

PUBLIC

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
ELIGIBILITY ASSESSMENT REPORT**

**COMPLAINT: DARIALI HPP PROJECT, GEORGIA  
REQUEST: 2014/05**

PUBLIC

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## **EXECUTIVE SUMMARY**

The Project Complaint Mechanism (PCM) has received a Complaint in relation to the EBRD's financing of the Dariali Hydro-electric Power Plant (HPP) Project in Georgia, alleging non-compliance with the Bank's 2008 Environmental and Social Policy (2008 Policy). The Eligibility Assessors have determined that the Complaint is eligible for a Compliance Review under the 2014 PCM Rules of Procedure (PCM RPs) 24-29.

The Complaint:

- a) concerns a Project that has been approved for financing by the Bank;
- b) has been filed within prescribed timeframes;
- c) raises issues that relate to the Relevant EBRD Policy, namely the 2008 Policy;
- d) adequately describes the PCM function requested, namely a Compliance Review;
- e) adequately describes what outcomes are sought;
- f) provides references to relevant correspondence, notes, or other materials related to communications with the Bank and the Client;
- g) raises issues that fall within the scope of the responsibility of the Bank, such issues constituting more than a technical violation of the 2008 Policy;
- h) is not disqualified under any criteria set forth in PCM RP 28.

**The PCM Eligibility Assessors find that the Complaint satisfies the PCM criteria for a Compliance Review.**

## I. BACKGROUND

1. On 24 November 2014 the PCM received a Complaint regarding the Dariali Hydro-electric Power Plant (Dariali HPP) in Georgia. The Complaint was submitted by the Association “Green Alternative” and the NGO “Stepantsminda”<sup>1</sup> requesting a Compliance Review. The Complaint<sup>2</sup> was registered by the PCM Officer on 8 December 2014 in accordance with 2014 PCM Rules of Procedure (PCM RPs) 11–13 and was subsequently posted in the PCM Register, pursuant to PCM RP 20. Dr. Maartje van Putten was appointed on 16 March 2015 as an Eligibility Assessor to conduct an Eligibility Assessment jointly with the PCM Officer, in accordance with PCM RP 22.
2. The Project financing of US\$ 80 million is for the development, construction and operation of Dariali HPP – a hydroelectric run-of-the river power plant located on the river Tergi in Kazbegi district, north-eastern Georgia, which includes an excavation of a 5.6 km underground headrace tunnel.<sup>3</sup> The Project is located near the town of Stepantsminda, 1.2 km from the border with Russia and 160 km north of the Georgian capital Tbilisi. Dariali HPP will have a capacity of 108 MW and an expected annual electricity output of 510 GWh. It has been categorised as “A” under the Bank’s 2008 Environmental and Social Policy (2008 Policy) and was approved by the EBRD Board of Directors on 7 May 2014.
3. In a broader context the following is noted by Management: “Georgia is estimated to have one of highest untapped hydro resources in the world with less than 20% of this potential capacity presently developed....The Dariali HPP Project is in line with the EBRD’s Energy Sector Strategy (BDS/13-291) which was approved by the EBRD Board of Directors in December 2013, and which specifically calls for support for greenfield hydropower development, projects which improve market signals, and clients that monetise carbon credit revenues. Furthermore, as highlighted in the EBRD’s Country Strategy for Georgia (BDS/GE/13-01) approved in September 2013, ‘the Bank will support the involvement of international private players in the further development of the country’s underutilised hydropower potential.’”<sup>4</sup>

## II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

4. The Eligibility Assessors have undertaken a general examination of the Complaint in accordance with the PCM RPs, as well as additional information provided by the Complainants and the EBRD. The Assessors also considered the responses to the Complaint from EBRD Management<sup>5</sup> and from the Project Client.<sup>6</sup>

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<sup>1</sup> Hereinafter the Complainants.

<sup>2</sup> Complaint Number 2014/05 at PCM Register on the EBRD website: <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html>

<sup>3</sup> Project Summary Document (PSD): <http://www.ebrd.com/work-with-us/projects/psd/dariali-hpp.html>

<sup>4</sup> EBRD Management response to PCM Officer, issued 12 January 2015, p 2.

<sup>5</sup> Ibid.

5. The Eligibility Assessors deemed it sufficient and adequate to determine eligibility through, primarily, a desk study. In addition, the Assessors had meetings with EBRD Management, including the team based in the Bank's Resident Office in Georgia via phone, and the Complainants, via a conference call.

### III. SUMMARY OF THE RELEVANT PARTIES' POSITIONS

#### Position of the Complainants

6. The Complaint comprises several alleged breaches of the 2008 Policy. In reviewing the Complaint, the Eligibility Assessors have found it expedient to group the concerns raised into *four core areas*:

*Adequacy and quality of the Environmental and Social Impact Assessment (ESIA), site selection, quality of additional studies, assessment of alternatives*

7. The Complainants allege that the Project did not undergo an adequate ESIA and is therefore not in compliance with Performance Requirements (PRs) 1.5 and 1.9 of the 2008 Policy.
8. A key issue raised is the alleged improper site selection for the HPP and claims that this resulted in worker and public fatalities after two consecutive landslides on the Devdoraki glacier in May and August 2014.<sup>7</sup>
9. The Complainants further allege that the Company relied upon an inadequate assessment of the risks of geodynamic processes in the Environmental Impact Assessment (EIA) and that the Company was warned by different geological experts and the Complainant The Association "Green Alternative" about these deficiencies. The Complainants assert that the Project calculations for suspended solid flow of the Tergi river is based on data of 1928-1940 and that the suspended solid flows of the Chkheri and Kuro rivers, as well as the risk of geodynamic processes, have not been studied at all. The Complaints are of the opinion that, by signing the Project in its current form, the EBRD was not in compliance with PR 1.9.
10. The Complainants also allege that the ornithological and herpetological studies that were carried out as additional studies for the purpose of the ESIA did not take into account the changing weather conditions in the area, were not conducted within a sufficient time period, and should take into consideration climate change considerations. According to the Complainants, therefore, the necessary data collection by the EBRD is not in line with the PR 1.5.

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<sup>6</sup> Response from Dariali Energy to PCM Officer, issued 13 January 2015.

<sup>7</sup> Complaint Number 2014/05, p 5.

11. The Complainants, while referring to PR 1.9, claim that the Project, categorised as “A”, should have undergone a special formalised and participatory assessment process including “an examination of technically and financially feasible alternatives to the source of [the potential future environmental and social impacts associated with the proposed project], and documentation of the rationale for selecting the particular course of action proposed.”<sup>8</sup> The Complainants argue these alternatives were not included in the assessment.
12. In addition, the Complainants refer to the finding of the PCM Compliance Review in Paravani HPP project regarding the selection of the river flow regime. According to the Complainants “EBRD ignored the finding of the PCM and accepted a similar practice in Dariali HPP.”<sup>9</sup>

*Risks to Stepantsminda settlement*

13. According to the Complainants the EIA does not adequately consider the risks to the Stepantsminda settlement, and in its present form the Project will cause sedimentation from the several tributaries of the river Tergi resulting in the rise of the Tergi riverbed. The Complainants assert that, at that point, the Project could result in accumulation and filling of the already-narrow Kuro valley thus posing a threat of flooding to the settlement.
14. Moreover, the Complainants claim that the Project area of influence was not determined correctly, in violation of PR 1.6(vi), because it did not include the Stepantsminda community, despite the potential risk of flooding identified by the Complainants.

*Project location within the boundaries of a National park, off-set selection and illegal construction*

15. The Complainants allege that the construction of the diversion pipeline, sedimentation basin and entrance to the diversion pipeline is located within the territory of a protected area, namely the Kazbegi National Park. According to the Complainants the Project is in violation of Georgian legislation and therefore in violation of PR 1.5.
16. In addition, the Complainants claim that the off-set that the Project sponsor returned to the government as compensation for the land acquired for the Project already had a status of a protected territory owned by the State. Further, the Complainants assert that the process of creation of the “natural monuments” as compensation measures is unclear.
17. The Complainants state the areas offered as off-set should have been declared as natural monuments irrespective of the Project and cannot be seen as mitigating measures for the

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<sup>8</sup> Complaint Number 2014/05, p 5 (reference to PR1.9).

<sup>9</sup> Ibid, p 12.

impacts of the Project. Accordingly, the Client's proposed compensatory measures are stated to be in violation of PR 6.8.

18. The Complaints also claim that the Client initiated the Project before it received a construction permit. The Complainants asked the Georgian Ministry of Environmental Protection to investigate the legality of the ongoing work, and although they were assured that they would receive information, the Ministry instead, issued the permit, which is stated to be in violation of the Georgian legislation.<sup>10</sup>

*Decision-making process, information disclosure and stakeholder engagement*

19. In respect of the required administrative proceedings and for the issuing of a conclusion of the State ecological assessment, the Complainants claim that they were not provided adequate time to comment. According to the Complainants, the final Environmental Impact Assessment was approved by the Georgian Ministry of Environmental Protection before the end of the Georgian-required consultation period, in violation of the Georgian legislation as well as the requirements of Georgia under the UNECE Aarhus Convention on ensuring public participation in the EIA process.
20. The Complainants claim that EBRD accepted the Client's violation of the Georgian national law and international law obligations with respect to public information and consultation, therefore failing to ensure the Project's compliance with PR 10.7.

**Position of EBRD Management**

21. In its response to the Complaint Management provided the following information:

*Adequacy and quality of the ESIA, site selection, quality of additional studies, assessment of alternatives*

22. In the Management response it is pointed out that by the time the Bank was approached for funding for the Project the tunnelling works and land acquisition processes had already begun. Under the 2008 Policy the Project was categorised as "A" and the Client prepared and disclosed the necessary ESIA documents, including an EIA, for a 60 day public comment period on 20 January 2014. According to the Management response, no comments were received by the Client during the ESIA public posting period.
23. In relation to the quality of the EIA and additional studies, EBRD Management states that the independent Environmental and Social Due Diligence (ESDD) Audit and the necessary additional studies on aquatic and terrestrial biodiversity meet the PRs of the 2008 Policy. The Bank notes that the issues raised by the Complainants have been

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<sup>10</sup> Georgia ratified the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "Aarhus Convention") on 11 April 2000, thereafter being subject to its requirements.

assessed during the formulation of the ESIA, which further resulted in an Environmental and Social Action Plan (ESAP) that will be monitored during Project implementation.

