



Independent
Project
Accountability
Mechanism

COMPLAINT: SHUAKHEVI HYDROPOWER PROJECT

REQUEST NUMBER: 2018/03

PROBLEM SOLVING COMPLETION REPORT – OCTOBER 2020

Until July 2020, the Project Complaint Mechanism (PCM) was the accountability mechanism of the EBRD. PCM independently reviews issues raised by individuals or organisations concerning Bank-financed Projects, believed to have caused, or be likely to cause harm. The purpose of the mechanism was to facilitate the resolution of social, environmental and public disclosure issues among Project stakeholders; to determine whether the Bank complied with its Environmental and Social Policy and the Project-specific provisions of its Access to Information Policy; and where applicable, to address any existing non-compliance with these policies, while preventing future non-compliance by the Bank. From 1 July 2020, the Independent Project Accountability Mechanism (IPAM) has replaced the PCM. For more information about IPAM, contact us at ipam@ebrd.com or visit the [IPAM webpage](#).

About this Report:

The Shuakhevi Complaint was received in 2018 and its Problem Solving Initiative was undertaken between 2018 and July 2020 under the EBRD PCM in accordance with the 2014 PCM Rules of Procedure. As per the 2019 IPAM Policy's Transition Provisions (Section V), all references in this report continue to refer to PCM.

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EXECUTIVE SUMMARY

In February 2018, the PCM received a [Complaint](#) from community members of the village of Makhalakidzebi, Georgia (i.e., the Complainants). The Complainants raised concerns in relation to the [EBRD's Shuakhevi Hydro Power Plant](#) (Shuakhevi HPP, or the Project), citing risks of landslides; perceived impacts to drinking water and irrigation systems; and impacts to the Adjaristskali river basin and the local microclimate.

During the Complaint's Eligibility Assessment process, the Complainants and the EBRD Client, Adjaristsqali Georgia LLC, (i.e., the Parties) jointly agreed to engage in a Problem-solving Initiative, participating in mediation through PCM's neutral and impartial platform and in an effort to resolve the issues raised in the Complaint. **The Parties requested that in order to facilitate opportunities for meaningful resolution, that activities and outcomes established within the confines of the Problem-Solving Initiative remain confidential, and therefore, this Completion Report presents a high-level summary of the mediation process.**

Similar complaints were submitted to the Asian Development Bank's Office of the Special Project Facilitator (OSPF) and the International Finance Corporation's Compliance Advisor/Ombudsman (CAO). Therefore, it was agreed that CAO and PCM (the Mechanisms) would co-facilitate the Problem-solving Initiative and that OSPF would act as an observer to the process, avoiding duplication of effort and undue disturbance to common parties.

Between June 2018 and June 2020, PCM and CAO conducted 19 mediation field missions and five joint negotiation meetings between the Parties and other relevant stakeholders, including representatives of the municipal and regional government. Throughout the process, the Mechanisms' facilitation:

- strengthened the Parties' capacity to engage effectively in mediation and stakeholder engagement, providing training, facilitating the exchange of Project information, and establishing a Working Group through which Complainants, Client and Government representatives could seek to resolve the issues raised;
- introduced new and relevant municipal and regional governmental stakeholders to the process at the Client's request and with the Complainants' agreement, to expand opportunities for resolution;
- negotiated the establishment of a Joint Program for Community Safety and Development, creating opportunities for addressing community concerns for safety through combined support of the regional government, the Client and other stakeholders;
- opened a communication channel for future dialogue which the Parties agreed to consider and use as required; and
- navigated the finalization of the Problem-Solving Initiative under the restrictions brought by COVID-19.

Despite the Parties' efforts in seeking to resolve all the issues raised in the Complaint, they did not reach a final agreement on the terms of the Joint Program for Community Safety and Development and will consider engaging in an ongoing dialogue process in smaller working groups outside the PCM Problem-Solving process. Based on this decision, PCM determined that no further progress would be likely to be made following the fifth joint meeting between the Parties and therefore, the mediation process would close. While respecting the confidentiality of the process, this Problem-solving Completion Report provides an overview of the mediation process and the various outcomes achieved, offering reflections and lessons learned from the Parties and the PCM.

