specifically for that purpose, Georgian Railway is now in the process of developing detailed engineering measures ensuring that adequate provisions are in place to mitigate these impacts. The implementation of this obligation is monitored by EBRD.

If the non resettled residents in Avchala or elsewhere along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of monitoring reports submitted by Georgian Railways to EBRD and periodic monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Complaint: Tbilisi Railways Bypass 3. Request number: 2011/03. By Alexandre Asatiani, a PAP, via the Association Green Alternative

This issue was brought directly by the Complainant to the attention of EBRD in January 2011. EBRD requested the Borrower to investigate the Complainant's claims as soon as it received initial communications from the complainant.

Georgian Railway has made a representation to EBRD that court action in respect of the Complainant's ownership and/or occupancy rights in relation to this land plot has been taken. The Complainant's eligibility for compensation in accordance with EBRD's Environmental and Social Policy either in respect of formal legal ownership rights (PR5, paragraph 31, item (ii)), or in respect of recognised occupancy rights or claims (PR5, paragraph 31, item (iii)) is dependent on the outcome of the court decision. Likewise, Georgian Railway and EBRD's response to the complaint and course of action depend on the court decision.

Complaint: Tbilisi Railways Bypass 4. Request number: 2011/04. By Nino Saginashvili, a PAP

The Complainant contacted EBRD by e-mail on 28 February 2011 and lodged the PCM complaint on 16 March 2011, before it had been possible to investigate her initial claim in detail.

If the non resettled residents along the railway route demonstrate that they are directly affected by the construction or operations of the Project, then Georgian Railway has to reach an agreement with them on either mitigation or compensation in compliance with

Georgian law and EBRD Environmental and Social Policy requirements. The implementation of these requirements by Georgian Railway will be monitored by EBRD through the review of monitoring reports submitted by Georgian Railway to the Bank and periodic monitoring visits by EBRD staff and representatives or independent monitoring consultants.

Annex 3 – Client’s Response

Dear Ms. Anoush Begoyan,

We have received the complaint on Tbilisi Railway Bypass Project lodged through Project Complaint Mechanism of the European Bank for Reconstruction and Development by the authorized representative of the property owners affected by the Tbilisi Railway Bypass Project: Gzirishvili Tamila, KemerteliZe Iakob, Maghlaferidze Natela, Gelashvili Lela, Maisuradze Lali, Doijashvili Eteri, Kulievi Ismaili, Nepharidze Neli and Jakobia Lali.

After thorough review of the complaint we would like to provide the EBRD with GR arguments on the controversial issues listed in the document:

Inadequate appraisal of the Social impacts and mitigation measures:

First of all it needs to be mentioned that the appraisal of the social impacts and mitigation measures are fully in line with following documents, which has been employed by the GDC Solutions, CENN and APLR in the process of elaboration of the comprehensive document – Environmental and Social Impact Assessment:

- The Georgian legislation: Law of Georgia on Protection of Environment (enacted 1996, amended 2000, 2003, 2007) and Law of Georgia on Environmental Impact Permit (adopted October 15, 1996, replaced by the law adopted in 2007);
- Performance Requirements of EBRD’s Environmental and Social Policy (2008);
- EIB’s environmental and social requirements given in their Environmental and Social Practices Handbook (2007);
- International conventions ratified in Georgia, especially the Aarhus Convention;
- European Union Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council directive 97/11/EC (Council of the European Union, 1985; 1997);
- IFC’s General Environment, Health and Safety Guidelines;
- IFC’s Environment, Health and Safety Guidelines, Railways (2007); and
- IFC’s Stakeholder Engagement (2007) manual.

ESIA of the construction and exploitation of the Tbilisi Railway Bypass Project has been elaborated on the basis of the initial design of the project, accordingly it was impossible to assess environmental and social problems and define mitigation measures on that stage of the project.

The design of construction and exploitation of the railway line is conducted in compliance with FIDIC yellow book requirements, according to which in the beginning initial design is elaborated, than the construction contractor is selected via tender, which undertakes elaboration of the detail design.

For the time being elaboration of the detail design is almost finalized by the Construction Contractor. The design is in full compliance with Environmental and Social Action Plan (the ESAP) and the report on ecological expertise, including:

- Engineer – technical solutions for the measures aiming at prevention of the Tbilisi water reservoir
- Engineer-technical solutions for crossing of the Tbilisi central water pipeline and Natakhtari gravity flow collector;
- Engineer-technical solutions for minimization of noise dissemination level in the process of railway line construction and exploitation;
- Engineer-technical solutions for prevention of contamination of reservoirs and natural gorges in the during construction and exploitation of the railway line and others

Communication with project sponsors:

A stakeholder consultation and engagement process has been implemented within the framework of the Tbilisi Railway Bypass Project development, based on the requirements of the EBRD and Georgian legislation in terms of disclosure of project related information and public consultation.