24. According to the Management's response, an alternatives analysis for the Project was conducted in preparation of the EIA for initial permitting approval and included four options: a no project alternative; a seasonal regulation HPP construction alternative; a riverbed type HPP construction alternative; and a diversion type HPP construction alternative. EBRD points out that the adequacy of those alternative analyses and the design of the Project met the requirements of PR1, having been reviewed by an independent consultant.
25. In regards to the assessment of the environmental river flow of 10%, the EBRD notes that, consistent with a precautionary approach and at the Bank's request, an independent geomorphology and biodiversity consultant, following a European Union (EU) best practice methodology, reviewed the specific characteristics of the river and its species. The consultant concluded that 10% flow was reasonable. However, like any HPP, such determination needs to be monitored in order to confirm that the impacts predicted in the EIA and foreseen mitigation measures show to be correct. Additionally, the EBRD points out, that temporary adjustments to the flow might be necessary during seasonal migration of trout during April and October.
26. In addition, EBRD's response explains that the reduced flow in the river will not contribute to natural disasters, as confirmed by the independent investigation. It is further noted that the 2014 landslide had a significant impact on the sediment flow and hydrogeological characteristics of the reach of the river Tergi and mentions that measures have been taken to address the sediment loading of the river.
27. In relation to the fatalities caused by the landslide and debris flow of May and August 2014, EBRD points out that the events were investigated by an EU delegation of disaster response experts on the request of and in collaboration with the Georgian government, concluding that the landslide and resulting debris flow "were rare and unfortunate incidents, are not related to seasonal mudflow in the river Tergi, nor does the investigation link the events to Project related activities."<sup>11</sup>

#### *Risks to Stepantsminda and other settlements*

28. Management states that the Stepantsminda community is situated around 1 km away from the head works location at a 25 metre elevation above the river Tergi. The Bank offers that, while the settlement may be considered to be within the Project Area of Influence, no river morphology modifications attributable to the Project are expected.

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<sup>11</sup> EBRD Management response to PCM Officer, issued 12 January 2015, pp 4-5.

*Project location within the boundaries of a National park, off-set selection and illegal construction*

29. The land for the Project site was acquired from the Georgian authorities responsible for national parks and, according to the Management response, was already at the time extensively modified through livestock grazing, a pipeline and human activity over the years. Management underlines that no critical habitat/species were identified by the biodiversity baseline studies, and the area's classification was confirmed as "natural habitat" in accordance with PR6. Further, it is pointed out that many of the Project impacts during construction are of a temporary nature and reversible.
30. As compensation, the Client allotted an off-set area that was transferred legally into national park ownership. Management stated that this compensation site has a greater biodiversity value and consequently it ensures no net loss of natural habitat – on the contrary, it translates into an overall positive impact on terrestrial ecology.
31. In regards to the legal issue concerning land take, permitting and granting of the HPP, Management refers to the judicial decision on a claim submitted by the Complainant<sup>12</sup> noting "the high Court of Georgia found that due legal process had been followed and rejected the claim." The Complainants' subsequent appeal to the Supreme Court was also not found eligible.

*Decision-making process, information disclosure and stakeholder engagement*

32. Management notes that while the Client has "a comprehensive grievance mechanism in place that allows affected people to raise complaints,"<sup>13</sup> to date no contact was made by the Complainant raising the same issues as those forwarded to the EBRD PCM. Management also confirms that the draft EIA/ESIA package was in the public domain for public comment for the full 60-day EBRD disclosure process, prior to a decision being made by the EBRD Board of Directors. Additional stakeholder engagement activities were completed by the Client to communicate the findings of these supporting studies and to hear public comments and concerns.

**Position of the Client**

33. In its official response, Dariali Energy responds to issues raised by the Complainants as follows:

*Adequacy and quality of the ESIA, site selection, quality of additional studies, assessment of alternatives*

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<sup>12</sup> The Association "Green Alternative".

<sup>13</sup> EBRD Management response to PCM Officer, issued 12 January 2015, p 7.

34. On the Complainants' claim that the landslide accidents were due to improper site selection, Dariali Energy responds by asserting that the results of the investigation by the EU and the Georgian government – specifically, that the presence of the derivation tunnel through which the river was diverted – was a significant factor in mitigating the impacts of the landslide and preventing a more significant impact on the region.
35. Concerning the claim that Dariali Energy did not consider the recommendations and warnings of geological experts, the Client maintains that all those recommendations were included in the EIA and notes that the Complainants have not presented any evidence that recommendations were not considered by Dariali Energy.<sup>14</sup>

*Risks to Stepantsminda settlement*

36. Regarding the Stepantsminda settlement, the Client notes that all the risk factors that may affect the region are included in the EIA.

*Project location within the boundaries of a National park, off-set selection and illegal construction*

37. Dariali Energy argues that construction is not carried out in a protected area, since the status of the land was changed by the order of law to “mixed use” prior to Dariali Energy acquiring it.
38. Further, Dariali Energy rejects the claim that the construction had begun without a legal permit by stating that bureaucracy and delayed receipt of information “does not mean that the construction works were launched illegally.”<sup>15</sup>

*Decision-making process, information disclosure and stakeholder engagement*

39. Dariali Energy points out that the Complainants have been involved in Project preparations from early stages, that their comments have been duly considered in final documents, and that their recommendations were undertaken with due care.

#### **IV. DETERMINATION OF ELIGIBILITY FOR A COMPLIANCE REVIEW**

40. The Eligibility Assessors have examined the Complaint to determine whether the relevant eligibility criteria are met under PCM RPs 24, 25, 27 and 28. In accordance with PCM RP 24, the Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint in making their determination on eligibility.

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<sup>14</sup> Response from Dariali Energy to PCM Officer, issued 13 January 2015, at 3.

<sup>15</sup> Ibid, at 6.

### *Limitation period*

41. To be eligible for a Compliance Review, the Complaint must be filed within 24 months after the date the Bank ceased to participate in the Project.<sup>16</sup> As the Bank has not ceased its participation in the Project this requirement is met.

### *Relevant EBRD Policy*

42. The Complaint must also relate to a Relevant EBRD Policy.<sup>17</sup> The Eligibility Assessors have concluded this criterion is met. In its response to the Complaint, Management clarifies that the issues raised in the Complaint relate to the 2008 Policy: “EBRD Management deems that each of the issues raised in the Complaint were assessed and mitigated during the ESIA and this was confirmed during ESDD process, which resulted in an ESAP that will be monitored by the EBRD during project implementation.”<sup>18</sup> The ESIA and ESDD processes are required under PR 1 of the 2008 Policy and, accordingly, it can be concluded that the present Complaint “relates to” this Policy.

### *Information requested from the Complainants*

43. PCM RP 25 provides that the Complaint should also include, if possible, certain information. In accordance with this PCM RP, the Eligibility Assessors take note of the following: the Complaint indicates that a Compliance Review is sought; the stated desired outcome of the Complainants is an examination of whether the general commitments and specific PRs in the 2008 Policy have been complied with, and “provide recommendations for how to resolve or mitigate the issues raised”<sup>19</sup> the Complaint includes a comprehensive list of communications with the Client, national authorities and Bank; and the Complaint provides details on alleged violations of the 2008 Policy. On the latter point, the Complaint states that the Bank is in breach of the PRs under the 2008 Policy, as described above in this Report.

### *Other factors to consider in determining eligibility*

44. In line with PCM RPs 27 (a) and (b) the Eligibility Assessors have considered that the Complaint relates to actions or inactions that are the responsibility of the Bank and more than a minor technical violation of a Relevant EBRD Policy. At present the Complaint does not raise issues in respect of monitoring, the Eligibility Assessors consider that PCM RP 27(c) is inapplicable for the purposes of the Eligibility Assessment.

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<sup>16</sup> PCM RP 24(b).

<sup>17</sup> PCM RP 24(b).

<sup>18</sup> EBRD Management response to EBRD PCM Officer, issued 12 January 2015, at “Summary”, p 7.

<sup>19</sup> Complaint Number 2014/05, at “Desired outcomes”, p 12.

### *Bank responsibility*

45. The Eligibility Assessors conclude that the Bank had a responsibility to ensure that the PRs of the 2008 Policy were met as required for a Category “A” Project. Key issues such as the adequacy of the assessment of Project siting and geodynamic risks (e.g., adequacy of ESIA, technical due diligence, etc.), consideration of risks to local populations, adequacy of project studies and adequacy of public consultations, *inter alia*, constitute key activities of the project appraisal and due diligence processes, which the Policy reflects as falling within the Bank’s area of responsibility.
46. To be clear, the 2008 Policy states: “The Bank’s role is (i) to review the clients’ assessment; (ii) to assist clients in developing appropriate and efficient measures to avoid or, where this is not possible, minimize, mitigate or offset, or compensate for adverse social and environmental impacts consistent with the PRs...”<sup>20</sup> and, further, “[t]he information gained [through appraisal activities such as environmental and social impact assessment] will inform the EBRD’s own due diligence related to the client and project.”<sup>21</sup>
47. As mentioned above, the Management response does not dispute the application of the 2008 Policy to any of the issues raised in the Complaint. The Client in its response argues that the Complaint should be found ineligible, *inter alia*, on the basis that the issues raised do not fall within the scope of Bank responsibility; that, rather, they fall to local authorities.<sup>22</sup> However, for the reasons set out above, the Eligibility Assessors conclude that the issues raised that relate to the assessment of the Bank’s requirements during project appraisal and due diligence do fall within Bank’s responsibility.