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ACRONYMS/LIST OF DEFINITIONS

ADB OSPF	Asian Development Bank's Office of the Special Project Facilitator
CAO	The office of the Compliance Advisor Ombudsman by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) by the World Bank Group
Company/Client	Adjaristsqali Georgia LLC
CSO	Civil Society Organization
EBRD	European Bank for Reconstruction and Development
IPAM	Independent Project Accountability Mechanism
PCM	Project Complaint Mechanism
Policy	PCM Rules of Procedure that governs PCM functioning
Problem-solving	Problem Solving process undertaken as one of PCM functions

1. BACKGROUND

The Project

The [Shuakhevi HPP Project \(project no. 45335\)](#) involves an EBRD senior loan to Adjaristsqali Georgia LLC (the Client) of up to USD 86.5 million (EUR 63.7 million) to finance the development, construction and operation of the Shuakhevi HPP, a hydroelectric power plant located on the Adjaristsqali River in south-western Georgia. The Shuakhevi HPP has an installed capacity of 185 MW, with an expected electricity output of 452 GWh. The plant has been designed as a run-of-the-river plant with capacity for diurnal storage in two reservoirs, allowing the Project to store water for up to 12 hours and consequently sell electricity at peak demand times.

The Client, Adjaristsqali Georgia LLC, is a special purpose vehicle established for the sole purpose of constructing a cascade of three hydroelectric power plants on the Adjaristsqali River, the first of which is the Shuakhevi HPP. Clean Energy Invest AS (40%); Tata Power (40%); and IFC Infraventures (20%) own Adjaristsqali Georgia LLC.¹

The EBRD Board of Directors approved the Project on 30 April 2014, as a Category A Project under the [2008 Environmental and Social Policy](#). Currently the transaction is in the process of repayment.

The Complaint

On 14 February 2018, the PCM received a Complaint² related to the Shuakhevi HPP Project. The Complaint was submitted by community members representing 22 households of the village of Makhalakidzeebi, in the Municipality of Shuakhevi in Georgia.

The Complainants voiced concerns regarding a range of existing and anticipated environmental and social impacts of the Project affecting the village of Makhalakidzeebi, namely:

- an increased risk of landslides and rock falls allegedly caused by the Project construction and blasting activities carried out by Adjaristsqali Georgia LLC during tunneling works, posing a threat to the safety of the community;
- damage to private homes and impacts to groundwater levels, allegedly resulting from blasting and construction activities involved in Project tunneling, as well as corresponding rock falls and vibration impacts;
- impacts to biodiversity in the Adjaristsqali River basin;
- failure to properly address the risks linked to the Project construction; and
- Alleged non-compliance with a previous agreement entered into with the Adjara regional government and the community members in 2014 to provide compensation in case of damages caused by the Client.

¹ Project Summary Document for Shuakhevi HPP, available at <http://www.ebrd.com/work-with-us/projects/psd/shuakhevi-hpp.html>.

² Complaint 2018/03, available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html>.

The Complainants requested that both a Problem-solving Initiative and a Compliance Review be undertaken by PCM.

After confirming that good faith efforts to resolve the issues with the Bank and/or Client had already been undertaken, PCM registered the Complaint on 15 March 2018 and published it on the [PCM Register](#) in [English](#) and [Georgian](#).

Given that the Complaints filed by the community of Makhalakidzeebi with IFC CAO and the ADB OSPF raised identical issues to those cited in the PCM Complaint, the three mechanisms (“Mechanisms”) sought consent from the Parties to cooperate and conduct a joint Problem Solving process to ensure efficient use of time and resources, and consistency of approach.

2. ELIGIBILITY ASSESSMENT

From March – May 2018, PCM assessed the Complaint’s eligibility to undergo a Problem Solving and/or a Compliance Review, based on the eligibility criteria outlined in the 2014 PCM Rules of Procedure. PCM Expert Mr. Constantin-Adi Gavrila and PCM Officer Erica Bach completed this assessment jointly.³



MAKHALAKIDZEEBI VILLAGE

As part of the assessment process, the Eligibility Assessors:

- completed an in-depth review of the Complaint, Project documents and further data provided by the Complainants, EBRD Management and the Client;
- held initial teleconference meetings with Complainants, the Client and Bank staff; and
- conducted in-country consultations with the Parties for the period 18-22 April 2018.

Through this engagement, the Complainants and the Client confirmed their interest in having PCM and CAO provide a forum for facilitated dialogue, through which to discuss and seek to resolve the issues underlying the Complaint without attributing blame or fault, with ADB OSPF acting as observer.