On July 24, 2009 a press conference was organized attended by all the key mass media of Georgia (TV Channels – Georgian Public Broadcasting, Rustavi2, Imedi, Maestro, Alania; Radio Channels - Imedi, Green Wave). Director General of GR and Mr. Gigi Ugulava, Mayor of Tbilisi presented to the audience the project: project needs and justification, its aims, project implementation process, etc. The maps of alternative project routes were displayed on the walls to aid visualization of the project and its effects on the city.

Since September 12, 2009 the project related articles have been published in the following lead newspapers: Alia, Rezonansi, Sakartvelos Respublika, 24 Saati, Asaval-Dasavali, Kviris Palitra, Chronica, Interpresnews. On July 31, 2009 a radio show dedicated to the project was broadcasted on the Radio Channel Imedi. This radio program was very important to reach that segment of the public that do not read newspapers or watch TV (news programs) but listen to the radio.

To ensure broad public outreach about the project, GR installed the hot line and Comments & Suggestions boxes in concerned Municipalities and the Georgian Railway Administrative office, prepared a leaflet of the Project for public information that were placed next to the Comments & Suggestions boxes. GR also prepared a Public Social Advertisement (PSA) about the Project. PSA is aired through the following TV channels: Imedi, Rustavi since September, 2009.

On July 24, 2009 a consultation meeting with railway siding owners, whose businesses are connected with the railroad and who, after replacement of the railway will lose direct connection to the mainline, was held in the main office of the Georgian Railway LLC (GR). The meeting was attended by representatives of eleven (11) out of the existing twenty nine (29) companies. Representatives of the invited companies were provided with detailed information about the project and afterwards invited to comment. The different alternative solutions to development of the railway sidings after the railway relocation were discussed at the meeting.

However at the stage of EIA report during field visits the consultants have had information meetings and consultations with the active groups of the population. They have been provided with the information about the project (about the availability of a Project Brochure, Comments & Suggestions Boxes) and the opportunity to express their views/comments. Comments & Suggestions Boxes labeled as “Comment Box for Tbilisi Railway Bypass Project” were installed in front of Isani-Samgori, Gldani-Nadzaladevi and Didube-Chughureti Municipalities, Mtskheta Council and the Georgian Railway Administrative office. In addition to the Comments & Suggestions Forms, the boxes also contain project leaflets in order to broadly distribute information on the project. During the meetings, stakeholders were informed that Comments & Suggestions Forms are available from the local administrative bodies within Tbilisi municipality (Isani-Samgori, Gldani-Nadzaladevi and Didube-Chughureti), Mtskheta Council, Georgian Railway and the Aarhus Centre. GR appointed a special person responsible for the collection of complaints forms from the boxes; this person checks all five (5) boxes and collects the forms on a weekly basis.

In addition, on August GR launched a hot line (Tel.: 19-95-51) through which stakeholders could raise their concerns.

On October 8, 2009 the Georgian Railway made an advertisement on public hearings of ESIA in the newspapers 24 Saati (24 Hours) - to reach high level stakeholders) and Kviris Palitra - to reach general public that read this newspaper). Starting from this date the public / stakeholders were given 45 day period for submitting written comments / recommendations to the Georgian Railway on the ESIA report. After receiving written comments from the public within the 45 days the Georgian Railway arranged public hearings with stakeholders. The public hearings were arranged in three target municipalities – Didube-Chugureti, Gldani-Nadzaladevi and Isani-Samgori and one for statutory stakeholders at the national level and NGO representatives. Along with the representatives of GR all four public hearing were attended by the group of specialists involved in development of ESIA report. After presentation of the project and ESIA the meetings were carried out in the form of questions and answers.

On November 30, 2009 a public discussion of the Tbilisi Bypass Railway Project ESIA with the target settlements of the Isani-Samgori municipality was organized in the building of the Isani-Samgori municipality. The meeting was attended by more than 1000 stakeholders/local population. The representative of Georgian Railway explained the attendees that within the boundaries of this municipality the project would not intersect with residential houses. The construction would mainly affect the agricultural lands. The population expressed the interest toward the procedures of land acquisition for construction purposes. They were informed that at the process of identification/registration of immovable assets was underway and GR would hire an evaluation company to assess the likely affected property and on the basis of obtained results the relevant offers would be processed and negotiations with the owners of land parcels started.

Public discussion with the population of the Didube-Chugureti municipality was held on December 1, 2009. The representative of Georgian Railway explained the attendees that the population of this municipality would not be subject of displacement, since only dismantling of the existing tracks would take place on its territory within 6 months after completion of the construction of the Tbilisi Bypass Railway. The population of the Didube-Chugureti municipality was mainly concerned whether the dismantling operation would damage their property and what measures would be undertaken by Georgian Railway in case of such damage.