### *More than a technical violation*

48. As asserted by the Complainants the Eligibility Assessors consider that the Complaint raises the possibility of serious environmental harm and risks to human life, issues that amount to more than a minor technical violation of the 2008 Policy. Therefore, this requirement has been met.

### *Disqualifying criteria*

49. Finally, the Eligibility Assessors must determine whether any of the provisions of PCM RP 28 apply, which would disqualify the Complaint from being found eligible. The Eligibility Assessors note that PCM RP 28(b) (seeking competitive advantage) has not been raised as an issue by either Bank Management or Client. Further, PCM RP 28(c) is inapplicable to the present Complaint.

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<sup>20</sup> EBRD 2008 Environmental and Social Policy, at B.3.

<sup>21</sup> Ibid, PR1.5.

<sup>22</sup> Response from Dariali Energy to PCM Officer, issued 13 January 2015, at 6.

50. As noted above, Client's response provides that the Complaint should be disqualified under PCM RP 28(a) (fraudulent or frivolous claim) and (d) (obligations of a third party). It is the view of the Eligibility Assessors that neither of these provisions apply. With respect to PCM RP 28(a), the Client holds that, due to the Complainants' efforts to launch legal proceedings in Georgia, that the PCM Complaint has been filed implies that the Complaint has "a frivolous and/or malicious purpose" (no suggestion of fraud has been made).<sup>23</sup> The Eligibility Assessors do not take the position that efforts to seek redress in a local legal forum, regardless of the conclusions reached, would necessarily imply frivolity or maliciousness in asserting a request for a Compliance Review under the PCM.
51. With respect to PCM RP 28(d), the Client argues that the Complaint "mainly relates to obligations of the environmental authority within Georgia and implementation on international requirements"<sup>24</sup> and should therefore be held ineligible for the PCM process. The Eligibility Assessors do not agree with this position. The 2008 Policy holds that: "The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances are designed and operated in compliance with applicable regulatory requirements and good international practice."<sup>25</sup> Further, PR 1 on Environmental and Social Appraisal and Management stipulates that "the appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters."<sup>26</sup> It is the view of the Eligibility Assessors that the scope of the Bank's responsibility extends to include the issues raised in the present Complaint, and that responsibility is not nullified by activities that may fall under the purview of the local authorities.

## V. CONCLUSION

52. On the basis of the analysis set out above, the present Complaint concerning the Dariali HPP Project satisfies the applicable eligibility criteria of the PCM RPs. The Terms of Reference for the Compliance Review follow in the next section of this Report. **The Eligibility Assessors find the Complaint eligible for a Compliance Review.**

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<sup>23</sup> Response from Dariali Energy to PCM Officer, issued 13 January 2015 at 1.

<sup>24</sup> Ibid, at 6.

<sup>25</sup> EBRD 2008 Environmental and Social Policy, at B.3.

<sup>26</sup> Ibid, PR1.5.

**COMPLAINT: DARIALI HPP PROJECT, GEORGIA  
REQUEST: 2014/05**

**Terms of Reference for Compliance Review**

**Application**

1. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view to determining, as per PCM RP 41 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a Relevant EBRD Policy, and, if in the affirmative, to recommend remedial changes in accordance with PCM RP 44.
2. Activities carried out as part of the Compliance Review and subject to these Terms of Reference are subject to modifications which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

**Compliance Review Expert**

3. The Compliance Review Expert, appointed in accordance with PCM RP 40, shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint, and due respect for EBRD staff and other stakeholders.

**Time Frame**

4. The Compliance Review will commence as soon as possible following the posting of the Eligibility Assessment Report containing these Terms of Reference in the PCM Register on the EBRD website.
5. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit, and it is intended that the Compliance Review shall be concluded within 60 Business Days of its commencement. On request of the Compliance Review Expert, the PCM Officer may extend this time period for as long as necessary to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

## Scope of Compliance Review

6. As an initial step, the Compliance Review Expert will determine the precise requirements, in the specific context of the present Project, of each of the relevant provisions of the 2008 Environmental and Social Policy (2008 Policy) and the Performance Requirements (PRs) therein, in respect of which the Complaint alleges non-compliance.
7. The Compliance Review process will examine the core compliance issues in the context of the 2008 Policy and in all cases limited to matters raised in the Complaint, in particular:
  - a) In accordance with PR 1, were the Environmental and Social Due Diligence (ESDD) and Environmental and Social Impact Assessment (ESIA) adequate, including verification of compliance with national laws, addressing site selection, off-set selection, river flow and alternatives considerations? With regard to site selection and geo-dynamic risk, did the Bank adequately assess these issues in technical due diligence and was the summary in the ESIA adequate for public comment?
  - b) In accordance with PR 1 and PR 6 as appropriate, did the ESIA and Environmental and Social Action Plan (ESAP) address adequate measures to avoid, minimise and mitigate the potential future environmental and social impacts associated with the Project, and was implementation carried out in line with the 2008 Policy?
  - c) In accordance with PR 1, did the Bank appropriately determine the scope of the environmental and social impacts to be assessed in the context of the Project's area of influence, and was the determination in relation to Stepantsminda settlement made in accordance with PR 1?
  - d) Was the Bank's due diligence regarding the Project land take and off-set conducted in accordance with PRs 1 and 6?
  - e) Was information disclosure and stakeholder engagement carried out in accordance with PR 10?
8. Although the Compliance Review Expert retains the final authority to frame and/or consolidate the core Compliance Review questions as he deems appropriate, he should give due consideration to those as set forth by the Eligibility Assessors in these Terms of Reference.

## Procedure: Conduct of the Review

9. The Compliance Review Expert may conduct the Compliance Review process in such a manner as he considers appropriate, taking into account the Rules of Procedure of the PCM, the concerns expressed by the Complainants as set out in the Complaint, and the

general circumstances of the Complaint. Specifically, the Compliance Review Expert may:

- a) Review the Complaint to frame the compliance issues to be included in the Compliance Review, specifically whether EBRD complied with the 2008 Policy;
- b) Review all documentation relevant to the Complaint;
- c) Consult extensively with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team Group, and the relevant EBRD Resident Office;
- d) Solicit additional oral or written information from, or hold meetings with, the Complainant, any other Relevant Party and, further, any interested person or party as may be appropriate for the conduct of the Compliance Review;
- e) If necessary to ascertain relevant facts, conduct a visit to the Project site accompanied by such officials of the Bank, the Complainants, the Client or other persons as he may consider necessary and appropriate;
- f) Request the PCM Officer to retain additional expertise if needed;
- g) Identify any appropriate remedial changes in accordance with PCM RP 41, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements; and
- h) Take any other action as may be required to complete the Compliance Review within the required timeframe and in consultation with the PCM Officer, as appropriate.

#### **Procedure: General**

- 10. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.
- 11. The Compliance Review Expert shall take care to minimise the disruption to the daily operations of all involved parties, including relevant Bank staff.
- 12. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to advance the Compliance Review as expeditiously as possible and, in particular, shall endeavour to comply with requests from the Compliance Review Expert for obtaining access to sites, submission of written materials, provision of information and attendance at meetings. The Compliance Review Expert will advise the PCM Officer of

situations where the actions or lack of action by any Relevant Party hinders or delays the conduct of the Compliance Review.

13. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial and/or other information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who owns such document.

### **Compliance Review Report**

14. In accordance with PCM RP 42, the Compliance Review Expert shall prepare a Report. The Report may include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review. The Relevant Parties shall be provided an opportunity to comment on the draft Report, and the Compliance Review Expert shall consider the comments of the Relevant Parties when finalising the Report. In addition, in cases of non-compliance, the Report shall include recommendations according to PCM RP 44.
15. The recommendations and findings of the Compliance Review Report shall be based only on the circumstances relevant to the present Complaint and shall be strictly impartial.
16. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 43, or sending the draft Compliance Review Report to the Bank's Management and the Complainant in accordance with PCM RP 45, the PCM Officer will verify that there are no restrictions on the disclosure of information contained within the Report, and will consult with the Relevant Parties regarding the accuracy of the factual information contained therein.

### **Exclusion of Liability**

17. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

## **Annexes**

**Annex 1: Complaint**

**Annex 2: Management response**

**Annex 3: Client response**

## **Annex 1: Complaint**

To:



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](mailto:pcm@ebrd.com)

From: Green Alternative, Georgia

22 November, 2014

### **Complaint Regarding**

### **The Dariali Hydro Power Plant Project, Georgia**

#### **Contact details of complainant**

David Chipashvili

Association "Green Alternative"

Address: 27/29 Paliashvili Str. II fl.

Tbilisi, 0179, Georgia

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Shota Buchukuri

“Stepanstminda”

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Tel: (+995) 345251000

Mobile: (+995 599) 32-11-70

**This complaint is not submitted by an authorised representative and we are not requesting our complaint to be kept confidential.**

### **Background of the project**

On May 7, 2014, the EBRD approved up to USD 80 million to JSC Dariali Energy for the 108 MW Dariali HPP project on the river Tergi, Kazbegi Municipality. The project envisages construction of a derivation tunnel in order to divert water from a place close to the town of Stepantsminda towards the powerhouse close to the Russian-Georgian border.

Green Alternative has on many occasions expressed its concern regarding the project development: inadequate appraisal of the environmental and social risks and inadequate mitigation measures, social impacts and impacts on a protected area, lack of public participation, and violation in the decision making and permitting procedures. The violations and faults which have taken place represent not only a violation of Georgian legislation, but also contradict the environmental and social policy of the EBRD.

### **Communication with decision makers**

Green Alternative and local non-governmental organization Stepantsminda have been involved in the project preparation from an early stage of the project development (the scoping process) and regularly provide their opinion on the project not only to JSC Dariali Energy, but also to the Ministry of Environment, Ministry of Energy, Members of Parliament of Georgia and EBRD staff by preparing and sending comments on project documentation. We also prepare fact sheets and issue papers and other publications as well as organizing roundtable and face-to-face meetings with decision makers in order to clarify and resolve the questionable issues related to the project. Green Alternative participated in all the public hearings organized by the project developer.