During the Eligibility Assessment, the Parties also agreed that the EBRD PCM and IFC CAO would co-facilitate the dialogue process, while ADB OSPF would act as an observer.

In May 2018, the Complaint was found eligible for Problem-solving and an Eligibility Assessment Report issued in [English](#) and [Georgian](#).

³ During the Eligibility Assessment process, the Eligibility 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.

3. PCM PROBLEM-SOLVING INITIATIVE

3.1 Process Design and Capacity Building



MEDIATION TEAM AND COMMUNITY

In June 2018, PCM and CAO began facilitating meetings between the Complainants and the Client, with the support of the PCM Problem-solving Expert and a local Georgian mediator hired by the CAO. As a preliminary step, the mediation team engaged with the Parties to develop the structure for the mediation process (i.e., reaching agreement on the issues to be discussed, meeting approaches, and setting ground rules for the Problem Solving Initiative.

Furthermore, the Parties were given an opportunity to designate key representatives to the process, who in turn received capacity-building training from the mediation team, on negotiation, conflict resolution, and effective communication. These PCM trainings helped Parties to engage more effectively and constructively in the mediation process and make informed decisions about both the process and its outcomes. The early meetings facilitated by the PCM-CAO mediation team were tense: Complainants' urgent need for assurances about the safety of their community and the Client's rejection of allegations put forward regarding the Project's environmental impacts made initial communications between the Parties quite difficult.

3.2 Framework Agreement and Process development

During the first joint mediation, PCM and CAO facilitated the signing of a Framework Agreement, which identified the structure and ground rules for the mediation process. The Framework Agreement outlined the principles governing the process; the roles of participants; meeting format; and the rules regarding decision-making, confidentiality, and communications.⁴



JOINT MEDIATION MEETING

Both the Complainants and the Client shared the vision that the local municipal administration, represented by the Mayor of Shuakhevi, was an important stakeholder in the Problem-solving Initiative and agreed to invite him to participate in the mediation process.

At the first joint meeting, the Parties exchanged their views regarding the issues raised in the Complaint. Key issues Complainants sought to address through the Problem Solving Initiative included the community's safety from landslides, rock falls, and the decreased water supply observed locally. The Complainants also identified active Client communication with affected

⁴ The Parties agreed to treat the Framework Agreement as confidential during the process.

communities and future cooperation to support community development as additional priority areas for discussion.

The Client's representatives clarified the Company's position stating that since 2011, stakeholder engagement activities (daily meetings, consultations, information disclosure) had taken place within the Project's influence zone, including the Makhalakidzebi community. They reaffirmed that all required monitoring and mitigation measures had taken place which included monitoring of vibrations, spring water and house inspections and any findings were addressed.

Notwithstanding the differences in the opinions shared by both sides, the Parties further discussed possible solutions that would be viable and acceptable for them both and identified information gaps between the Parties that the Problem-solving Initiative could help to address.

The final joint meeting between the Parties was held on 14th July 2020 and was facilitated by the PCM Expert and the local mediator by means of videoconferencing. As part of the dialogue, the Parties decided that resolution would not be possible to be achieved via PSI and that they would continue engagement in smaller groups and without the facilitation of PCM-CAO. The priority being to exchange information on the Client's ongoing construction activities, their safety measures and risk monitoring activities related to potential environmental impacts of the Project.

3.3 Negotiation of Key Issues and Working Group Establishment



After jointly identifying priority issues to be addressed through Problem-solving, the Parties began negotiations, exploring viable solutions with the support of the PCM-CAO mediation team. At the second joint meeting in September 2018, the Parties agreed to create a Working Group comprised of the Complainant, Client and municipal government representatives. The purpose of the Working Group was to provide a

constructive space for cooperation and action planning between the Parties' representatives, who were mandated to routinely report to their constituencies and eventually propose a mutually acceptable action plan addressing the issues raised in the Complaint.

In preparation for the third joint meeting in December 2018, the mediation team also engaged with a representative from the Adjara regional government at the Parties' request, to inform them about the ongoing mediation process and clarify the scope of the existing government program providing financial support to households impacted by natural disasters (i.e., the Georgian "eco-migrants" program). Given the relevance of this program for the community members of Makhalakidzebi and the interest of the regional government in resolving community concerns, the Adjara government was invited to participate in the process and attended the fourth joint mediation meeting in June 2019.