On December 2, 2009 a public hearing with the population of the Gldani-Nadzaladevi municipality was organized in the building of the municipality. During the meeting the representative of GR talked about main procedures of land and immovable property acquisition. Mr. Vazha Beselia, resident of Avchala commented on project. In particular, he spoke about possible negative impact of the project on Avchala settlement. The local population was mainly interested in procedures of land acquisition and technical measures for mitigating impacts of noise, dust and other negative impacts. After presentation and discussions the representative of the company “Geographic” presented the visual materials of land survey.

On December 3, 2009 a consultation meeting with the specialists, representatives of governmental structures, private sector and non-governmental organizations was organized in the administrative building of Georgian Railway. This meeting was an additional meeting which was not considered by the legislation and was designed for the above listed groups for the purpose of receiving/ discussion of their professional comments and suggestions. In the beginning of the meeting the representative of Georgian Railway proposed to carry out the meeting in the format of questions and answers and avoid standard presentations since the majority of the meeting participants had attended the previous meetings.

The following issues were discussed during the meeting:

- _ Earth fill in Zemo Avchala settlement;

- _ Crossing of the Tbilisi National Park by the Tbilisi Bypass Railway;
- _ Mitigation/protection measures developed for Kvirikobiskhevi and Tbilisi Sea.

GR is always ready to meet with the property owners at their request in order to discuss specific issues related to the project implementation. One of such meetings was arranged specifically for this group of complainants, the authorized representative – david chipashvili and the representatives of the consulting company “Gamma” were also attending the meeting. On the meeting the GR representatives expressed their readiness to discuss the concerns of the property owners and try its best to come up with feasible solution, but considering the generality of the issues raised by the complainants no results have been achieved.

Safety of Local Population:

We do confirm that according to the detail design on the initial section of the railway line the several residential houses are located 15-20 meters away from the projected railway line. In order to mitigate impact on the population living in those houses the detail design considers noise and vibration mitigation measures.

The detailed engineering design of the railway line (the detail design) is currently in the process of elaboration. Accordingly, elaboration of final design solutions for the embankment to be constructed in the avchala neighborhood is ongoing. According to the design in order to mitigate the impact caused by the fragmentation of the residential zone it is considered to arrange several exits. The design also envisages measures for prevention of the possible accidental situations and measures for liquidation of the results of accidents.

GR uses its best endeavors to ensure safety of the population residing nearby. As for the access roads that might be needed for the property owners in order to use their property and have the same living conditions, GR undertakes to provide/construct such access roads. As for the allegations as to why such access roads and alternative communication sources were not determined in the ESIA, we would like to point out that the ESIA has been elaborated on the basis of the Initial Design of the Project and it was not feasible to determine each and every aspect of the Project in full. In the process of resettlement and at this initial stage of the project the GR identifies all such issues and on the later stage shall ensure incorporation of respective design solutions in the Project Detail design.

As a response to the reference to the PR 4 (point 7) of the Environmental and Social Policy of EBRD, which envisages clients (GR) obligation to identify and evaluate the risks and potential impact to the health and safety of the affected community during the design, construction, operation and decommissioning of the project, we would like to point out that

the GR is not in violation of this obligation. In this regards, through its contractor in environmental issues GAMMA LLC ensures elaboration of respective manuals for the GR as well as the Construction Contractor, providing all technical standards that should be obeyed by all parties involved in the elaboration of the detail design and actual construction and assists the GR in fulfillment of the conditions precedents defined by the Ecological Summery Expertise of the Ministry of Environment and Natural Resources.

At the initial stage of the project implementation there were discussions regarding alternative routes of the Project and the main selection criteria was technical parameters and standards needed for the normal operation of the railway. One of the alternatives under discussion was construction of the railway bypass 12meters along the Tbilisi See, but considering the drastic negative environmental impact that the project would have on the Tbilisi Sea this alternative has been rejected. Two other alternatives regarding construction of the railway line north from the projected one have been assessed by the ESIA but due to some technical parameters (unstable soil etc.) and financial matters had to be rejected as well.

Against the information provided in the complaint regarding the alternative route bypassing the Avchala settlements using a tunnel we would like to inform you that the GR has studied thoroughly this route, but unfortunately due to incompatibility with technical parameters of the railway and not because of increase of the cost, GR had to reject it.