## Communication with the Investor and Ministry of Environment and Ministry of Energy:

1. Participation of Green Alternative and Stepantsminda in the scoping meeting of the Dariali HPP project, held in Stepantsminda; **August, 12, 2011**;
2. Comments by Green Alternative and Stepantsminda regarding the scoping report of the Dariali HPP project and Stakeholder Engagement Plan were sent to JSC Dariali Energy; **September 15, 2011**; See Georgian comments:  
[http://www.greenalt.org/webmill/data/file/Comments\\_on\\_draft\\_scoping\\_report\\_and\\_public\\_consultation\\_plan\\_15\\_Sept\\_2011.pdf](http://www.greenalt.org/webmill/data/file/Comments_on_draft_scoping_report_and_public_consultation_plan_15_Sept_2011.pdf)
3. Comments by Green Alternative and Stepantsminda on the Environmental and Social Impact Assessment Report of the Dariali HPP project were sent not only to the JSC Dariali Energy, but also to the Ministry of Energy and the Ministry of Environment; **November 14, 2011**; See comments in Georgian:  
[http://www.greenalt.org/webmill/data/file/GA\\_comments\\_on\\_Dariali\\_HPP\\_draft\\_ESIA.pdf](http://www.greenalt.org/webmill/data/file/GA_comments_on_Dariali_HPP_draft_ESIA.pdf)
4. A collective letter of 56 national and international non-governmental organisations was sent to the President of Georgia, Mikheil Saakashvili, calling for suspension of large and other hydro-power development projects, including Dariali HPP, that pose a serious threat to the environment and livelihoods; **December 21, 2011**; See  
In Georgian: [http://www.greenalt.org/webmill/data/file/Letter\\_to\\_president\\_HPP\\_geo.pdf](http://www.greenalt.org/webmill/data/file/Letter_to_president_HPP_geo.pdf)  
In English: [http://www.greenalt.org/webmill/data/file/Letter\\_to\\_president\\_HPPs\\_ENG.pdf](http://www.greenalt.org/webmill/data/file/Letter_to_president_HPPs_ENG.pdf)
5. Green Alternative issued and disseminated the fact sheet “How Tergi River is Being Killed”; **July 13, 2012**; See in English:  
[http://www.greenalt.org/webmill/data/file/Dariali\\_HPP\\_Fact\\_Sheet\\_July\\_2012\\_ENG.pdf](http://www.greenalt.org/webmill/data/file/Dariali_HPP_Fact_Sheet_July_2012_ENG.pdf)  
In Georgian: [http://www.greenalt.org/webmill/data/file/fact\\_sheet\\_re\\_Dariali\\_hpp\\_July\\_2012.pdf](http://www.greenalt.org/webmill/data/file/fact_sheet_re_Dariali_hpp_July_2012.pdf)
6. Roundtable meeting: “Derivative Types of (Run-of-River) Hydro Power Plants (HPPs) in Georgia – Current Practices and Challenges”; The representatives of the Ministry of Environment, the Ministry of Energy, non-governmental, international and consultancy organizations, as well as other interested stakeholders participated in the discussion; **December 19, 2012**; See results in English:  
[http://www.greenalt.org/wp-content/uploads/2013/08/follow\\_up\\_18\\_December.pdf](http://www.greenalt.org/wp-content/uploads/2013/08/follow_up_18_December.pdf)
7. Roundtable meeting with the chair of the environmental protection and natural resources committee of the Parliament of Georgia, where together with other important issues problems related to the Dariali and Shuakhevi HPP projects were also discussed; **January 22, 2013**;
8. Green Alternative participated in working group meetings within the Ministry of Energy (2 meetings were held) in order to work on problematic issues related to derivative types of HPPs on the example of Dariali and Kazbegi HPP projects; **February, 2013**;
9. Green Alternative together with the organizations from the Third Working Group of the Eastern Partnership Civil Society Forum, Georgia, organised a roundtable meeting dedicated to ensuring face-to-face dialogue between the local population and decision makers regarding the HPP projects in Georgia with a focus on Dariali HPP; **March 14, 2013**;
10. Green Alternative’s statement on the natural disaster in the Dariali gorge, 17 May 2014; **May 19, 2014**; See

In English: [http://greenalt.org/wp-content/uploads/2014/06/Dariali\\_Statement\\_eng.pdf](http://greenalt.org/wp-content/uploads/2014/06/Dariali_Statement_eng.pdf)

In Georgian:

[http://greenalt.org/wp-content/uploads/2014/05/Position\\_statement\\_GEO\\_DARIALI\\_19MAY2014.pdf](http://greenalt.org/wp-content/uploads/2014/05/Position_statement_GEO_DARIALI_19MAY2014.pdf)

#### **Communication with the EBRD Bank staff:**

1. Meeting regarding the Shuakhevi and Dariali HPPs with [REDACTED] the Senior Advisor from the Environment and Sustainability Department of the EBRD, [REDACTED] environmental consultant from AMEC and [REDACTED] OPIC, in Tbilisi, Georgia; **September 26, 2013;**
2. Following up from the meeting in Tbilisi [REDACTED] sent an email letter to Green Alternative regarding Dariali HPP and asked for feedback; **January 20, 2014;**
3. Response email letter and feedback from the Green Alternative to [REDACTED] the EBRD; The letter was copied to the PCM of the EBRD regarding the Dariali HPP project; **April 15, 2014;**
4. Response email letter from the EBRD staff to the Green Alternative regarding Dariali HPP; **April 16, 2014;**
5. Clarification email letter to the EBRD staff from the Green Alternative regarding the Dariali HPP; **April 17, 2014;**
6. Open letter to the executive directors of the EBRD from the Green Alternative regarding the Dariali and Shuakhevi HPPs; **April 28, 2014;**
7. Response email letter from the EBRD staff to Green Alternative regarding the Dariali HPP; **May 6, 2014;**
8. Green Alternative participated in Annual Meeting and Business Forum of the EBRD in Warsaw during **May 14-15;** During the event Green Alternative presented issue papers on Dariali (See: <http://bankwatch.org/sites/default/files/briefing-DarialiHPP-Georgia-2May2014.pdf>) and Shuakhevi HPPs (See: <http://bankwatch.org/sites/default/files/briefing-ShuakheviHPP-Georgia-2May2014.pdf>) to the Bank staff, Executive Directors and the President of the Bank.
9. Email letter of the Green Alternative to the EBRD staff regarding the Dariali and Shuakhevi HPP projects after the May 17 accident on Dariali HPP project; **June 2, 2014;**
10. Response email letter of the EBRD to Green Alternative regarding the Dariali and Shuakhevi HPPs; **June 4, 2014;** Response email of the Green Alternative to the EBRD regarding the Dariali and Shuakhevi HPPs; **June 4, 2014;**

#### **Inadequate assessment of the environmental and social impacts**

##### **Improper HPP site**

The one of the main problems raised in the complaint involves the improper site selection for the hydropower plant, that has resulted in the death of around 6 workers and 4 truck drivers (in May – 8

people died; in August – 2 workers died)<sup>1</sup> at the working place after the two consecutive landslides on Devdoraki glacier in May and August 2014.

There are at least three well known mudflow rivers Devdoraki, Khuro, Chkhere on the project site, that has been chosen in a way that the Dariali Hydro derivation channel portal is located exactly at the convergence of the Devdoraki and Tergi rivers and the Dariali dam, tank and headwork – just at the convergence of the Khuro and Chkhere rivers.

The Devdoraki river begins at the Devdoraki glacier, which is known in the Caucasus as a glacier with lower hypsometrical position. It belongs to the category of hanging glaciers, meaning that it is impulsive and ice calving can cause disasters. One such disaster took place in 1832, when ice and debris moving at high speeds from the Devdoraki glacier blocked the Tergi river for three days; when the river broke through the blockage, it flooded Vladikavkaz (Russia) located downstream. The glacier ice then took seven years to melt. Moreover, in 2007 a landslide of Devdoraki killed one person.

The same threats are forecasted from the Kuro and Chkheri Rivers. The Kuro river intensively saturates avalanche material with water, turning it into a mudslide before carrying it into the Tergi. The flow of materials created by the Kuro destroys everything in its path; a onetime deposit contains hundreds of cubic meters, which has already blocked the Tergi river multiple times. The flow of materials from the Kuro occurs several times per year.

It should be also noted that in an interview with Liberali magazine the Director of Dariali Energy Zurab Alavidze said that the capacity was increased up to 110 MW just upon the request from the Ministry of Energy while the company itself wanted to build a 70 MW HPP<sup>2</sup>. In 2008 in the list of proposed projects available on the ministry of Energy website, the capacity of Dariali HPP was only 50 MW. There was a gradual increase of hydro capacity justified through the “optimization of the scheme of river hydropower potential”<sup>3</sup> by the Minister of Energy. It is clear that decision was not based on a detailed study and that the option chosen has not been proven to be the most technically feasible. This represents a violation of PR1 of the environmental and social policy of the EBRD: The project, as a Category A project, falls under paragraph 9 of the PR, requiring special formalised and participatory assessment processes including an environmental and social impact assessment. While this has been carried out, it is only partial and does not include the following provision: “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”.

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1 <http://m.amerikiskhma.com/a/georgia-glacies-mudflow-in-dariali-gorge-georgia/1917479.html>

2 <http://www.liberali.ge/ge/liberali/news/113451/>

3 Order 10 of the Minister of Energy; February 17, 2010;

## Inadequate assessment of the geodynamic risks

Another problematic issue of the project relates to the inadequate assessment of the risks of the development of dangerous geodynamic processes within the project site and proper mitigation measures.

The company has been provided with information about the improper assessment of the risks regarding the development of geodynamic processes in the EIA. It was warned several times by different geological experts and Green Alternative but unfortunately the company did not take it into account.

