European Bank
for Reconstruction and Development

Project
Complaint
Mechanism

COMPLAINT: Nenskra HPP

REQUEST NUMBER: 2018/08

ELIGIBILITY ASSESSMENT REPORT – September 2018

The Project Complaint Mechanism (PCM) is the accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of Complaints from one or more individual(s) or organisation(s) concerning an EBRD Project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the Project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

Contact information

Inquiries should be addressed to:

The Project Complaint Mechanism (PCM)
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
Telephone: +44 (0)20 7338 6000
Fax: +44 (0)20 7338 7633
Email: pcm@ebrd.com

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

How to submit a Complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

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

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

EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint in relation to the EBRD's financing of the Nenskra HPP Project (the Project), alleging non-compliance with the Bank's 2014 Environmental and Social Policy (ESP). In particular, the Complainants allege Project impacts and harm on Svan people, who self-identity as being Indigenous, but are not recognized as such by the Government of Georgia. Complainants allege Project impacts on their culture, livelihoods, health and general well-being. Complainants also assert limited public consultations, insufficient impact assessment and mitigation measures undertaken on the Project. The Complainants requested that a Compliance Review be undertaken by the PCM.

In consideration of the Bank's responsibilities under the ESP in relation to the issues raised in the Complaint, the Eligibility Assessors have determined that the Complaint is eligible for a Compliance Review.

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

I. BACKGROUND

1. On 30 May 2018 the PCM received a Complaint regarding the Nenskra HPP Project.[1] The Complaint was submitted by four community members of Chuberi, in the Samegrelo-Zemo Svaneti region of Georgia, who requested their identities be kept confidential. Complainants are supported by CEE Bankwatch Network and Green Alternative, an NGO based in Georgia. The Complainants requested that the PCM undertake a Compliance Review in relation to the Project.

2. The PCM registered the Complaint on 11 June 2018 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs). The Complaint was subsequently posted on the PCM Register pursuant to paragraph 20 of the PCM RPs. On 27 June 2018 an *ad hoc* PCM expert was appointed as Eligibility Assessor to conduct the Eligibility Assessment of the Complaint jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs.

3. The Project involves the construction of a large dam on the Nenskra River with a height of 130 m and a reservoir of up to 3 km2 and the construction of 280MW Hydropower Plant (HPP). The hydropower scheme is located in Samegrelo-Zemo Svaneti region, on the territory of Mestia Municipality.

4. The Project is developed by JSC Nenskra, a special purpose vehicle (SPV) established in Georgia for the sole purpose of constructing the 280 MW JSC Nenskra Hydro. At financial close the SPV will be majority owned by Korea Water Resources Corporation (K-water), a State-owned company registered in South Korea, with a participation of 10% by Partnership Fund, a state-owned company registered in Georgia. More information can be found on the JSC Nenskra website.[2]

5. The Nenskra HPP Project was approved by the EBRD Board of Directors on 31 January 2018 and has been Categorised "A" in line with EBRD's 2014 Environmental and Social Policy (ESP) thereby requiring a formalised and participatory Environmental and Social Impact Assessment (ESIA) to be prepared by the Project Sponsors in accordance with EBRD's Performance Requirements (PRs). The proposed hydropower scheme includes the construction of a large dam which therefore triggered Category "A" requirements; in addition the Project comprises a large and complex Greenfield development with a number of significant environmental and social sensitivities.

6. A detailed Project description is provided in the ESIA and, as indicated, the Project includes a number of "large" (as per International Commission of Large Dams definitions) infrastructure components as well as extensive tunnelling for the transfer of water from a neighbouring catchment. The Project's catchment area is entirely within Georgia; however, it is highly sensitive from both social and environmental viewpoints. The Project footprint is therefore relatively large and complex and has been carefully considered during the preparation of the ESIA by the Sponsors and resulting due diligence by EBRD. [3]

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

7. The Eligibility Assessors have undertaken a general examination of the Complaint, and additional information provided by the Complainants, EBRD Management and the Client, to determine if the eligibility criteria set out in the PCM RPs are satisfied.

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[1] Complaint Number 2018/08, available at http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html and annexed to the report.
[2] Project Summary Document for Nenskra HPP Project, available at https://www.ebrd.com/work-with-us/projects/esia/nenskra-hpp-portage.html
[3] Bank Management response dated 10 July 2018, annexed to this report.

8. A site visit was not considered necessary for the purposes of this Eligibility Assessment as the Assessors deemed it sufficient and adequate to determine eligibility primarily through a document-based review.

9. PCM had meetings and written communication with the Complainants, Bank staff and the Client since the receipt of the Complaint, during May – August 2018.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainants

10. The Complaint describes the alleged harm caused by the Project as follows:

> *[..] potentially significant impacts and harm on Svans as Indigenous People, on our culture, livelihoods, health and general well-being of the impacted community, by accepting the lack of proper public consultations, as well as by approving the project that lacks proper impact assessment and mitigation measures. Hereby we allege that the Nenskra HPP project fails to meet the EBRD's policy and Performance Requirements (PRs), especially PR 1 on Assessment and Management of Environmental and Social Impacts and Issues, PR 5 on Land Acquisition, Involuntary Resettlement and Economic Displacement, PR 7 on Indigenous People, PR 8 on Cultural Heritage and PR 10 on Information Disclosure and Stakeholder Engagement.*

11. Complainants allege that EBRD has failed to ensure compliance of the Nenskra HPP Project, as follows:

> *[..] Failure to recognise and treat Svans as Indigenous Peoples - Non-compliance with R7 on Indigenous Peoples (part 4)*
> *Lack of coherence of PR7 with principles of UN Declaration on Rights of Indigenous Peoples, ILO Convention no.169, EU policy (part 5)*
> *Lack of assessment of alternatives, cumulative impact - Non-compliance with PR1 on Assessment and Management of Environmental and Social Impacts and Issues (part 6)*
> *Lack of gender impact assessment - Non-compliance with PR 1 on Assessment and Management of Environmental and Social Impacts and Issues and PR 2 on Labour and Working Conditions (part 7)*
> *Non-compliance with PR 10 on Information Disclosure and Stakeholder Engagement and commitment to respect the Aarhus Convention (part 8)*
> *Violation of the customary land rights of Svans, inadequate livelihood restoration -non-compliance with PR5 on Land Acquisition, Involuntary Resettlement and Economic Displacement (part 9).Failing to assess Nenskra project's threats to Svan culture - non-compliance with PR 8 on Cultural Heritage (part 10)* [4]

2. Bank Management

12. EBRD Management submitted its written response[5] to the Complaint to the PCM on 10 July 2018.

13. In response to Complainants' request that PCM establish a panel of experts in the area of Indigenous Peoples, Bank Management highlights that EBRD's position is that PR7 of the ESP does not apply, and that this was confirmed by multiple independent experts.

[4] Complaint
[5] The Bank Management response dated 10 July 2018 in annex to this report.

14. According to the Bank's response, meaningful consultations have been conducted with impacted communities and the ESIA meets the PRs as set by the ESP.

15. Management explains that an independent panel of experts was convened to provide additional oversight and transparency into the Project design and implementation arrangements. One of the recommendations of the panel was to avoid physical resettlement of local communities and additional actions to be taken regarding public safety.

16. Management highlights the fact that a precautionary approach was undertaken to avoid the Project being located within a protected area.

17. In conclusion, EBRD Management states that considerable efforts were made to undertake an extended due diligence process that lasted more than three years and that they are confident that the Project has been designed to meet relevant PRs of the ESP.

3. Client

18. The Client submitted a written response[6] to the Complaint to the PCM on 10 July 2018.

19. In the response, the Client describes their efforts to ensure Project information disclosure and consultation with stakeholders during March-August 2017.

20. Further, in relation to Complainants' allegations regarding the lack of impact assessment and mitigation measures, the Client clarifies that a gap analysis of the 2015 Environmental Impact Assessment was conducted by independent consultants and subsequent mitigation measures were described in the Environment and Social Management Plan. The Client's response also details that the ESIA includes gender disaggregated data.

21. The Client's response also indicates that a Livelihood Restoration Programme has been proposed to be consulted with Project affected people, and additional efforts were undertaken to preserve cultural heritage.

22. Further, with regards to PR7, related to Indigenous Peoples, the Client states that they involved external consultants who undertook research concluding that lenders policies regarding Indigenous Peoples did not apply to the Svan population living in the Project area of Influence.[7]

IV. DETERMINATION OF ELIGIBILITY

23. The Eligibility Assessors have examined the Complaint to determine whether it meets the relevant eligibility criteria under paragraphs 24-28 of the PCM RPs and gave due consideration to the responses of EBRD Management and the Client in accordance with paragraph 29 of the PCM RPs. The PCM has also sought additional information and documentation from Bank staff (in particular, the Banking and Environment & Sustainability Departments) and the Client.

24. Pursuant to paragraph 24 of the PCM RPs, 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 in making their eligibility determination.