Deterioration of living conditions:

Detail design of the projected railway line envisages following engineer-technical solutions for prevention of pollution of Tbilisi central reservoir and other reservoirs, as well as groundwater pollution:

1. For the prevention of the Tbilisi Water reservoir following measures are considered:
 - At the exit from the #5 tunnel the kvirikobis khevi will be passed through Kvirila (instead of previously projected bridge). Both banks of Kvirila shall be raised and the railway line shall run through artificially arranged section/cut. The abovementioned design solution excludes the possibility of falling of the wagons into the Kvirikobis Khevi and the risk of Tbilisi water reservoir pollution in case of derailment;
 - For the purposes of prevention of underground water pollution, on the whole perimeter of the Tbilisi Sea on the sub-grade of the railway line it is decided to arrange hydro isolation system, which includes: Installation, sand layer will be placed on it, geomembrane and geotextile and then rail superstructure on it. On the both sides of the railway it is considered to locate concrete culverts (height – 0.5m, ground width – 0.4m, upper width – 1.2m), which shall ensure that the rain water is directed to the tunnel. These culverts shall be used to direct the liquids spilled because of derailment to the tunnel;

- There is designed transit collector, which will be used to transit storm water and emergency spilled liquids in ravine at North-West portal of the Tunnel 5. Water will be treated before discharging in ravine, suitable structures will be designed (sedimentary tank and oil arrester);
 - Water from “Kvirike” to South-East direction will be transited with same method and will be discharged into the so called small ravine. Collecting reservoirs arrangement for emergency spilled liquids deterrence is considered as well.
 - In accordance with above mentioned engineering decision the conceptual project has radically changed and thus Tbilisi water reservoir contamination risk has minimized considerably.
2. Cuvettes and emergency spilled liquids collecting reservoirs will be arranged for other reservoirs and naturally formed ravines water contamination prevention;
 3. Hydro-isolation layer (Geomembrane and Geotextile) will be arranged and emergency spilled liquids collecting reservoir will be in place to prevent underground water (near the surface) contamination at Varketili housekeeping and Glani Big Lake adjacent area.

In order to minimize the risk of damaging Tbilisi main water pipelines during the railway by-pass construction phase and thus to mitigate the risk of having problems to supply citizens with drinking water the detail design considers the following measures:

- Tbilisi water pipelines in Avchala will be reallocated on a new rout in order to mitigate the risk damage and negative social impact on the population. Decision is agreed with the Georgian Water and Power company and for the time being the project is under elaboration;
- Gravity flow pipe constructed in 30th well be crossed by the concrete reinforced bridge, that will ensure proper maintenance and operation of the pipe. The same will to cross Jinvali tunnel in two points of the designed area (Gldani big lake and adjacent Khevdzmari ravine).

According to the Georgian Environmental Legislation and International Environmental Standards quantitative assessment of harmful substances release modeling is done for railways, roads, transmitting lines transport as mostly sensitive areas, also non suitable climate conditions are taken into account. Avchala district is considered as one of the most sensitive area along the route and thus air quality assessment has been conducted for this area for the construction and operation phases.

Smell prevention measures during oil products transportation by the railway will be described in the Railway Operation Environmental Management Plan.

According to the main project noise abating screens and noise abating green zones will be arranged to minimize Noise Impact on population living near the Railway. Noise abating screens will be installed in Avchala designed mound and on the mound slopes.

We do confirm that the projected railway line crosses the Tbilisi water pipeline on Avchala. In order to solve the problems related to these pipelines the GR is holding intensive negotiations and consultations with the Tbilisi Water Company and have approached the beneficial outcome. Considering that the central water pipeline is in a very poor condition it has been decided to relocate it in a way to prevent damage of the pipelines and consequent negative impacts on people who are living along the route. Decision is agreed with Georgian Water and Power Company and the project is currently under elaboration. Considering the work done in order to solve the abovementioned problematic issue and the plans already agreed allegation on violation of PR1 para 9 of Environmental and Social Appraisal of the EBRD's Environmental and Social Policy should be considered void.

Possible Emission Limits during camps construction and operation phases and locomotive and wagons depot operation process has been agreed with the Ministry of Environmental Protection and Natural Resources of Georgia.

Depreciation of Property:

The claim regarding the depreciation of the property value and the consequent/possible request of the respective property owners regarding compensation of the difference between previous and current market value of their property might be considered unfeasible on this stage of the project implementation. The basis for such argument is that Environmental and Social Policy of the EBRD does not specifically assign such obligation to the GR and in addition Georgian legislation does not consider any legal liabilities regarding such depreciation.

Considering abovementioned in case there are such claims regarding the depreciation, which shall be evidenced by specific report issued by independent valuation expert respective property owners are free to apply to the court requesting compensation for the depreciation of their property. If the court interprets applicable legislation of Georgia and decides that GR is obliged to provide such compensation, GR hereby warrants to ensure execution of the Court decision in full compliance with Georgian legislation.

Against this background we would like to point out that Section 3 of the Civil Code of Georgia (Delictual responsibilities) envisages responsibility of providing respective compensation for the damage caused to the property of other person by intentional or unintentional activities. Considering the abovementioned regulation GR undertakes responsibilities to reimburse the property owner for damage caused by the construction works of the Bypass project or further exploitation of the newly constructed railway line.