For example in 2012 Green Alternative in its fact sheet “How the Tergi river is being killed” was indicating that “...the calculations for suspended solid flow of the Tergi River (solid and bottom sediments) are based on the data of 1928-1940. No data about the tributaries of the Tergi River, as well as average annual flows and suspended solid flows of the Chkheri and Kuro Rivers have been studied or provided at all. The lack of hydrogeological data, taking into account that under the project only 10 percent of water flow will remain in the river, increases risk of harmful damages to the Dariali Gorge and its biodiversity, **as well as occurrence of natural disasters**. Moreover, it is established that due to climate change, the glaciers which feed Tergi and its tributaries, are reduced by several meters every year. **The issue of changing the water and solid flow caused by accelerated melting of glaciers was not taken into consideration while developing the HPP project.**”

In September 2013 Prof. Otar Duduari, also warned that the construction site has been chosen inadequately<sup>4</sup>. More recently, Duduari stated that a construction of a hydropower plant anywhere in the Dariali gorge would increase the risk of natural disasters<sup>5</sup>.

The Chairman of the Expert Commission<sup>6</sup>, Teimuraz Tbelishvili, that provides the state ecological expertise conclusion regarding the Environmental Impact Assessment (EIA) in 2011 stated that “potential for mudslides at Khdistskali and Kurotskali have not been properly reflected in the EIA<sup>7</sup> document.” Chapter 7.5 of the EIA report was dedicated to the risks of development of dangerous geodynamic processes such as ravine formation, landslides, debris flow, rockslide, mudflow that might be caused or activated only by the project itself. The risks of development geodynamic processes independently from

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4 <http://www.icmm.ge/ka/site/articles/4868/%E1%83%93%E1%83%90%E1%83%95%E1%83%90-%E1%83%AE%E1%83%93%E1%83%98%E1%83%A1-%E1%83%AE%E1%83%94%E1%83%9D%E1%83%91%E1%83%90%E1%83%A8%E1%83%98-%E1%83%90%E1%83%A1%E1%83%90%E1%83%A8%E1%83%94%E1%83%9C%E1%83%94%E1%83%91%E1%83%94%E1%83%9A-%E1%83%B0%E1%83%94%E1%83%A1%E1%83%96%E1%83%94-%E2%80%93%E1%83%A1%E1%83%90%E1%83%99%E1%83%A0%E1%83%94%E1%83%91%E1%83%A3%E1%83%9A%E1%83%9D%E1%83%A1-%E1%83%95%E1%83%94%E1%83%A0%E1%83%93%E1%83%98%E1%83%A5%E1%83%A2%E1%83%98-%E1%83%AA%E1%83%9C%E1%83%9D%E1%83%91%E1%83%98%E1%83%9A%E1%83%98%E1%83%90.htm>

5 <http://www.radiotavisupleba.ge/content/meckeri-darialis-kheobashi/26543484.html>

6 According to Georgian legislation the Expert commission is created by the Department of licensing and permitting within the Ministry of Environment of Georgia in order to review EIAs of the project and issue its recommendations to the decision maker;

7 <http://www.ebrd.com/english/pages/project/eia/45542esiag.pdf>

the project and their impact on the project was not studied at all. Accordingly the proper mitigation measures such as early warning systems have not been determined, resulting in the death of around 6 workers (a total of 10 people died out of which 4 were truck drivers) on the construction site after the two consecutive landslides on Devdoraki glacier in May and August, 2014.

By approving and signing the project in its current form the EBRD violated its own environmental and social policy, as according to PR1: “9. ...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.***”

Accordingly the Bank also bears part of the responsibility for the results of the tragedies that happened already and those that may happen in future.

### **The project poses risks to Stepantsminda settlement**

The EIA does not study the impacts of the project on the settlement of Stepantsminda located upstream of the water intake site of the project. The project development in its current form will cause accommodation of the sedimentation from the multiple tributaries of the river Tergi at the mouth of the Kuro and Chkheri rivers and result in a rise of the Tergi riverbed.

In addition, according to the project design, up to 90% of the average annual flow of the Tergi river will be diverted, therefore the river Tergi will not be able to transport materials brought by the Kuro river. As a result, it will result in accumulation and filling of the already-narrow Kuro valley, posing a threat to the settlement of Stepantsminda upstream. The same processes will be developed with respect to the Chkheri river, which joins Tergi from the left side and which is also a mudflow river as was indicated above.

Therefore by signing the project the Bank violated PR 1 of the Environmental and Social Policy, as the project area of influence has not been determined in accordance with the policy, that requires, “6. Environmental and social impacts and issues will be appraised in the context of the project’s area of influence. This area of influence may include one or more of the following, as appropriate: (vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.”

### **HPP construction in a protected area**

Georgian legislation prohibits the construction of a HPP on the territory of a protected area, particularly national parks. However, JSC Dariali Energy actually requested and received a permit for the Dariali HPP project, covering territories of Kazbegi National Park’s traditional usage zone and roughly violating the law.

According to the EIA report, the "...diversion pipeline, sedimentation basin, and entrance portal of diversion pipeline will be located in Kazbegi National Park traditional usage territory. The area of the mentioned communications and access roads will be 2.64 hectares." By approving the project EBRD accepted the violation of Georgian legislation and therefore violates its own environmental and social policy, namely, PR 1 (Para 5) "...The appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law (for example commitments related to land use planning and protected area management)."

Green Alternative raised this issue with the EBRD and provided information about this violation. Unfortunately the EBRD did not provide an adequate response to GA regarding this issue:

"The land required for headwork construction activities has been acquired from the authorities responsible for national parks. The area acquired from park ownership was categorized as "mixed use" and was extensively modified through livestock grazing, pipeline and transmission routing and other human activity. In return the Client acquired an area of land that has been legally transferred into national park ownership as compensation (or off-set). Flora and fauna studies have confirmed that the off-set area is of a greater biodiversity value than that the area removed from the park boundaries, and this will ensure no net loss of critical habitat or species in line with PR6. Independent due diligence completed for the Bank has confirmed that the flora and fauna studies undertaken have been completed in accordance with the EBRD's PRs and that the results are reflected in the ESIA. It is important to note that many of the impacts to the previous park-owned land will be of a temporary nature and will be largely reversible following construction."

First of all it should be noted that information provided by the Bank according to which the three areas were "acquired" by the Dariali Energy and "transferred into the national park ownership" is confusing. These three areas, namely, Abano lake, Sakhiznari Cliffs and Truso travertine were under state ownership and thus it is unclear what does EBRD mean by "acquiring" state owned lands from the state by the company and then transferring it back to the state in order to establish 'natural monuments'.

The explanatory note of the amendments in the law "On the status of the protected territories", that established the above-mentioned three natural monuments: Abano lake, Sakhiznari Cliffs and Truso travertine states nothing about such operation (See attachment: explanatory note of the amendments in the law "On the status of the protected territories"). On the contrary according to the explanatory note the "Project initiator is Government of Georgia" and "author of the law is the Ministry of Environmental Protection of Georgia". Moreover, it directly states that "Neither governmental, non governmental and/or international organisations nor experts have taken part in preparation and assessment of the draft law". Therefore, it is unclear what is the role and function of the Dariali Energy in this process in any form.

It is also notable that ecosystems of newly established natural monuments are completely different from the ecosystems of project impacted Kazbegi National Park and Tergi river therefore these three newly

established natural monuments can not be considered biodiversity off-sets for the project impacted areas on either Tergi river ecosystem or to ecosystem of Kazbegi National Park.

The EBRD has violated its PR6 “Biodiversity Conservation and Sustainable Management of Living Natural Resources” of its own environmental and Social policy: “8. The client will need to identify measures to avoid, minimize or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity,” through funding of the project.

There is no proof or any official documentation that would prove that the company was involved in creation of the three natural monuments as compensation measures. These areas should have been declared natural monuments irrespective of the project, and the declaration of their protected status should not be conflated with mitigating the project's impacts. Since their biodiversity value is already existing, declaring them natural monuments, while welcome, is not an offset, as it will not simply stay the same, not replace any destruction caused by the project.

### **Quality of the additional studies**

There are also problematic issues regarding the quality of the additional studies of the project, that have been provided by the Bank as additional measures in order to ensure the compliance of the project with the Bank's environmental and social policy. e.g. the document “Expert advice on Terrestrial Biodiversity Conservation Land Take and Compensation” directly states that:

“The zoological (in particular, ornithological and herpetological) investigations on 4-7 October 2013 were carried out in not proper time and in not favorable weather conditions. During all working days the weather was changeable, mainly windy, cold +5 - +15 °C, cloudy, with snow at night and light rains during the day time. Only, 5th October was sunny day.”

It turns out that for a supposedly detailed study the experts had only 4 days and because of the bad weather conditions they conducted the study only in one day showing the quality of additional studies. This violates PR6, which requires “In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on integrating biodiversity into impact assessments. The appraisal also needs to take into account climate change and adaptation issues. When requirements of paragraphs 13, 14 and 15 apply, the client will retain qualified and experienced external experts to assist in conducting the appraisal.” And PR 1.58: “... The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail.

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<sup>8</sup> “[Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD's own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs.]

## **Violations in the decision making procedures**

The process of decision making regarding the project on the national level was also characterized with legal violations.

Green Alternative applied to the Ministry of Environmental Protection (MOE) on September 21, 2011, and requested to be involved in administrative proceedings on issuing a conclusion of the “ecological expertise” concerning the Dariali HPP project.

On November 28, 2011 Green Alternative received the notification dated November 18<sup>th</sup> from the MOE that the EIA report on the project was submitted for obtaining a positive conclusion. The letter includes the date of launching an administrative proceeding (November 17, 2011), not indicating the date of its completion.

On the same day of receiving the notification, Green Alternative familiarized itself with the EIA report posted at [www.aarhus.ge](http://www.aarhus.ge). The information about the terms of administrative proceedings was also indicated: according to the source the administrative proceedings should have been held from November 17, 2011 till December 2, 2011.