25. The Eligibility Assessors have also taken note that the criteria outlined in paragraph 25 of the PCM RPs have been addressed by the Complainants as follows:

[6] Client response dated 10 July 2018 in annex to this report.
[7] *Ibid.*

- The Complainants have requested the PCM to undertake a Compliance Review to address the issues raised in the Complaint.

- The Complainants have indicated the outcomes sought as a result of use of the PCM process:

> *First, the PCM should assign recognized and independent Indigenous Peoples experts and Indigenous peoples organizations, like the United Nations Permanent Forum on Indigenous Issues (UNPFII), to l review the compliance of the EBRD with its policy commitments, as well as review EBRD's Indigenous Peoples PR coherence with relevant international law and good practice, including Declaration on Rights of Indigenous Peoples, ILO Convention 169 and EU policy approach to Indigenous Peoples. Based on this review, the PCM should make recommendations for necessary steps and improvements on both project and policy level.*
>
> *Second, the EBRD should trigger PR 7 for the Nenskra HPP project by acknowledging Svans' self-identification and requests to be treated as Indigenous Peoples.*
>
> *Third, the EBRD should request from the Republic of Georgia conducting an appropriate alternative analysis for the Nenskra HPP project, which should be accompanied by meaningful consultations based on the special measures, such as Free Prior Informed Consent, in line with the international law protecting Indigenous Peoples' rights.*
>
> *Fourth, the EBRD should require a new ESIA, should address all relevant environmental, social, gender and economic issues, taking into due account the feedback from affected communities. EBRD should commission an independent review of the new ESIA coming from project vast impact over Svan communities and citizens of Georgia.*
>
> *Finally, if the above cannot be done, the EBRD should withdraw its commitment to the Nenskra HPP project, as it threatens imminent and irreparable harm to local people and the Upper Svaneti region, and it stands in manifest violations of the EBRD's applicable environmental and social standards.*

- The Complainants have submitted copies of their correspondence with the Bank and other relevant documents related to their Complaint.

- The Complainants have indicated details of a Relevant EBRD Policy:

> *[…] Hereby we allege that the Nenskra HPP project fails to meet the EBRD's policy and Performance Requirements (PRs), especially PR 1 on Assessment and Management of Environmental and Social Impacts and Issues, PR 5 on Land Acquisition, Involuntary Resettlement and Economic Displacement, PR 7 on Indigenous People, PR 8 on Cultural Heritage and PR 10 on Information Disclosure and Stakeholder Engagement.*

26. Pursuant to paragraph 28 of the PCM RPs, the Eligibility Assessors have found that the Complaint was not filed fraudulently or for a frivolous purpose and its primary purpose is not to seek competitive advantage through the disclosure of information or through delaying the Project. The Eligibility Assessors have also found that the issues raised in the Complaint do not trigger third party obligations.

1. Eligibility for a Problem-solving Initiative

27. PCM's Problem-solving function has the objective of restoring a dialogue between the Complainant(s) and the Client to resolve the issues underlying a Complaint without attributing blame or fault. In their Complaint, the Complainants have not indicated an interest in pursuing a dialogue process with the Client, convened by the PCM.

28. During a video call with representatives of the Client held by the PCM on 22 August 2018, the Client showed an interest in a potential Problem-solving Initiative under the auspices of the PCM involving community members and their advisors.

29. In making their determination, the Eligibility Assessors take into account the PCM function requested by the Complainants. The Complainants only requested a Compliance Review be undertaken by the PCM.

30. Considering that the Problem-solving Initiative is a voluntary process and both Parties should be willing to engage in a facilitated dialogue, the Eligibility Assessors have considered it unproductive to recommend a Problem-solving Initiative.

2. Eligibility for a Compliance Review

31. In considering whether the Complaint meets the eligibility criteria for a Compliance Review, the Eligibility Assessors have concluded that the conditions set out in paragraph 24(b) of the PCM RPs have been met:

- the Complaint was filed within the prescribed timeframes; and
- the Complaint relates to the EBRD 2014 Environmental and Social Policy.[8]

32. Further, the Eligibility Assessors have considered that the Complaint raises more than a minor technical violation of the Relevant Policy.

33. The Eligibility Assessors consider that paragraph 27(a) of the PCM RPs is also satisfied. The issues raised in the Complaint highlight matters that relate to actions or inactions which are the responsibility of the Bank. Under the ESP the Bank has clear responsibilities to ensure adequate due diligence for the Project and to monitor Client commitments – namely:

- Ensure that the Client undertakes an adequate environmental and social appraisal and identifies relevant requirements of PR1 applicable in relation to the Nenskra HPP Project, and how those are to be addressed and managed through the Project cycle;
- Ensure that the Client is properly applying relevant provisions of PR5 related to Client's land acquisition, involuntary resettlement and economic displacement;
- Ensure that the Client has adequately assessed if the Project is likely to affect Indigenous Peoples and to ascertain by seeking expert advice on the matter, if required, whether a particular group affected by the Project is considered Indigenous in accordance with PR7; and,
- Ensure that the Client would, as part of its environmental and social assessment process, identify the relevant requirements of PR8 applicable under the Project and how these would be addressed as part of the Client's overall Environmental and Social Management System (ESMS) and/or the Project's Environmental and Social Management Plan (ESMP).

[8] Paragraph 24(b) of the PCM RPs stipulates that: "To be held eligible for a Compliance Review, the Complaint must be filed within 24 months after the date on which the Bank ceased to participate in the Project and must relate to a Relevant EBRD Policy."

- Finally, under PR10 and PR1, the Bank has a responsibility to ensure that the Client properly identified and engaged with relevant stakeholders as an integral part of their overall environmental and social management system, the Project's environmental and social assessment process and the environmental and social management plan.

V. CONCLUSION

34. Based on this assessment, the Eligibility Assessors have found the Complaint eligible for a Compliance Review, in accordance with the Terms of Reference set out below.

COMPLAINT No: 2018/08 Nenskra HPP

TERMS OF REFERENCE FOR A 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 toward 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, in the present case, the EBRD's 2014 Environmental and Social Policy. If it is determined that there has been non-compliance, the Compliance Review will 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 any modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

Compliance Review Expert

3. In accordance with PCM RP 40 the PCM Officer will appoint a PCM Expert who was not the Eligibility Assessor, to act as the Compliance Review Expert and to conduct the Compliance Review.

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

Time Frame

5. 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.

6. 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. At the 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

7. Based on the issues raised in the Complaint, the Compliance Review Expert will determine which provisions of applicable Relevant EBRD Policies apply, and examine core compliance issues (such issues being limited to matters raised in the Complaint). Besides making reference to specific PRs, the TORs do not neglect potential inter-linkages between the different PRs.

PR 1: Assessment and Management of Environmental and Social Impacts and Issues

- Did the Bank ensure that the Client undertook adequate environmental and social assessment on the Nenskra HPP Project commensurate with and proportional to the Project potential impacts, including cumulative Project impacts and issues as specified in PR 1 paragraph 7, PR 1 paragraph 8, PR 1 paragraph 9, PR 1 paragraph 10 and PR 1 paragraph 15 and with additional requirements on assessment of cumulative impact as found in PR 3 paragraph 19 and PR 6 paragraph 8?
- Did the Bank ensure that there was an assessment of environmental impacts of associated facilities in line with Annex 2 of the ESP and PR 1 Paragraphs 7 and 9 as part of the environmental and social assessment on the Project?
- Did the Bank satisfy its obligations to ensure that Project alternatives were sufficiently assessed in the ESIA in line with PR 1 paragraph 10?
- Did the Bank satisfy its obligations to ensure that a gender impact assessment is conducted as part of the environmental and social assessment on the Nenskra HPP Project in line with PR 1 paragraph 8 and 17-20?

PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

- Did EBRD satisfy its obligations to ensure that the Client is properly applying relevant provisions of PR 5 paragraph 6 and paragraphs 10, 12 and 13 of the same PR, with regards to early and continuous consultations with affected men and women as well as with disadvantaged or vulnerable groups?
- Did EBRD satisfy its obligations to ensure that the Client carried out a socio-economic baseline assessment on people affected by the Project in line with PR 5 paragraphs 14, 15, 16 and 17, including impacts related to land acquisition and restrictions on pasture land use by the local population in line with PR 5 paragraph 37? Were the impacts on pasture areas mitigated and minimized?
- Did EBRD satisfy its obligations to ensure that the Client carried out an adequate Livelihood Restoration Framework in line with PR 5 paragraphs 22, 36, 37, 38 and 39, and a Livelihood Restoration Plan in line with PR 5 paragraph 22 to include the nature or magnitude of the land acquisition or restrictions on land use considering the customary land rights of Svans?

PR 7: Indigenous People

- Did the Bank adequately analyse the applicability of the eligibility criteria for triggering PR 7, in addition to adequately appraising whether the Client examined the potential application of PR 7?