MEDIATION TEAM AND COMMUNITY

In between joint meetings, the local PCM-CAO mediation team continued to facilitate negotiations through in-person and remote bilateral meetings with the Parties and other stakeholders.

3.4 Development of Joint Program for Community Safety and Development

During the fourth joint meeting, the Parties agreed on a “*Joint Program for Community Safety and Development*,” which provided a structure for cooperation among the Parties and the local and regional governments to address the community of Makhalakidzebi’s desire for resettlement. Specifically, the Program combined the existing governmental eco-migrant program with additional financial contributions from the Client’s corporate social responsibility program, to support the resettlement of community members



MEDIATION TEAM AND COMMUNITY

The representative of the Adjara regional government confirmed the government’s commitment to lead the implementation of such a Joint Program.

The Parties agreed in principle that the implementation of the Program could begin in 2020, once the Client a) began operations and b) confirmed the budget available for its corporate social responsibility program. However, Community members expressed reservations on the scope of the Program.

Following the fourth joint meeting, the PCM-CAO mediation team continued to work with the Parties in bilateral meetings. From those meetings, the mediation team found that there were limited conditions to reach an agreement, but there was willingness from all for further engagement and dialogue. To this end, a fifth joint meeting was convened. Due to the travel and social distancing restrictions brought about by COVID-19, the PCM Expert and local mediator facilitated the session by means of videoconferencing while the Parties met in person under safe social distancing measures. The meeting concluded with the decision not to sign a settlement agreement, but the Parties remained open to engaging in further dialogue in smaller workings groups based on the new skill-sets obtained in the capacity building trainings conducted.

4. PROBLEM-SOLVING OUTCOMES

Despite the Parties’ efforts in seeking to address the issues raised in the Complaint, the process did not lead to an agreement. However, the Parties expressed their willingness to continue a dialogue process in smaller working groups on the basis of the progress achieved during mediation. In the opinion of the Problem-solving Expert, no further progress towards resolution of the dispute was deemed feasible. Consequently, in accordance with paragraph 27 of the PCM Rules of Procedure, the Problem-Solving process facilitated by PCM was concluded.

Over the course of the dialogue process, nineteen mediation field missions and five joint meetings were undertaken. Although a final settlement agreement could not be reached, the efforts made by the Parties throughout the process brought a range of positive outcomes, including:

- The scope of the stakeholders involved in the discussion of Makhalakidzebi’s safety was broadened to include the municipal and regional government, whose involvement will likely be necessary in any future activities in this regard;

- The community's need for continuous support in response to the existing geological risks in the Shuakhevi area was acknowledged both by the Client and the Government;
- Both Parties recognized that the public funding available for communities affected by geological risks in the Adjara region of Georgia alone was not sufficient to support full resettlement, and other avenues would need to be explored in the future if resettlement remains of interest;
- The Shuakhevi municipality agreed in principle to the establishment of a "Natural Disasters Fund" that would be available for all villages in the Municipality of Shuakhevi, open to contributions from the Client and other funders (e.g., other Project developers in the region). The Parties discussed a range of options for a financial support program for the Makhalakidzebi community, which could be further explored by the Parties in future;
- The community received information on the status of the Project, its potential environmental impacts and established mitigation measures;
- A safe space for dialogue was created between the Client and the Makhalakidzebi community to discuss the community concerns and expectations, generating strengthened relationships between the Parties with a prospect of its continuation in the future; and
- The Parties' capacity to engage effectively in dialogue processes was strengthened, supporting future opportunities for constructive engagement. By establishing the Working Group, a format for ongoing engagement between the Client, the community of Makhalakidzebi, and the local government has been jointly created.



COMMUNITY, CLIENT, GOVERNMENT, AND MEDIATION TEAM

5. CONCLUSION

It is the opinion of the Problem-solving Expert that no further progress towards the resolution of the dispute is possible. Under paragraph 37 of the PCM Rules of Procedure, the Problem-solving Expert does not identify the need for any follow-up monitoring or reporting by the PCM Officer. In consequence the processing of the Complaint is now completed and the case closed.

This Problem-solving Completion Report will be circulated for information to all relevant Parties, the EBRD President and the EBRD Board of Directors, and will be publicly released and posted on the Mechanism's website.