Green Alternative prepared its remarks and comments on the report and submitted them on December 1, 2011. As appeared later, the MoE made a decision on issuing a positive conclusion on November 28, 2011 – before the announced date (December 2) and on the same day, when Green Alternative received a notification on launching the administrative proceedings and availability of the report. Therefore the MoE violated the Georgian legislation, including a number of requirements of the Aarhus Convention on ensuring public participation in the process of making environmental decisions.

Information regarding the violations in the public participation process were provided to the EBRD. However, the bank accepted the existing violations and signed the project without requiring the client to ensure compliance of the project with the environmental and social policy of the Bank (2008), namely, PR 10 “Information Disclosure and Stakeholder Engagement” (Para 7): “...As part of its own due diligence, the Bank will assess the level of information disclosure and consultation conducted by the client against the requirements of this PR and may require additional engagement. The requirements of national law with respect to public information and consultation, including those laws implementing host country obligations under the international law (E.g. Aarhus and Espoo conventions) must always be met.”

## **Illegal construction of Dariali HPP and inaction from the EBRD side**

In addition, Dariali Energy started construction before it received a construction permit.

On September 2011 the Mtskheta-Mtianeti Information Center published information about launching the implementation of the Dariali HPP project. The Director of Dariali Energy confirmed that the construction had really been launched, according to the Information Center. Since the company had not obtained the necessary permit documents to launch the construction, referring to this information by the

Information Center, Green Alternative applied to the Ministry of Environmental Protection and demanded to investigate the legality of works ongoing on the project territory as well as to take relevant measures in case of detecting any wrongdoings<sup>9</sup>.

In response, Green Alternative was assured that it would receive information about the legality of ongoing works after the planned inspection<sup>10</sup>. Almost a month and a half after the promise was given, Green Alternative applied to the Ministry of Environmental Protection again and requested information about the response measures. The Ministry answered that by that period Dariali Energy had already obtained the conclusion of ecological expertise necessary for the project implementation.

The Ministry of Environmental Protection did not react to the notification regarding the wrongdoing; moreover, it rapidly issued a permit document (conclusion of ecological expertise) trying to turn illegal construction into a legal activity. Besides the Ministry of Environmental Protection, Green Alternative also notified the Ministry of Energy and Natural Resources about illegal construction (because one of its departments was in charge of monitoring environmental issues) and asked the latter to investigate the legality of ongoing construction. A month after notification the organization received an answer, according to which a letter has been sent to the relevant regional unit (Agency of Natural Resources) of the Ministry for the purpose of taking relevant measures. A month after this response, as in case of the Ministry of Environmental Protection, Green Alternative requested information about the implemented measures. Finally, two months after the organization received an answer from First Deputy Minister of Energy and Natural Resources, Mariam Valishvili, stating that the company had already obtained all necessary permit documents.

Both the Ministry of Environmental Protection and the Ministry of Energy and Natural Resources should have been obliged to suspend illegal construction and react in line with the requirements of the Code of Administrative Offences and/or the Criminal Code of Georgia.<sup>11</sup>

EBRD commits that all its projects "are designed and operated in compliance with applicable regulatory requirements and good international practice", however the Dariali HPP project does not fit "good international practice related to sustainable development".

### **Additional information**

Despite the fact that regarding the Paravani HPP project the PCM found non compliance with the EBRD's environmental and social policy regarding the selection of the flow regime, EBRD ignored the finding of the PCM and accepted a similar practice in Dariali HPP by signing the project with the same conditions as it was in case of Paravani.

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9 Letter 04/06-38 sent by Green Alternative to Minister of Environment Protection Goga Khachidze on September 15, 2011

10 Letter 133 of September sent by head of public relations Department of the moE, Ekatherine Bendeliani.

11 The Criminal Code of Georgia, Article N306; "Activity without Environmental Impact Permission";

In case of Paravani HPP project PCM found that:

*"In the case of the Paravani River, the selection of a flow regime model such as the 'Tennant' methodology was not in itself flawed, but that the %AAF to be adopted should have been validated through calibration against local conditions established through an appropriate baseline assessment of the River ecology, morphology and flow rates in advance of the EBRD investment decision, at least to the point where EBRD could be confident that the plant could operate at sanitary flow rates which would not irreversibly damage the river ecosystem.*

*That EBRD is therefore in breach of Performance Requirement 6.6 with respect to the potential impact on biodiversity in that it did not fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders in advance of the EBRD board decision to invest.. It is also in breach of Performance Requirement 1.5 in that at the time of board decision the appraisal was not based on an accurate delineation and description of the environmental baseline data at an appropriate level of detail."*

#### Desired outcomes

We expect that with the complaint the PCM will perform a compliance review of the Dariali HPP project and examine whether the aspects above comply with the Performance Requirements and general commitments of the EBRD's Environmental and Social Policy and provide recommendations for how to resolve or mitigate the issues raised.

Best regards,

David Chipashvili

Association "Green Alternative"



Shota Buchukuri

"Stepanstminda"



**Management Response to PCM Complaint on Dariali Energy Project**

Project	45542 Georgia: Dariali HPP
Project Team	Operation Leader: [REDACTED]  Office of the General Counsel [REDACTED] [REDACTED]  Environment and Sustainability Department: [REDACTED] [REDACTED]
To: PCM Officer	[REDACTED]
Via: Vice President, Risk	[REDACTED]
From:  Managing Director, Environment and Sustainability  Director, Power and Energy	 [REDACTED]  [REDACTED]
Date of issue to PCM Officer	12 January 2015

A complaint (22 November 2014) issued by the campaign group Association “Green Alternative” and an individual of Stepanstminda settlement was received by the EBRD’s PCM officer relating to EBRD’s financing arrangements relating to the construction and operation of the Dariali Hydro Power Plant, Georgia.

The complaint primarily relates to the siting of the project, the environmental sensitivity of the river Tergi, adequacy of Project supporting documents (including the Environmental and Social Impact Assessment), public consultation and permitting status of the Project. In addition, the Complainant makes references to the 2014 Kazbegi mountain collapse and resulting debris flows.

The following sections provide a summary of the Project context and an overview of the Environmental and Social setting of the Project before addressing in detail each of the issues raised in the Complaint.

**Background**

JSC Dariali Energy (*Dariali Energy*, or *the Borrower*), is a special purpose vehicle that was established in Georgia for the sole purpose of constructing the Dariali hydro-electric power plant (HPP). Dariali Energy requested EBRD to provide a loan of up to a USD 80 mln (c. EUR 57 mln equivalent) for the Project. Dariali HPP is a run-of-the-river hydroelectric power plant (without a dam and a reservoir) with installed capacity of 108 MW, and is expected to generate an annual electricity output of 510 GWh at P50 scenario (implied load factor of 53.9%). Dariali HPP is located on the Tergi River in the

Kazbegi district of Georgia, near the town of Stepantsminda and approximately 1.2 km from the Georgian – Russian border, 160 km north of the capital city of Tbilisi.

### *Strategic Context*

Georgia is estimated to have one of highest untapped hydro resources in the world with less than 20% of this potential capacity presently developed. The country remains dependent on imported fossil fuels, particularly during the dry winter months when the existing HPPs operate at low load. Georgia is also strategically located, able to link the South Caucasus with Western Europe, Turkey and Russia, giving the country large potential for connecting and trading energy with other systems, strengthening national but also regional energy security. The Project has been under development since 2010, and was included in the Georgian Energy Strategy financed by World Bank. The Project is one of the largest greenfield HPP constructed in Georgia for nearly 40 years.

The Dariali HPP project is in line with the EBRD's Energy Sector Strategy (BDS/13-291) which was approved by the EBRD Board of Directors in December 2013, and which specifically calls for support for greenfield hydropower development, projects which improve market signals, and clients that monetise carbon credit revenues. Furthermore, as highlighted in the EBRD's Country Strategy for Georgia (BDS/GE/13-01) approved in September 2013, "the Bank will support the involvement of international private players in the further development of the country's underutilised hydropower potential".

### *Environmental and Social Related Transition Impact of the Project*

The Project has the potential for setting improved standards for HPP implementation in Georgia through the application of international good practices including, but not limited to, environmental and social assessment and performance. Dariali HPP has been built to be operated in full accordance with the EBRD 2008 Environmental and Social Performance Requirements (PRs), which is consistent with EU environmental requirements and with the sustainability guidelines of the International Hydropower Association in place at the time of construction. The Project will be the first energy project that will offset Greenhouse Gas Emissions generated during construction in Georgia and for the EBRD in all regions. In addition, the Project is one of the first private energy projects in Georgia that has monetised carbon emissions reductions under Clean Development Mechanism (CDM), one of the three market-based mechanisms of the Kyoto Protocol.

### **Environmental and Social Context of the Project**

The Project was categorised "A" in accordance with the Bank's 2008 Environmental and Social Policy (ESP), based primarily on the specific location of the Project, sensitivities around hydropower development in Georgia in general, and public interest in the Project. The Client prepared and disclosed an Environmental and Social Impact Assessment (ESIA) for public review and comment, in accordance with the EBRD requirements of a Category A project. The ESIA package was published on 20 January 2014 and includes the following documents: Environmental Impact Assessment (EIA) prepared for submission to the relevant Competent Authorities for public hearing and permitting purposes; supplementary terrestrial and aquatic biodiversity studies prepared to meet international standards; a Stakeholder Engagement Plan (SEP); a Non-Technical Summary (NTS); and an Environmental and Social Action Plan (ESAP). No comments were received by the Client in relation to the ESIA package and the Client has a policy of open dialogue on environmental and social issues.

EBRD's environmental and social due diligence (ESDD) was undertaken by an independent consultancy firm of international environmental and social experts in conjunction with EBRD environmental and social specialists.

### **Key issues raised during project appraisal and approval**

The Project will reduce the amount of water in a 5 km long reach of the River Tergi between the headworks and the tailrace structure. A minimum environmental flow that will allow the river to function as a habitat is required to be maintained—the level that has been authorised by the competent authorities is 10% of the mean annual flow. In reality, this will be exceeded by some margin in times of high flow and will only normally be experienced during the four dry winter months. At EBRD's request, and following a precautionary approach, the 10% flow value has been reviewed by an independent geomorphology and biodiversity consultant who, taking into account specific characteristics of the river and the species it might support, as well as practices in the EU on similar rivers, concluded that 10% was a reasonable value and that this will need to be monitored closely to verify the predicted impacts. In order to monitor these impacts, a four-year ecological monitoring programme to supplement existing baseline data, will commence one year before the Project is put into operation.