PR 8: Cultural Heritage

- Did the Bank satisfy its obligations to ensure that the environmental and social assessment process identified relevant requirements of PR 8 applicable to the Project?
- Did the Bank satisfy its obligations to ensure that potential Project impacts on the Svan's tangible and intangible cultural heritage (including language) are being adequately assessed and addressed as part of the Client's Environmental and Social Management System and/or the Project's Environmental and Social Management Plan in line with relevant provisions of PR 8 and PR 1?

PR 10: Information Disclosure and Stakeholder Engagement

- Did the EBRD satisfy its obligations to ensure that the Client properly identified affected stakeholders and adequately engaged with them as an integral part of the Client's overall environmental and social management system, the Project's environmental and social assessment process and the environmental and social management plan as outlined in PRs 1 and 10?
- Did the Bank satisfy itself that the environmental and social assessment included a public disclosure and meaningful consultation process with affected communities as specified in relevant provisions for Category A Projects under PR 1 and PR 10?

Procedure: Conduct of the Review

8. The Compliance Review Expert may conduct the Compliance Review process in such a manner as he/she considers appropriate, taking into account the PCM Rules of Procedure, the concerns expressed in the Complaint and the general context of the Complaint.

9. Specifically, the Compliance Review Expert may:

   a) Review the Complaint to frame the compliance issues to be included in the Compliance Review;
   b) Review all documentation relevant to the Complaint;
   c) Consult with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team, and the relevant EBRD Resident Office;
   d) Solicit additional oral or written information from, or hold meetings with, the Complainants, any other Relevant Party and, further, any interested person or party as may be appropriate for the conduct of the Compliance Review;
   e) 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
   f) Take any other action as may be required to complete the Compliance Review within the required time frame and in consultation with the PCM Officer, as appropriate.
   g) Inform the PCM Officer if there would be a need to obtain additional expertise to effectively conduct the Compliance Review.

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. In conducting the Compliance Review, the Compliance Review Expert shall exercise caution with the aim of minimizing any 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 enable the Compliance Review to be carried out and concluded as expeditiously as possible and, in particular, 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 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 and methods used 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 finalizing the Report as appropriate. 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 Complainants 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.

ANNEX 1: COMPLAINT

To Ms Erica Bach, PCM Officer
Project Complaint Mechanism (PCM)
European Bank for Reconstruction and Development (EBRD)

30 May 2018

Request to the EBRD's PCM on the Nenskra HPP project

Dear Ms Bach,

In our opinion the EBRD has not complied with its Environmental and Social Policy (ESP2014) by failing to address properly the Nenskra HPP project's potentially significant impacts and harm on Svans as Indigenous People, on our culture, livelihoods, health and general well-being of the impacted community, by accepting the lack of proper public consultations, as well as by approving the project that lacks proper impact assessment and mitigation measures. Hereby we allege that the Nenskra HPP project fails to meet the EBRD's policy and Performance Requirements (PRs), especially PR 1 on Assessment and Management of Environmental and Social Impacts and Issues, PR 5 on Land Acquisition, Involuntary Resettlement and Economic Displacement, PR 7 on Indigenous People, PR 8 on Cultural Heritage and PR 10 on Information Disclosure and Stakeholder Engagement.

Therefore, we request from the PCM to start a Compliance Review of the Nenskra HPP project in the anticipation of the following:

First, the PCM should assign recognized and independent Indigenous Peoples experts and Indigenous peoples organizations, like the United Nations Permanent Forum on Indigenous Issues (UNPFII), to l review the compliance of the EBRD with its policy commitments, as well as review EBRD's Indigenous Peoples PR coherence with relevant international law and good practice, including Declaration on Rights of Indigenous Peoples, ILO Convention 169 and EU policy approach to Indigenous Peoples. Based on this review, the PCM should make recommendations for necessary steps and improvements on both project and policy level.

Second, the EBRD should trigger PR 7 for the Nenskra HPP project by acknowledging Svans' self-identification and requests to be treated as Indigenous Peoples.

Third, the EBRD should request from the Republic of Georgia conducting an appropriate alternative analysis for the Nenskra HPP project, which should be accompanied by meaningful consultations based on the special measures, such as Free Prior Informed Consent, in line with the international law protecting Indigenous Peoples' rights.

Fourth, the EBRD should require a new ESIA, should address all relevant environmental, social, gender and economic issues, taking into due account the feedback from affected communities. EBRD should commission an independent review of the new ESIA coming from project vast impact over Svan communities and citizens of Georgia.

Finally, if the above cannot be done, the EBRD should withdraw its commitment to the Nenskra HPP project, as it threatens imminent and irreparable harm to local people and the Upper Svaneti region, and it stands in manifest violations of the EBRD's applicable environmental and social standards.

1. Facts of the request

1.1. The European Bank for Reconstruction and Development approved the Nenskra HPP[1] and the Nenskta HPP Portage[2] projects in January 2018 with planned investment of USD 214 and USD 15 million respectively. Nenskra HPP is a 280 MW hydropower plant project on the Nenskra and Nakra rivers of Mestia Municipality in Georgia. Nenskra HPP represents one of 35 power plants planned to be constructed in Upper Svaneti. The project is being implemented by the State Partnership Fund and the Korean State company K-water.

1.2. Initial EIA

On October 2, 2015 the Ministry of Economy of Georgia issued a permit to JSC Nenskra Hydro to construct the 280 MW Nenskra HPP project with the following technical parameters: 135 meter high and 870-meter-long rockfill dam with a reservoir area of around 400 hectares (182 mln cubic meters) on the Nenskra River and a 13-meter-high dam on the Nakra River in order to divert the Nakra River flow to the Nenskra Reservoir.

Before the lenders group became involved in the Project in early 2015, the 2015 ESIA was completed and the public meetings were conducted in accordance with Georgian requirements. The lender group found that the consultation processes conducted until then were insufficient and asked the client to undertake more intensive and meaningful consultations while additional ESIA studies were being carried out.

1.3. ESIA for the lenders group

An Environmental and Social Impact Assessment for the Nenskra HPP project was prepared for the lenders and published on the EBRD's website in March 2017[3]. The supplemental package includes substantially modified technical parameters of the project -Namely, the height and length of the Nenskra River dam decreased to 130 meters and 820 meters, while the dam type changed to rock-filled with asphalt face, with total reservoir area 267 ha. Technical parameters for the Nakra River derivation dam were changed from 13 to 8.7 meters in length, while the diameter of the derivation tunnel was reduced from 4.5 to 3.5 meters.

Following public consultations with many unanswered questions and concerns voiced by local impacted people, and due to continued requests for additional information and greater guarantees for the safety and livelihoods of Svans, an up-dated Environmental and Social Package (E&S Package) was provided by the company and announced by lenders in November 2017[4]. This updated E&S Package was available only in English language and, in spite of our requests, it was not provided in Georgian language to those directly affected by

1 EBRD PSD: http://www.ebrd.com/work-with-us/projects/psd/nenskra-hpp.html
2 EBRD PSD: http://www.ebrd.com/work-with-us/projects/psd/nenskra-hpp-portage.html
3 EBRD ESIA disclosure on 17 March 2017: http://www.ebrd.com/work-with-us/projects/esia/nenskra-hpp-portage.html
4 JSN Nenskra, www.nenskra.ge

the project and additional formal consultations were not carried out before the dates for approval by the EBRD Board were announced for December 2017 and then January 2018.
It should be stressed, that both March 2018 as well as November 2018 ESIAs

1.4. Communication with the EBRD

- Briefing on Nenskra, EBRD AGM 2016, https://bankwatch.org/wp-content/uploads/2016/05/briefing-EBRD-GEhydro-protests-10May2016.pdf
- Nenskra hydropower plant project, Georgia; EBRD annual meeting; **May 5, 2017**; https://bankwatch.org/publication/nenskra-hydropower-plant-project-georgia
- Comments on Nenskra Hydropower Project Supplementary Environmental & Social Studies, by JSC Nenskra hydro, by CEE Bankwatch Network, Green Alternative and Balkani, http://greenalt.org/wp-content/uploads/2017/07/comments-_Nenskra_hydro20171.pdf
- Failing local communities – the Land Assessment and Livelihoods Restoration Plan for the Nenskra dam; **September 11, 2017**; https://bankwatch.org/publication/failing-local-communities-the-land-assessment-and-livelihoods-restoration-plan-for-the-nenskra-dam
- Six reasons for not financing the Nenskra hydropower project in Georgia; **December 5, 2017**; It was sent to Executive Directors of EBRD,https://bankwatch.org/publication/six-reasons-for-not-financing-the-nenskra-hydropower-project-in-georgia
- Comments on the Nenskra supplementary environmental and social studies together with the annexes related to Bern convention were sent to Management and Executive Directors of the IFIs; **January 15, 2018**; https://bankwatch.org/publication/comments-on-the-nenskra-supplementary-environmental-and-social-studies
- Issue paper for the EBRD annual meeting; **May 4, 2018**

Locals communities communication with Bank

- The members of the impacted community have shared concerns Nenskra HPP, April 2016, http://greenalt.org/other_sources/mestia-municipality-chuberi-community-collective-statement-regarding-the-nenskra-hydropower-plant/
- The members of the impacted community have shared concerns related with their status as indigenous people with the EBRD in June 2017.http://greenalt.org/wp-content/uploads/2017/07/Collective_letter_2017.pdf
- Local communities letter to IFIs, December 2017, http://greenalt.org/wp-content/uploads/2017/12/Svan_letter_against_Nenskra_December_2017.pdf
- Chuberi Community member [redacted] raised concerns regarding the indigenous people's status and lack of public participation in EBRD AGMs, in Cyprus (2017) and Dead Sea, Jordan (2018)
- **Svan Lalkhor approach to IFIs**

  Lalkhor Declaration to all IFIs on recognision of Indigenous people ; **March 14, 2018**; www.goo.gl/AJkrkW

A. EBRD response to Collective letter from Nakra and Chuberi Citizens, 2016, 6 May

1.5. This request is supported by CEE Bankwatch Network as a co-requesters.
The Svan requesters ask for confidentiality due to concerns about retaliation.