The ecological data will assist in refining any future required corrective measures with respect to environmental flows to ensure that any negative impacts on downstream ecology are understood and managed. The resulting adaptive management plan will be implemented by the Client, and this is a commitment under ESAP. The intention is to have real time monitoring data that will be summarised and provided for public consultation.

During the ESDD period, additional biodiversity baseline studies and detailed impact assessments were completed by the Sponsor prior to Board approval. Various measures were incorporated in the design of this Project, including a four year monitoring programme and the development of a management plan which allows sufficient flexibility to be built into design and operation of the Project to further mitigate impacts should this be deemed necessary following the collection of further monitoring data. Management believe that the ESDD undertaken was appropriate and an adequate adaptive management plan has been developed to meet the project's needs. The adaptive management plan provides a long term sustainable solution to the management of impacts to achieve effective protection and conservation of biodiversity and ensures that the Project achieves the intended outcomes of PR6 through adaptive management.

### **2014 Landslide Event**

On 17 May 2014 a glacial break on Mt Kazbegi occurred which resulted in a significant debris flow (or landslide) terminating in the River Tergi within close proximity of the Dariali HPP infrastructure and construction site. As the complaint makes frequent reference to the landslide a brief summary of the event is provided here.

The debris flow constituted a rock, ice and snow mass collapse which blocked the Tergi River and covered the public highway running parallel to the river, a number of fatalities occurred on the public highway and at the location of the Dariali HPP underground power house which filled with water following the damming of the river.

At the request of the Government of Georgia a delegation of EU experts joined the disaster investigation team. The team concluded that the disaster was a result of intensive movement of the Devdoraki glacier located at the 5047 meter-high peak. The project location is between 1345 and 1725 metres elevation, approximately 10km from the glacier and on the opposite bank of the river Tergi to Mt Kazbegi. The mass of ice, mud and rocks swept down the mountain with velocity of more than 50 meters per second, ending at the Tergi riverbed and blocking it, forming a 15-20 m height dam. The landslide destroyed the part of the Georgian military road, as well as the gas pipeline supplying natural gas to Armenia.

A second event occurred in August when the remaining debris on the mountainside were discharged into the river. A group of hydrologists, geologists and glaciologists of National Environmental Agency under auspices of the Ministry of Environment and Natural Resources Protection, concluded that the cause of the second event was intensive precipitation which mobilised the material left behind during the mudflow of 17 May.

Two fatalities occurred at the project location on both occasions (a total of four Project subcontractors) and a number of drivers of trucks and other vehicles using the highway were also lost.

The remainder of this document addresses the specific issues raised in the complaint

**Issue 1 - Inadequate assessment of the environmental and social impacts: Project Location, Geodynamic risks, and Alternatives Analysis**

In accordance with PR1, an alternatives analysis for the Dariali HPP was conducted in the EIA that was prepared for initial permitting approval. The alternatives considered include: the no project alternative; a seasonal regulation HPP construction alternative; a riverbed type HPP construction alternative; and a diversion type HPP construction alternative. The configuration and design of each of these alternatives was also reviewed as part of this assessment by EBRD and the independent environmental and social (E&S) consultant appointed for this Project. ESDD concluded that the alternatives analysis was undertaken in accordance with PR1.

It should be noted that when the Bank was first approached for possible funding of the Project, tunnelling works and land acquisition activities had already commenced. Based on the adequacy of the alternative analysis in the EIA document and the design of the project, the Project siting and alternatives analysis was deemed to have met the requirements of PR1. Furthermore, technical engineering aspects of the Project location were assessed in detail by the Client and their consultants and were independently reviewed by EBRD's consultants.

This event was investigated by an EU delegation of disaster response experts on the request of the Georgian government, and their report concluded that the debris flow was *"a rock/ice/snow mass collapsed in the Dariali Gorge on 17 May, blocking the Tergi River. The disaster was a result of intensive movement of the Devdoraki glacier located at the 5047 meter-high peak"*. The investigation did not attribute the incident to project activities and they have recommended that the authorities install an early warning system for any such future events. This has since been completed by the relevant authorities in Georgia.

The accident investigation team mobilised by the EU in collaboration with the Georgian government further confirmed that the landslide and resulting debris flow of 2014 were rare and unfortunate incidents are not related to seasonal mudflow in the river Tergi nor does the investigation link the event to Project related activities. The majority of the impacts and accidents resulting in fatalities were at the public highway which runs along the left bank of the river Tergi. The project location is on the opposite side of the river. Debris entering the river did result in floodwater entering into the Project footprint, which resulted in the loss of life of two workers in the underground powerhouse. The incident may be considered as a *force majeure* event (the last of which was over 150 years prior) rather than the known impacts of seasonal mudflow which were taken into consideration during project location selection and technical design parameters.

Investigations completed by an independent EU expert delegation and the Government of Georgia into the landslide also concluded that the presence of Dariali HPP tailrace tunnel and underground powerhouse alleviated the pressure of water build up providing additional time to reroute the watercourse without causing further risks to downstream communities. Furthermore Russian authorities commended the Georgian response to the incident in mitigating potential additional impacts downstream (as had occurred in an 1832 incident). Without the presence of the HPP infrastructure, a major transboundary issue might have occurred.

## **Issue 2 – Inadequate assessment of the environmental and social impacts: Hydrology, Hydrodynamics and Minimum Environmental Flow**

The second issue presented in the complaint refers to a number of different topics including river morphology and environmental flow. Further clarity is requested on this section of the complaint, as the point is unclear; however, the below tries to address issues raised by the complainant:

The Project will reduce the amount of water in a 5 km long reach of the River Tergi between the headworks and the tailrace structure. A minimum environmental flow that will allow the river to function as a habitat is required to be maintained by both the authorities and the EBRD. The level that has been authorised by the competent authorities has been set as 10% of the mean annual flow. In reality, this will be exceeded by some margin in times of high flow and will only normally be experienced during the four dry winter months.

At EBRD's request and consistent with a precautionary approach, the 10% flow value was reviewed by an independent geomorphology and biodiversity consultant. This expert, taking into account specific characteristics of the river and the species it supports, as well as practices in the European Union on similar rivers, concluded that 10% was a reasonable value, and like any HPP, this will need to be monitored carefully to confirm that the impacts are as predicted in the EIA, and that mitigation measures are appropriate. A four-year ecological monitoring programme has commenced in this regard.

If needed, the ecological data from monitoring will be used to adapt the agreed mitigation measures, or to define any additional corrective measures needed. This will help ensure that the environmental flow regime is designed to understand and manage any negative impacts on ecology and sediment flow. The resulting adaptive management plan will be implemented by the operator

of the HPP, and this is a legal commitment that has been agreed with the EBRD, and which will be closely monitored by the Bank.

The assessment of impacts to the aquatic environment was undertaken in accordance with the 'building block' methodology which is considered to be best practice. The assessment made direct comparisons between this Project and other similar projects within the EU. It was reviewed by the EBRD and a third party specialist consultant, concluding that the outcomes and objectives of PR6 will be met through the adoption of this approach.

EBRD and the client recognise that temporary adjustments in the environmental flow to support seasonal migrations of trout (if confirmed as present) between April and October may be necessary to fully mitigate any impacts. It has yet to be confirmed whether the affected reaches of river are in fact used by fish during the dry winter months. If they are, then an adjustment in this minimum flow may be required and this has been agreed with the operator.

The complaint suggests that the reduced flow in the river will contribute to natural disasters such as the landslide event in 2014. This allegation was not confirmed by the independent investigation nor does it appear feasible that modifications in sediment flow would result in further such events. However, it can be stated that the 2014 landslide and resulting debris flow events have had significant impact of the sediment flow and hydrogeological characteristics of the reach of the river Tergi where the HPP is to be located.

A number of measures have been designed to address altered sediment loading of the river and its impact on the HPP operation, such as appropriate sediment flushing operating procedures regarding sediment flow in the river, prior to operation. Such procedures will be developed in line with international good practice to ensure any residual risks and impacts are appropriately assessed. The residual risk of alterations of sediment flow in the river Tergi to biodiversity are considered to be low, and no additional risk to community health and safety from the Project was identified.

### **Issue 3 – Inadequate assessment of the environmental and social impacts: Impacts to upstream settlements and communities**

The complaint suggests that the settlement of Stepantsminda will be adversely impacted by alterations in base flow in the river Tergi and tributaries. Stepantsminda is located approximately 1km away from the headworks location, on a raised bank 25m elevated above the river Tergi and the intake structure from the point where the diversion of flow will first occur. While the settlement may be considered as within the Project Area of Influence, no modifications to river morphology attributable to the Project will be observed at this point or within the proximity of Stepantsminda.

### **Issue 4 – Violations in the Landtake and Permitting and Illegal Construction**

The land required for headworks construction activities was acquired from the authorities responsible for national parks. The area acquired from park ownership was categorised as “mixed use” and had been extensively modified through livestock grazing, pipeline and transmission routing and other human activity over the years. Biodiversity baseline surveys identified no critical habitat features in this area and confirmed the area classification as a natural habitat in accordance with PR6. In return, the Dariali Energy surveyed an area of land that has been legally transferred into national park ownership as compensation (or “offset area”).

Flora and fauna studies commissioned by the client have confirmed that the offset area is of greater biodiversity value than that the area removed from the park boundaries, and this will ensure no net loss of natural habitats in accordance with PR6, and will result in an overall positive impact to terrestrial ecology. Independent due diligence completed for the Bank has confirmed that the flora and fauna studies undertaken were completed in accordance with the EBRD's PRs and that the results are reflected in the supplementary reports to the EIA which were part of the disclosure package for public consultation. It is important to note that many of the project impacts to the previous park-owned land will be of a temporary nature and will be largely reversible following construction and the client has committed to develop a comprehensive and an extensive restoration plan following the completion of construction.