1.6. The requesters are asking the PCM to conduct a Compliance Review.

Mechanism of the European Investment Bank.

2. ADB Compliance Review Panel's Report (CRP) on Eligibility of the Compliance Review Request

2.1. Submission details: the complaint to ADB CRP was submitted 7th December 2018 by group of affected people, requested confidentiality and represented by Green Alternative employes.

2.2. In March 2018 the Asian Development Bank published a Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility (CPR's Report) of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project, Georgia.

2.3. The CRP Report's findings and conclusions are relevant to the EBRD and the PCM in the parts on inadequate impact assessment and management, consultations, gender impact, involuntary resettlement and economic displacement. However, the CRP's assessment of the Indigenous People's status of Svans is not entirely relevant due to the criteria on vulnerability, which is part of the ADB's, but not part of the EBRD's policy and relevant international law.

3. Requirements of the EBRD's ESP2014

3.1. The EBRD is committed to promoting "environmentally sound and sustainable development" in its investment which is considered by the bank as a fundamental aspect of achieving outcomes consistent with its transition mandate. EBRD is committed that projects it finances shall be structured to meet the requirements of its Environmental and Social Policy (ESP2014, art. 4), as well as applicable laws and regulatory requirement (PR1, art. 18), while greenfield projects should meet the PRs from the outset (ESP2014, art. 37).

3.2. In addition the EBRD is committed "*to promoting the adoption of EU environmental principles, practices and substantive standards by EBRD-financed projects, where these can be applied at the project level, regardless of their geographical location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent.*" (ESP2014, art.7)

3.3. "*Within its mandate, the EBRD will seek to structure the projects it finances so that they are guided by the relevant principles and substantive requirements of international law. The EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements, as identified during project appraisal.*" (ESP2014, art.8)

3.4. In this regard, the EBRD's appraisal requires that clients disclose sufficient information about projects' impacts and consult with stakeholders in a meaningful and culturally appropriate manner, as "*stakeholder engagement should be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.*" (ESP2014, art.34)

3.5. According to art.9 of the ESP2014, the EBRD recognises the responsibility of clients and their business activities to respect human rights, as this responsibility involves respecting

human rights, avoiding infringement on the human rights of others, and addressing adverse human rights impacts that their business activities may cause, or to which they may contribute.

3.6. According to ESP2014, art.10, the EBRD believes that gender equality is a fundamental aspect of a modern, well-functioning market economy and democratic society. The EBRD expects its clients to identify any potential gender-specific and disproportionate, adverse impacts, and undertake to develop mitigation measures to reduce these.

3.7. Projects are expected to meet GIP related to environmental and social sustainability. To help clients and/or their projects achieve this, the Bank has defined specific PRs for key areas of environmental and social sustainability (ESP2014, art.36). Requirements of each PR are elaborated below is separate sections.

3.8. In addition to ESP2014 the EBRD has developed an Environmental and Social Guidance Note on Hydropower that complements the ESP (does not replace it) by clarifying issues specific to hydropower projects and providing recommendations and requisites for compliance with each performance requirement.

3.9. In conclusion, in order to achieve compliance with ESP2014, the EBRD should ensure respect for human rights in projects that are designed, implemented and operated in compliance with applicable regulatory requirements, EU substantive requirements (or whichever is more stringent), Georgia's obligation under international law, the Aarhus Convention, good international practice (GIP), its own policy, PRs and Guidance Note on Hydropower.

The requesters allege that the EBRD has failed to ensure compliance of the Nenskra HPP project with the above listed policy commitment and requirements. Evidence to that and related questions are presented below in the following structure:

- Failure to recognise and treat Svans as Indigenous Peoples - Non-compliance with PR7 on Indigenous Peoples (part 4)
- Lack of coherence of PR7 with principles of UN Declaration on Rights of Indigenous Peoples, ILO Convention no.169, EU policy (part 5)
- Lack of assessment of alternatives, cumulative impact - Non-compliance with PR1 on Assessment and Management of Environmental and Social Impacts and Issues (part 6)
- Lack of gender impact assessment - Non-compliance with PR 1 on Assessment and Management of Environmental and Social Impacts and Issues and PR 2 on Labour and Working Conditions (part 7)
- Non-compliance with PR 10 on Information Disclosure and Stakeholder Engagement and commitment to respect the Aarhus Convention(part 8)
- Violation of the customary land rights of Svans, inadequate livelihood restoration - non-compliance with PR5 on Land Acquisition, Involuntary Resettlement and Economic Displacement (part 9)
- Failing to assess Nenskra project's threats to Svan culture - non-compliance with PR 8 on Cultural Heritage (part 10)

4. The EBRD has failed to ensure Nenskra project compliance with PR7 Indigenous People

4.1. Below we bring up evidence demonstrating that the ESIA conclusions are guided by political considerations rather than either detailed field work and focus group research with Svans, or by robust and objective analysis of existing academic opinions. Moreover, while the ESIA assessment is focused on the EBRD and ADB's policy criteria, these are not coherent with the UN and EU criteria and principled policy approach to Indigenous Peoples and thus betray the objective of defending Indigenous People.

4.2. We are deeply concerned that the EBRD disregarded the self-identification of Svans and our request, while it did not seek wider opinions of independent, external to the ESIA team, qualified **Indigenous Peoples experts**, but relied primarily on the promoter's ESIA and lender's own social experts. In view of the complexity of the issues, the varying definitions and criteria that apply to varying degrees, the lenders numerous **social experts**, who may lack sufficient experience on Indigenous Peoples issues, could hardly be counted as competent on either Svans identity and culture or on questions regarding Indigenous Peoples. In view of EBRD's limited experience with Indigenous Peoples, the ability of the banks's ESD's social experts to have a competent opinion on Svans should be questioned by the PCM.

4.3. The bank's E&S Guidance Note on Hydropower provides a recommendation on the need to provide International and local competences, in order to "*ensure both the application of good international practices and due consideration of the local context, a balanced mix of international and local E&S experts with hydropower sector specific experience should be involved in the preparation of category A hydropower projects.*"

4.4. Instead the ESIA assessment of Indigenous Peoples issue was conducted by one Georgian consultant, an anthropologist from the Institute of History and Ethnology of [redacted] State University of Tbilisi, who was engaged by the project to study the Svan's ethnic identity, language, history, customs, traditions, way of living, and livelihoods.[5] In spite of numerous requests from Svans and Bankwatch, and in spite of the arbitrary determination of the sufficiency with regards to the "varying degrees" of application of the PR7 criteria, it would appear that the EBRD did not encourage its client to look for wider points of view or hire its own independent international experts with specific Indigenous Peoples experience.

4.5. In this regard, the report of ADB's Compliance Review Panel (CRP) revealed that all positions with respect to the applicability of the Indigenous Peoples policy are based on the ESIA expert's views[6]. A social expert (not clear if an Indigenous Peoples expert), who was involved in the International Panel of Experts (IPOE) retained by the client also referred to this expert's opinion in the telephone discussion with the CRP[7].

4.6. Further the CRP notes that there is a body of opinions by academic researchers that contradicts the assessment done by this ESIA expert in regards some of the characteristics of Svans. Therefore, it is recommended that ADB staff should consult not only with a local scholar, but also with **a qualified social science expert and an Indigenous Peoples representative organization**.

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5 ESIA, page 24

6 Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia), page 7

7 Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia), page 7

4.7. In the face of EBRD's failure to apply its own guidance and to ensure GIP and ESP compliance (PR1 and PR7), it would be advisable that the PCM should seek opinions of external and qualified experts, including UN United Nations Permanent Forum on Indigenous Issues (UNPFII).

PCM's own track record with regards to questions on Indigenous Peoples in Mongolia has in the past caused concern and protest of complainants. Therefore, due to the complexity of the issue and the varying experiences of experts that may predetermine or prejudice their views, we suggest that the PCM appoints **a panel of experts on Indigenous Peoples**. We believe that the PCM approach to the Nenskra compliance review can set a good example of how such a contentious question should be objectively approached in the future, both on project level and for the ESP revision process, to ensure adequate protection of Indigenous Peoples.

4.8. We believe that Svans fulfill all the criteria set in PR7 to a sufficient degree and thus the application of PR7 should have been triggered with adequate provisions for special protection and Free Prior Informed Consent of Svans in the case of the Nenskra HPP project.

4.8.1. Svans are an ethnic (social and cultural group) group in Georgia, approximately 1% of Georgian population, with our own distinct cultural and religious traditions, unique language and law, which runs in communities and the region. We recognize ancestors rules and customs on land ownership and we carry on the traditional activities, such as agricultural production and livestock breeding, wood processing, crafts etc.. Svan requesters represent the indigenous population which lives in the Samegrelo-Zemo Svaneti Region. Therefore, we believe the Government of Georgia should build consensus and find an agreement with Svans about the development of the region and the projects that are planned to be constructed on the land we live in. The Georgian government plans to develop another 34 HPPs in the region, including five large reservoirs and dam projects. These developments, including Nenskra HPP threaten our culture, traditions and livelihood.

4.8.2. The EBRD has failed to establish applicability of PR 7 during the environmental and social impact assessment process. The project promoter has failed to properly categorise Svans, the impacted community, as indigenous peoples and in consequence has failed to ensure our right to determine our development, including the right to taking part in decision-making on a project situated on our traditional land. In addition, the bank's client has failed to ensure that the adverse impacts and potential harm by the Nenskra project on the community are avoided or properly mitigated. Therefore the Project does not meet the requirements of the PR7.

4.8.3. PR7 aims to protect and promote the rights of indigenous peoples by stating that projects can create opportunities for Indigenous Peoples to participate in and benefit from project-related activities that may help them fulfill their aspiration for economic and social development (PR7, art.1) and that special measures are required to ensure that indigenous men and women are not disadvantaged and that they are included in, and benefit from, bank-supported projects (PR7, art.6).

4.8.4. EBRD's PR 7, acknowledging the lack of the universal definition (PR7, art.2) and thus provides guidance on defining "Indigenous peoples". According to art.3 of PR7 of the ESP2014, the term "Indigenous Peoples" refers "*to a social and cultural group, distinct from*

dominant groups within national societies, possessing all of the following characteristics in varying degrees:
• self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
• collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories
• descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations
• customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture
• a distinct language or dialect, often different from the official language or dialect of the country or region."
It further acknowledges that the dominant culture may sometimes be unaware of or reluctant to admit the existence of an indigenous status for certain groups of people. (PR7, Art.6)

4.8.5. The Nenskra HPP ESIA included an assessment of whether the Indigenous Peoples policies of the potential financial institutions apply to the project. This assessment was done on the basis of the definitions of Indigenous Peoples used in the EBRD and the ADB policies, against the following five criteria:

- self- identification;
- collective attachment to land;
- existence of customary cultural,
- economic, social, or political institutions;
- existent of a distinct language and descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations.

The ESIA conclusion was done in accordance with the EBRD's PR7, art.3 requirement that Indigenous peoples must possess all of the characteristics **in varying degrees**. The ESIA concluded that Svans possess three characteristics to some degree, however, the degree has not been specified further. It wrongly concluded that Svans do not possess customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture. ESIA also argues that Svans do not descent from populations which have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations.

We strongly disagree with the ESIA findings and here is why:

4.8.6. **Self-identification of Svans**
Svans are the ethnic group of Georgians. Svans have own and distinct cultural and religious traditions, unique language and law, which run in communities and the region. Svans recognize ancestors rules and customs on land ownership. They carry on the traditional activity (agricultural, livestock, wood processing, crafting and etc.).

According to the Nenskra HPP project's ESIA Svans do identify themselves as Svan and are identified as such by others, and have kept specific ancient traditions and ethnographic features. Their specific cultural identity is recognised by themselves and by others.[8]

The ESIA also recognised that there are others distinct ethnic sub-groups of Georgians (apart from Svans) such as Mingrelians and Lazes, and ethnographical groups such as Imeretians, Tushs, Khevsurians, and Kakhetians[9], however, it failed to assess whether these ethnic sub-groups identify themselves as Imeretians and Kakhetians or only as Georgians. The ESIA makes a reference to the current scientific consensus based on available historical and anthropological studies that Svans are considered as an ethnic sub-group within the broader Kartvelian (Georgian) ethnos.[10]

The EBRD's procedure recognizes that the dominant culture may sometimes be unaware of or reluctant to admit the existence of an indigenous status for certain groups of people. The United Nations legal framework emphasizes the role of self-identification of indigenous people regarded as a fundamental criterion for determining the groups.[11]

The self - identification criteria has been fully met although Svans are not being recognized by the Georgian state as Svans, ethnic minority, indigenous people or ethnic subgroup.

4.8.7. **Collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories**

The ESIA informs that the Nenskra project is located in the Svaneti historical region (namely in Upper Svaneti, i.e. the upper valley of the Enguri River and tributaries), which is populated by the Svan people. Svaneti is the historical land of the Svan people. [12]

Svans are descended from the populations of Svans which inhabited the region over the past centuries. Svans preserve historical continuity with the ancestral territory, culture and language. The ESIA concludes that the land tenure in Mestia Municipality District is the product of the local history. Legal and formalized land tenure is recent, and customary land tenure prevails in most areas, including forest lands.[13]

It also refers to the 2011 report prepared by several NGOs[14], including CEE Bankwatch Network's member group Green Alternative, which explains that for centuries in Mestia, the local population has owned property by inheritance and disposed land plots as distributed (or re-distributed) based on agreements between ancestors. It also states that most land plots have in fact never been legally registered in the high mountainous regions of Georgia, such as Svaneti.

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[8] ESIA, page 25
[9] ESIA, page 219
[10] ESIA, page 22
[11] United Nations "Guidelines on Indigenous Peoples' issues , 2008, ttp://www.ohchr.org/Documents/Issues/IPeoples/UNDGGuidelines.pdf
[12] ESIA, page 22
[13] ESIA, page 21
[14] Problems Related to the Protection of Property Rights in Georgia – The Case of Village Mestia, Green Alternative, Georgian Young Lawyers Association, Georgian Regional Media Association, Transparency International Georgia and Open Society Georgia Foundation, 4 July 2011 http://greenalt.org/news/report-presentation-problems-related-to-the-protection-of-property-rights-in-georgia-the-case-of-village-mestia/

The Nenskra project's ESIA further explains that customary land tenure is well recognized in the local communities. Within the settlements, individual land plots are all well demarcated, and almost always fenced. Outside the settlements, in the forested areas, customary ownership is also most of the time well defined. Specific areas are owned by groups of extended families sharing the same ancestry, as the customary right of use of these areas is inherited.

Ownership and right of use of pasture areas are defined by customary rights. These customary rights for pasture areas are not recognized by the Georgian legal system. It is complicated to register the land, as one has to prove claimed ownership, most of the time without any existing document. Some people succeeded to officially register some residential land plots as their private land, but this is still categorized as Agricultural Land. [15]

In view of the above, the criteria for collective entitlement and/or attachment to ancestral lands has been fully met by Svans.

4.8.8. **An indigenous language**

ESIA found that this characteristic fully applies to Svans who are bilingual: they speak both their own, unwritten Svan language, as well as Georgian.

The ESIA concludes that Svan qualifies as a separate language and is different from Georgian and studies by linguists indicate that Svan, Megrelian and Laz all belong to the same Kartvelian group of languages, Svan is believed to have differentiated as a separate language in the 2nd millennium BC.[16] ESIA also finds that in Svaneti, the Svan language is used by local people in everyday interaction between Svans, while Georgian is used for any official communications and interaction with non-Svan Georgians.[17]

Available literature is not coherent assessing the number of people who use Svan language. *Ethnologue: Languages of the World* provides it is spoken by 14-15 thousands and classifies Svan's status as shifting, which means that "the child-bearing generation can use the language among themselves, but it is not being transmitted to children".[18]

Other studies double the number of Svan speakers: although Svan, spoken by approximately 30 thousands peoples is Georgia, belong to the same (Kartvelian) subgroup of languages as Georgian but is sufficiently distinct from Georgian as not to be mutually comprehensible.[19] This study also concludes that "as for Megrelian, Svan and Laz, using purely objective criteria it is hard to argue that they are mere dialects of Georgian since they are not mutually comprehensible with Georgian"[20].