The Complainant has previously raised the issue of land take, permitting and granting of authorisations with the judiciary of Georgia. The High Court of Georgia found that due legal process had been followed during granting of permits and the complaint was rejected. The Complainant then referred the issue to the Supreme Court which did not consider the complaint eligible for further hearing. During Project Appraisal, EBRD obtained an independent legal opinion regarding the legal permitting process which confirmed that the courts acted appropriately and according to the Laws of Georgia. ESDD also confirmed that due process has been followed in all aspects of land acquisition and obtaining necessary permits. Furthermore, independent ESDD confirmed that the construction works did not commence prior to obtaining necessary permits.

#### **Issue 5 – Quality of EIA and Supplementary Studies to EBRD Requirements**

A firm of international consultants were appointed by EBRD to assist in the first stage of the ESDD. The ESDD comprised a review of all existing data (including the EIA prepared for Georgian requirements), a visit to the project location, meeting with Project Stakeholders and discussions with the Client and their representatives. The independent ESDD report concluded that while additional studies were required to meet EBRD's requirements, particularly with regard to aquatic and terrestrial biodiversity, the project was capable of being structured to meet the PRs.

Additional studies were completed prior to ESIA disclosure and a process of public consultation was completed prior to approval by the EBRD Board of Directors. These studies were reviewed by the independent consultant and EBRD and determined as adequate to meet the EBRD requirements. Additional stakeholder engagement activities were completed by the sponsor to communicate the findings of these supporting studies and to hear public comments and concerns.

#### **Summary**

EBRD Management deems that each of the issues raised in the complaint were assessed and mitigated during the ESIA and this was confirmed during ESDD process, which resulted in an Environmental and Social Action Plan (ESAP) that will be monitored by the EBRD during project implementation. Stakeholder engagement activities associated with the ESIA disclosure were completed and the project will report regularly to the public on the implementation of the commitments. The Client has a comprehensive grievance mechanism in place that allows affected people to raise complaints. The grievance mechanism was reviewed as part of due diligence and it was confirmed as fit for purpose. To date, the Sponsor has had no contact from the complainant on any of the above points.

[REDACTED]  
Project Complaint Mechanism Officer  
European Bank for Reconstruction and  
Development One Exchange Square, London  
EC2A 2JN

Re: Official Response over the Complaint of  
Association “Green Alternative” regarding Dariali  
Hydro Power Plant Project in Georgia

[REDACTED]  
Director of JSC Dariali Energy

#### OFFICIAL RESPONSE

The Complaint provided for our review is submitted by two persons: Mr. David Chipashvili as the representative of Association “Green Alternative” and Mr. Shota Buchukuri as the representative of “Stepantsminda”, however neither of the mentioned natural persons are official representatives of the organizations and neither have provided duly executed powers of attorney or any other authorization documents (*see Annex 1*), therefore the Complaint shall be considered as submitted by natural persons, which deprives them right to:

1. Speak on behalf of Association “Green Alternative” and “Stepantsminda”; and
2. Ask for compliance review and seek for problem solving mechanisms as the authors fail to prove their legal interest.

As regards the content of the Complaint itself which relates to JSC “Dariali Energy” (Dariali Energy), we would like to provide our answers in the same sequence as drafted in the Complaint.

##### 1. Background of the Project

Dariali Energy is constructing a 108 MW installed capacity hydro power plant on the River Tergi, Kazbegi Municipality, which is done with consideration of the mandatory requirements of Georgian legislation and international treaties, including environmental and social policies of EBRG.

Association “Green Alternative” and “Stepantsminda” (The Claimants) have been involved in project preparation from an early stage and have provided their comments over the project materials, which were duly considered in final documents prepared for implementation of the project. Claimants have as well participated in all public hearings and all their recommendations were undertaken with due care and seriousness by Dariali Energy.

Taking into consideration recommendations and comments of the organizations like the Claimants is one of the mandatory requirements of Georgian legislation; otherwise it would have been regarded as the violation of administrative requirements such as Article 6 of the Law of Georgia on Environmental Impact Permit and would result in abolishment of certain legal acts.

Moreover, on 30<sup>th</sup> of January, 2012 the Association “Green Alternative” has submitted the Administrative Claim (Court Claim I) to the Civil Court of Tbilisi requesting:

1. Abolishment of the Order No. 50 of the Ministry of Environmental Protection issued on 28<sup>th</sup> of November, 2011 on the basis of which the Ecology Decision was approved;
2. Abolishing the Administrative Act of the Government of Georgia according to which the Administrative Complaint of Association “Green Alternative” was declined.

Basis of the above Court Claim I according to the Association “Green Alternative” was that Ecology Decision over the project was prepared unprofessionally without due care and with violation of mandatory requirements of law and should be abolished.

The Court Claim I underwent all instances of Georgian courts. After reviewing the case in detail and for months the first and second instance courts did not satisfy the Court Claim I of Association “Green Alternative” through its decisions of 31<sup>st</sup> of May, 2012 and 19<sup>th</sup> of December, 2012. The Supreme Court did not even accept the claim for discussion as it failed to pass the case acceptance criteria and therefore on 18<sup>th</sup> of April, 2014 on the basis of the final ruling of the Supreme Court of Georgia the claim of Association “Green Alternative” became final and unsatisfied.

On 21<sup>st</sup> of December, 2012 the Association “Green Alternative” initiated another Administrative Claim (Court Claim II) to the Civil Court of Tbilisi requesting:

1. Abolishment of the Administrative Act No. 2247 issued by the Government of Georgia on 18<sup>th</sup> of November, 2011 according to which certain land plots of the protected area were transferred under special use to the Dariali Energy.

The claim is still pending at the first instance court. At the moment of submitting the mentioned claim the status over the disputed land plots was already changed on the basis of special law and the lands were already transferred under ownership of Dariali Energy, therefore even if the claim becomes satisfied it shall have to reverse effect on the project itself.

Considering above, submission of the unclear claim to the court makes us think that the Complaint submitted to the PCM is as well filed for a frivolous and/or malicious purpose. Moreover, all the local and/or international requirement were duly observed by the company, which is proven by the Court Decisions mentioned above and the Complaint mainly relates to obligations of the environmental authority within the country and implementation on international requirements, therefore, on the basis of Sections 26 (a), 27 (a & b) and 28 (a & d) of the PCM Rules of Procedure the Complaint shall not be regarded eligible.

## 2. Inadequate Assessment of the Environmental and Social Impact

In this particular Section the Claimants are blaming Dariali Energy for improper site selection and they use certain arguments of vital accidents at the site initiated by landslides of Devdoraki glacier. In case PCM researches the mentioned accusation deeper it will find out that all the rational publishers regarded Dariali Energy as the savior of the situation. If not the derivation tunnel through which the river was diverted and landslide was cleared there would be unavoidable disaster in that Region.

## 3. Inadequate Assessment of the Geodynamic Risk

In this particular Section the Claimants are insisting that Dariali Energy did not take into consideration recommendations and warnings of different geological experts. All those recommendation were included in the Environmental Impact Assessment (EIA) and were duly carried by the Dariali Energy. Claimants cannot present even one fact or argument why and how those recommendations were not considered by Dariali Energy.

## 4. Stephantsminda Settlement

EIA report includes all the risk factors that may affect the Region, particularly Stephantsminda settlement, therefore information provided in this Section is false and lacking evidences.

## 5. Construction in a Protected Area

Similar to above, the information indicated in this Section is false and lacking evidences. Construction is not carried out in the protected area, as mentioned above status of the land plots required for construction of the derivation tunnel was changed on the basis of the special law before transferring them to Dariali Energy, therefore, Complaint falls under Sections 27 (a) and 28 (d) of the PCM Rules of Procedure the Complaint shall not be regarded eligible.

Moreover, information regarding off setting three areas against one is absolutely new to us and is far from being truth.

## 6. Violation in the Decision Making Procedures and Illegal Construction

Again, in this Section the Claimants are insisting that decision making process was violated on the national level and this should lead to compliance review and seeking problem solving mechanisms. First of all it has to be reminded that the Court Case I, which was pending for years could not reveal any procedural and/or legal violation of any national entities and moreover such accusations shall not be considered by the PCM at all as they fall under Sections 27 (a & b) and 28 (d) of the PCM Rules of Procedure, therefore the Complaint shall not be regarded eligible.

Claimants are as well appealing that the construction was commenced before obtaining the construction permit. It is noteworthy that delaying receipt of information due to bureaucracy does not mean that the construction works were launched illegally. Claimants are not indicating on which date the construction was commenced and when the permit was obtained. Moreover, making announcement on launching the construction works does not mean that main works requiring permit are commenced, this could have been a land works which under Order No. 57 of the Government of Georgia Construction Permits and Relevant Procedures adopted on 24<sup>th</sup> of March, 2009 is regarded as preconstruction works. Information provided in this Section again is unproven and lacking evidences.

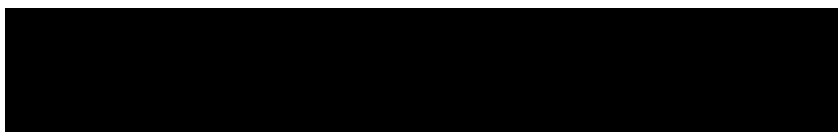
#### 7. Additional Information

As regards additional information provided by the Claimants regarding Paravani HPP, it is unclear how these two are interconnected. This information has neither influence, nor may be used as precedent.

Considering the information provided in our Response, we expect the PCM to evaluate the case in detail by examining all the provided materials and regard the Complaint of Association "Green Alternative" and "Stepantsminda" ineligible.

All the Annexes provided in this Response are unfortunately provided in Georgian language, should you require having their English copies, we may provide them to you later.

Sincerely,



13<sup>th</sup> of January, 2015