It should be mentioned that well-known Georgian linguists, such as [redacted] the founders of Georgian linguistic school, identified Svan as language among the Iberian (Kartvelian) language family, along with Georgian, Zan and Laz languages. The

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[15]ESIA, page 22
[16]ESIA, page 26
[17]ESIA, page 23
[18]https://www.ethnologue.com/language/sva
[19]Jonthan Weathley, Georgia and the European Charter for Regional or Minority Languages, European Centre for Minority Issues, Page 12, https://www.files.ethz.ch/isn/102089/working_paper_42_en.pdf

[20]Ibidem, page 16

Tbilisi State University Arnold Chikobava Institute of linguistics, Kartverlian Languages Department, studies and researches Svan-Zan Languages and its dialects.[21] Also foreign linguists recognized Svan as a separate language which "*is no closer to Georgian than Icelandic is to Modern English.*"[22]

The first opposite opinion was introduced only in 21st century by group of scientists ([redacted] and etc), that cliam that Megrelian-Zan and Svan are not languages but dialects and accused the opponents that they were serving the Russian special forces.[2324] The politization of debates, coincided with the issue of signature and ratification of the European Regional or Minority Languages Charter. European Centre for Minorities Issues found that preserving regional languages in Georgia, such as Megrelian, Svan and Laz is politically contentious because to grant them recognition as distinct languages would be seen as a threat to the coherence of the Georgian nation.[25]

In this regard, it should be noted that the Svan language protection activities reported discrimination from the local institutions when they were organizing the event in Svan: '*People are happy that more serious attention is being given to the local language. However, some years ago, when we did the library project, we experienced some repression. We were kicked out of promised premises for the kick-off seminar in Mestia since the working language was Svan in addition to Georgian and English. Local librarians were threatened that they would lose their jobs if they took part in a seminar where the working language was Svan in addition to Georgian and English. The local authorities also wanted to censor the Svan version of the project's website. But with the change of the government, the attitude towards the regional and minority languages has fortunately changed for the better, in a more modern European way. Now, for instance, the local government in Mestia, alongside foreign embassies and other entities, is among the supporters of the Svan youth literature competition.*[26]

Although a member of Council of Europe, Georgia has not ratified European Charter for Regional or Minority Languages until today. In 2013 draft Instrument of Ratification of Georgia concerning the European Charter for Regional or Minority Languages has been prepared and the implementation progress report was published last year.[27] The instrument and the report refer only to the languages of national minorities whereas regional languages remained out of scope of this action. None of the Georgian regional language is institutionally protected nowadays.

Nonetheless, as the Nenskra project ESIA agrees the language criteria fully applies to the Svans, although Svan language is not protected and recognised by the Georgian state as indigenous.

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[21] http://ice.ge/ofen/kartvelian-languages-department/

[22] http://www.unijena.de/unijenamedia/Downloads/faculties/phil/kaukasiologie/Svan%5Bslightlyrevised%5D.pdf

[23] https://bit.ly/2LrhwKD

[24] http://liberali.ge/articles/view/3738/ena-tu-dialeqti

[25] Jonthan Weathley, Georgia and the European Charter (...), page 6

[26] http://dfwatch.net/support-and-resistance-for-svan-language-activism-38834

[27] Applying the European Charter for Regional or Minority Languages in Georgia 2015-2017, https://rm.coe.int/project-report-minority-languages-in-georgia-en/168072f1c4

4.8.9. **Customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture**

The ADB's CRP's report concluded that based on the body of academic literature there are also continued traditions which prevail only in the Svan community and can be classified as cultural and social institutions. Svan legal system with binding values for the Svan community exists in parallel to Georgian national legal norms and processes .[28]

For example, "Local Legal Conceptions in Svan Villages in the Lowlands" a 2012 study based on research conducted by the Georgian–German research team found out that *despite a strong administration and working law enforcement agencies, traditional law continues to be an important frame of reference for the Svans.*[29] The study describes the current practices of Svans, based on their traditions and beliefs and with their specific institutions, which substitute national legal system and which are not limited only to resolutions in instances of crime or conflicts, but also deal with such issues as problems with infrastructure. It also captures the four dimensions of the traditional Svan law which makes it distinct from the Georgian legal system.

Anthropological researches also show that although Svans are Orthodox Christians, they preserved traditional religious practices.[30] Svan religious traditions are at risks nowadays facing repressions from a dominant church in a country. With an increased influence of the Georgian Orthodox Church in Georgia, and especially in Svaneti, there were number of attempets (successful) to prohibit the traditions and religious rituals of Svans, like Lamproba, hlishi, women pray and etc.[31]

The Nenskra project's ESIA also refers to the existing studies describing traditional unwritten customs which are present with regards to the Svan's "*self-understanding of how things should be, how the extended family has to be organised, religious institutions and practices respected, and social life in the village organized.*" [32]

Further it also explains that traditional dancing and music (the distinctive Svan polyphony) are important features of the local traditional cultural heritage, which various popular folklore groups keep well alive.[33]

Svans are high mountains peoples. They represent merely 1% of the Georgian population which is estimated for over 3.9 million people. The CRP's report found that the majority of households hold livestock and livestock herding is considered a traditional activity of the Svan society with long established rights on pastures and forest for grazing of animals.[34] The majority of the impacted population (ESIA does not provide the figure) cultivates variety of crops, including 84% of population growing vegetables of various sorts in their home gardens.

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[28] Compliance Review Panel's Report on Eligibility of the Compliance Review (...), page 7
[29] Local Legal Conceptions in Svan Villages in the Lowlands, Caucasus Analytical Digest No 42, 30 September 2012, http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-42-2-5.pdf
[30] Stephane Voell, Iwona Kaliszewska, State and Legal Practice in the Caucasus: Anthropological Perspectives on Law and Politics
[31] http://www.tabula.ge/ge/verbatim/99403-tevzadze-svanetshi-martlmadidebeli-eklesia-adgilobriv-dgheobebs-krdzalavs
[32] ESIA, page 23
[33] ESIA, page 23
[34] Compliance Review Panel's Report on Eligibility of the Compliance Review (...), page 24

The ESIA reported that 38% of impacted households have at least one member permanently employed in the public service or a private company.[35] Logging was also found by the ESIA as the primary source of income for most families. The livelihood of Svans is based to a large extent of self - sufficient production of food and is only complemented by other limited sources of income.

There are no doubts that Svans represent a distinct culture, beliefs and social system from the majority of modern and dominant Georgian society, as well as a distinct legal system from that of the state.

The ADB' CRP's report noted that there is a body of scientific opinion which presents Svan legal traditions and cultural practices as distinctly different from other Georgian groups, and as distinct from the mediation processes exercised through elders in other Georgian mountain valleys.

In conclusion, we believe that the criteria on distinct Customary cultural, economic, social or political institutions is met to a satisfactory degree.

4.8.10. **Descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations**
Svans have historical continuity and association to the Svaneti region where we live. We originate from a populations which has lived in these regions for many centuries and thanks to the geographical isolation our way of life has preserved many distinct features as described above.

The Nenskra project's ESIA found that although Svan area was Christianised around the 6th century AD, traditions, including complex codes of chivalry, date back from pre-Christian times and have been maintained since due to the physical isolation of the region.

The ESIA study found that "*the traditional Svan way of life, which was predominantly based on subsistence farming and livestock grazing, has changed in recent times, and household incomes also include salaries, as well as revenues from logging and lumbering activities, particularly in the Project area; However, the traditional way of life remains prevalent and Svans have a strong cultural attachment to their region.*"[36]

ESIA limited its assessment of this requirement to a mere statement: *"The Svans are descended from tribes that were always sedentary and the Svan society has been linked and integrated to that of the rest of Georgia."* It is not required by PR 7 that indigenous peoples should originate only from nomadic tribes, as the standard only indicates that the past populations might have pursued nomadic subsistence strategies, but it does not excludes other subsistence, non-wage strategies.

The UN guidelines on the identification of Indigenous Peoples, do not establish such criteria which would prevent indigenous people from seeking income from non-traditional activities, including undertaking paid work in the dominant sectors of economy. On the contrary, ILO Convention 169 seeks to ensure that indigenous peoples enjoy the general rights of

[35] ESIA, page 30
[36] ESIA, page 25

citizenship, without discrimination and that the improvement of the conditions of life and work, levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit.

It has already been described above that Svans do originate from a population which has traditionally pursued non-wage subsistence strategy and whose status was regulated by their own customs, traditions and special traditional law which is manifested in their current way of life. Therefore the criteria is met to a sufficient degree. We request the PCM to review if the EBRD applied this criteria properly and if the formulation in the EBRD policy requires improvement, to ensure the objective of PR7 is kept and it is in line with international law on Indigenous Peoples.

4.8.11. ADB's Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia)

The Asian Development Bank Compliance Review Panel conducted an assessment of the applicability of the indigenous policy of the bank to the Nenskra project. The CRP found no evidence of non-compliance with regards to Indigenous Peoples status only on the ground that according to CRP the *Svan community is neither economically nor socially marginalized because of their belonging to the Svan social and cultural group. While income levels in the Nenskra valley are below the national average and thus many people are vulnerable, the income levels are not lower than in other mountain areas of Georgia. Their vulnerability is related to the limited income earning opportunities in the Nenskra and Nakra river valleys (...) Svans in Georgia do not display vulnerability which is related to their status as a distinct social and cultural group (...).*[37]

This request does not judge the relevance of this assessment in the context of the ADB's safeguards, however, it argues that the **EBRD's PR 7 does not require indigenous peoples to be economically vulnerable** vis-à-vis other groups - indigenous or not in the country. Therefore the CRP's report is not directly relevant for the PCM's review compliance of the EBRD with its own policy, which is different than the ADB's[38].

Svans are high mountain people, who live on isolated territories in rather difficult environment. This is their characteristic that distinguishes them from the general society. According to the Nenskra project's ESIA, 42% of the impacted populations are vulnerable, 22% are officially registered as being under the national poverty line which is twice above the national average.[39] Svans are economically vulnerable exactly because they are Svans – one percent of the Georgian population, geographically isolated and dependent on the surrounding environment with very limited opportunities for additional income.

The UN framework for the protection of indigenous peoples seek to promote indigenous people rights, including the right to development which has been largely denied by colonial

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[37] ADB Compliance Review Panel's Report on Eligibility of the Compliance Review (.https://bit.ly/2IFLpce.), page 7

38 It is worth mentioning that the EIB's definition of Indigenous peoples includes criteria such as "*a shared experience of oppression or colonisation*" which is not relevant for the EBRD (it is a subject to a separate complaint to the EIB's CM) and underscores the challenge of trying to apply different criteria in the Nenskra case and moreover to establish what is a degree of sufficiency in applying the various criteria.

[39] ESIA, page V

and modern states in the pursuit of economic growth.[40] The UN Declaration on Rights of Indigenous Peoples emphasizes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. They retain their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.[41]

Therefore the fact that indigenous peoples undertake activities in dominant sectors of economy, society, including being active in politics and government, or even being better off than other groups in society, does not undermine their status as indigenous peoples, which is determined by the objective criteria demonstrating their distinct social, cultural, political and economic characteristics vis-à-vis general society which descent from the past.

5. PR7 and in the framework of applicable United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169 and EU's Indigenous Peoples policy.

5.1. The failure of the EBRD and its client to recognise and treat Svans as Indigenous Peoples results not only from the flawed approach to implementing PR7 in the case of the Nenskra HPP project, or from limited experience at the EBRD with Indigenous Peoples, but also from inherent weaknesses and limitations of PR7. These weaknesses call for a revision of the EBRD's Environmental and Social Policy, so it can afford adequate protections to Indigenous Peoples, and a substantial revision of specifically of PR7. In view of the on-going Good Governance policies revisions, we believe that it is an opportune moment for the PCM to review this question and to come with recommendations for relevant changes in the ESP.

5.2. The EBRD's ESP2014 makes a reference to the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169 **only with regards to the application of FPIC, but not with regards to the definition of Indigenous Peoples**.

The United Nations "Guidelines on Indigenous Peoples' issues" were published in 2009 in order to mainstream and integrate Indigenous Peoples' issues in processes for operational activities and programmes at the co
try level. The guidelines refer, among others, to "The concept of Indigenous Peoples" a backgrod paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues.

It is noted in the United Nations publications that there is no universal definition of "Indigenous Peoples" however Indigenous Peoples possess certain characteristics and their self-identification as indigenous shall be regarded as a fundamental criterion for determining whether the provisions of the relevant conventions apply to the group. These publications are also sources of the examples of working definitions of indigenous peoples and their characteristics developed during the international studies in the framework of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169.

[40] State of the World's Indigenous Peoples, 14.01.2010, United Nations
[41] Frequently Asked Questions, United Nations Declaration on the Rights of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf

In this regard PR7 takes a lot more narrow approach that does not give self-determination the necessary weight in establishing whether a population is indigenous or not. The Nenskra HPP project clearly shows that the EBRD has not encouraged its client's expert
s to take a broader and principled approach basing the expert judgment on wider UN publications. Therefore we request from the PCM to assign a recognised international experts (or group of experts) to review and present an opinion on the coherence of PR7 with the UN Declaration and working definitions, in addition to determining the status of Svans in the case of the the Nenskra project.

5.3. At the EU level a focus on indigenous groups is considered of particular importance in the wider EU policies supporting social inclusion, nondiscrimination and the rights of Indigenous Peoples expressed in the UN Human Rights Conventions. Therefore the EU protects and promotes the rights of Indigenous Peoples as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is the guiding document of reference.

In 2016 the High Representative of the Union for foreign Affairs and Security Policy adopted a staff working document "Implementing the External Policy on Indigenous Peoples" which reiterates that "*the EU's external action on supporting indigenous peoples is guided by a number of principles, mainly set out in the 1998 European Commission Working Document on support for indigenous peoples in development cooperation and the corresponding 1998 Council Resolution, as well as in the Council Conclusions on indigenous peoples in 2002. These principles, to be applied in EU strategies and financing instruments including through mainstreaming, include the following:*

- *the indigenous peoples' right to their 'self-development', including the right to object to projects, in particular in their traditional areas, and the right to obtain compensation where projects negatively affect their livelihoods;*
- *the full and effective participation of indigenous peoples at all stages of the project cycle (in development cooperation) and the importance of building the capacities of organisations representing indigenous peoples;*
- *the inclusion of the concerns of indigenous peoples into the political dialogues with partner countries.*"[42]

The document also provides further guidance on the identification of Indigenous Peoples by invoking the two UN based definitions[43]:

"*Indigenous communities, peoples and nations are those which, having* ***a historical continuity*** *with pre-invasion and pre-colonial societies that* ***developed on their territories****, consider themselves* ***distinct*** *from other sectors of the societies now prevailing on those territories, or parts of them. They form at present* ***non-dominant*** *sectors of society and are determined to* ***preserve, develop and transmit*** *to future generations their ancestral territories, and their* ***ethnic identity****, as the basis of their* ***continued existence*** *as peoples, in accordance with their* ***own cultural patterns, social institutions and legal system****.*"

"*Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who,* ***irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions****" and „****Self-identification as indigenous***

[42] Implementing the External Policy on Indigenous Peoples, Staff Working Document, European Commission, 17.10. 2016
[43] Ibidem, Annex 1, page 20

or tribal shall be regarded as a fundamental criterion *for determining the groups to which the provisions of this Convention [ILO Convention 169] apply."*

Similarly, we request that the PCM with the help of an expert or a panel of experts on Indigenous Peoples examines the coherence of the EBRD policy with the EU approach to Indigenous Peoples, especially in view of its application in the Nenskra HPP project.

6. Nenskra HPP project non-compliance with ESP2014 PR 1 on Assessment and Management of Environmental and Social Impacts and Issues

6.1. The EBRD's failure to ensure adequate assessment of environmental and social impacts on Svan's results predominantly from the failure to recognise their indigenous status and to thus implement properly PR7 requirements. However, there are additional and related questions about the implementation of PR1 that we ask the PCM to review, as raised below.

6.2. ESP2014 PR 1 (art.10) requires that for Category A projects the ESIA "*will include an examination of technically and financially feasible alternatives to the source of such impacts, including the non-project alternative, and document the rationale for selecting the particular course of action proposed*".

6.3. In addition, the EBRD's E&S Guidance Note on Hydropower elaborates with regards to Assessment of alternatives the following: "*The assessment of alternatives for hydropower projects should address both (i) the energy production alternatives to the proposed scheme, (including both hydro and non-hydro projects, as well as the no-project alternative) and (ii) the alternatives and options that were envisaged and discussed between the technical and E&S teams during project preparation when optimising the location, size, structural design, construction principles and operation of the scheme (see the section "Optimisation of hydropower projects" below). The assessment of alternatives should take into account relevant Strategic Environmental Assessments and other strategic level documents, regional programmes, basin management plan or any bi-lateral/multi-lateral agreements related to the water body.*"

6.4. We would like to draw your attention to the findings of the ADB CRP regarding the assessment for alternatives which were found confidential. The CRP noted that to proceed with the Nenskra HPP reflects a political preference, the location was given and was not subject to any alternatives assessment as the location choice is only politically driven.[44] This stays in an evident contradiction to the EBRD PR 1 requiring including an examination of technically and financially feasible alternatives to the source of such impacts and document the rationale for selecting the particular course of action proposed.

6.5. Importantly the opinions and concerns of Svans have not been taken into account during a scoping stage or assessment of alternatives for the Nenskra HPP project, as moreover, it is not clear if any social considerations were taken into account at all. For example the Khudoni project downstream has already in the past caused significant Svan mobilisation and opposition to hydropower, an issue that is not unrelated to the Nenskra project[45]. Similarly, the ESIA lacks analysis of the regional development vision for Svaneti, as well as assessment of the cumulative impacts and Svans' attitude to the plans to develop no less than 35 HPPs in

[44] ADB CRP Report, https://bit.ly/2IFLpce page 8 and 9
45For example the up-dated E&S Studies refer to Khudoni dam.

Svaneti, as well as existing mining licences bordering the project area, which provoked the recent Lalkhor declaration.

6.7. In this regard PR1 Art. 9 states that: "*The environmental and social assessment process will also identify and characterise, to the extent appropriate, potentially significant environmental and social issues associated with activities or facilities which are not part of the project, but which may be directly or indirectly influenced by the project, exist solely because of the project or could present a risk to the project. These associated activities or facilities may be essential for the viability of the project, and may either be under the control of the client or carried out by, or belong to, third parties. […] Additionally, the assessment process will consider cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.*"

We allege that PR 1 was not properly implemented by the client, the EBRD has failed to ensure adequate assessment and consultation on the project's alternatives and cumulative impacts with other hydropower plants in the Svaneti region, so in this regard the EBRD has failed to ensure full project compliance with its policy. We also ask the PCM to review if the EBRD and its client have followed EU requirements and good practice in the preparation of the ESIA, particularly in the parts on scoping, alternatives assessment, river basin management and cumulative impact assessment.

7. **Lack of adequate gender assessment – project non-compliance with PR1 and PR 2 on Labour and Working Conditions**

7.1. According to ESP2014 art.10, the EBRD "*expects its clients to identify any potential gender-specific and disproportionate, adverse impacts, and undertake to develop mitigation measures to reduce these*". PR1 art.8 suggests that "*it may be appropriate for the client to complement its environmental and social assessment with further studies focusing on specific risks and impacts, such as climate change, human rights and gender*".

In addition the E&S Guidance Note on Hydropower instructs that "*[a]ll potential gender-specific risks and opportunities associated with hydropower schemes development, modernisation or operation should also be clearly and systematically identified within the frame of their assessment*".

7.2. The ESIA does contain gender disaggregated data and some analysis of gender relations, dynamics and inequalities in the project area. It identifies among directly impacted households, the ones headed by women as vulnerable. It describes in some detail the impact on women that according to the project will be directly impacted, as part of vulnerable households. However, ESIA does not assess all specific risks and impacts in relation to gender. In case of identification of "other potential impacts on vulnerable groups," the ESIA pays attention to women, "notably in regards to employment opportunities", but missed to recognize other impacts, e.g it does not analyse in depth all challenges that may arise in terms of health risks and gender impact of workers influx.

Despite the project promoter's efforts to ensure increased employment of women, as in case of most constructions, the majority of the employees up to 75% will be the man during the construction stage. The ESIA does not assess the impacts on women as the economic power

redistribution within the families may shift, increasing women's vulnerability in case of inflation and increased prices for food, possibly increased violence in the family etc.

7.3. With regards to PR2 and workforce influx the Note says: "*Depending on the project's social context, the variation in the number of workers can be associated with a wide range of social or environmental risks, community tensions or gender-related issues that should be anticipated at the project preparation stage, particularly when the required workforce is significant compared to the total project area population. These may include cultural changes, increased pressure on existing resources and services, inflation, competition for employment, health impacts, workers' accommodation management, and an influx of opportunistic service providers.*"

The EBRD guidance note also stressed that for the projects in remote locations, specific provisions related to labour and workers' accommodation should be taken into consideration in early project planning stages, in accordance with IFC/EBRD Guidance Notes on workers' accommodation. That has not been done.

7.4. According to ESIA the project will require about 1,100 workers (730 skilled and semi-skilled and 364 unskilled) during the planned 5-year construction period (612 for the dam site, 340 for the power house area, and 190 for the Nakra Intake). Taking into account the fact that about 300 workers will be recruited from the Nenskra and Nakra valleys or more widely from Mestia municipality. There is expectation that 75% will come from throughout Georgia, that means that at least 800 workers will travel to the valleys, where the total number of local people does not exceed 1400 people.

7.5. According ADB CRP eligibility report, the communities "*presently live in a very cohesive Svan culture. The massive inflow of workers during the construction period will create a security risk to the local population as is evidenced in numerous construction projects throughout the world. IFIs have noted important sexual abuses in construction projects if there is a large inflow of foreign workers who live for longer periods of time in construction camps. This risk will likely exist in the Project even though only about 25% of the workers (or about 280 individuals) are expected to be foreign workers. Workers coming in from other parts of Georgia will have different values and traditions which will clash with the cohesive values and traditions of the Svan families who have long lived in these mountain valleys. The large inflow of workers will fundamentally challenge the social cohesion and values of the Svan communities in the Nenskra river valley. As construction activities will be carried out over many years and the workers remain at the same location until the construction is completed, the impacts on the local population are likely very significant. While there will be economic benefits to the population during the construction period, these benefits will cease once the project has been constructed, as the operation of the HPP will require a minute number of unskilled labour.*"

CRP's Report is clear, that the measures proposed are more targeted for the protection of workers, rather than for the protection of local communities "*The influx of male workers who need to be separated from their families, poses risks for sexual abuse of local girls and women. There will also be a demand for entertainment facilities. The ESIA recognizes that the arrival of temporary workers may increase the level of communicable diseases and will offer to the workers awareness raising, health screening, and make condoms available. But these are measures to protect the workers, not the local population.*"

CRP considers, that almost all mitigation measures focus on the workers, "*no mitigation measures are considered to protect the population from sexual abuses and no measures to help safeguard their cultural values and traditions during the multi-year construction period*". It concludes that "*It is not the task of the CRP to design the mitigation program. But the CRP is of the view, that measures laid out in the ESIA are vastly insufficient to protect the local population*", while noting that there is a need for proactive programs to support "*the community on how to manage the transformation of the local community which, once the construction time ends and workers leave, could well remain permanently harmed and without lasting employment prospects*".

We allege that the EBRD has failed to ensure proper gender impact assessment and mitigation measures, as well as proper consultations with local stakeholders, and especially local women, on these impacts and the mitigation. Therefore, we request that the PCM reviews the EBRD's compliance with its policy commitments to promoting gender equality and protecting women from disproportionate impacts of the Nenskra HPP project. In the absense of a clear guidance on how gender impact assessment should be done, we expect the PCM findings and recommendations will help set a good standard at the EBRD.

8. **The Svans have not been appropriately consulted through the process of the Project – project incompliance with PR 10 on Information Disclosure and Stakeholder Engagement and the Aarhus Convention**

8.1. According to art.2 of PR10 the process of stakeholder engagement "*is an integral part of the assessment, management and monitoring of environmental and social impacts and issues of the project. Therefore, this PR should be read in conjunction with PR 1, and with the requirements in PR 2 regarding engagement with workers. In the case of projects involving involuntary resettlement and/or economic displacement, affecting Indigenous Peoples, having anadverse impact on cultural heritage, the client will also apply the special disclosure and consultation requirements as foreseen in PR 5, PR 7 and PR 8.*"

8.2. The UN ILO Convention 169 gives the rights to peoples to decide their development priorities through meaningful and effective consultation and participation of these peoples at all stages of the development process, and particularly when development models and priorities are discussed and decided. Consultations participation in decision-making for the Project should be conducted in a climate of mutual trust under the special measures by the state and not by the private company. General public hearing processes would not normally be sufficient. The Convention also seeks to ensure that indigenous peoples actively participate and propose measures, programmes and activities that shape their development. Participation should lead to concrete ownership of initiatives by indigenous peoples.[46]

8.3. However, as a result of failing to recognise Svans as Indigenous Peoples, PR 7 requirements for impact assessment were not triggered, an Indigenous Peoples Development Plan was not developed for the Nenskra HPP project and consultations respecting the Free, Prior and Informed Consent of Svans were not conducted. As a consequence of that the Nenskra HPP project has increased tensions within and among Svan communities in the region. Numerous strikes were organized since January, 2018 both in Svaneti and Tbilisi to protest the Nenskra project and hydropower development in the region more broadly.

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[46]Procedures for consultations with indigenous peoples, ILO, page 3, http://www.ilo.org/wcmsp5/groups/public/---dgreports/-- gender/documents/publication/wcms_534668.pdf

Due to an incident between the company and locals in Chuberi, the Salini Impregilo, the project construction contractor, was forced to halt construction and leave the area. The situation escalated so much, that on March 4, 2018 a general meeting of all Svan communities (Lalkhor) was called in Mestia and issued a joint statement on the indigenous status of Svans and demanding not to implement any hydropower or extractive projects without our free, prior informed consent.[47] More than 3,000 signatures were collected in support of the Lalkhor declaration. It should be mentioned that according to recent census only 11, 000 people are living in Upper Svaneti.

8.4. The EBRD's E&S Guidance Note on Hydropower instructs that "*stakeholders and their information needs are clearly identified and addressed [and] people receive objective information about the potential negative impacts and benefits / opportunities associated with the hydropower scheme in terms of livelihood or employment and environmental and social impacts, the risks and disturbances associated with the construction period are communicated to affected stakeholders.*"

8.5. With regards to PR 4 on Health and Safety the Note adds that "*For large dams, this assessment [on natural hazards, technological risks and infrastructure safety] has to be carried out as part of the design and should be made available in a form suitable for public consultation, together with a description of the structural and operational measures required to mitigate the risks and manage emergency situations.*" In this regard, in public hearings conducted by the client and in written communication to the EBRD local communities have raised the question of geological hazards, however, these questions have remained unanswered.

8.6. The Nenskra project ESIA outlines that the consultations conducted for the Project included:

- Meetings held with the local authorities in Chuberi and Naki villages on **5 September 2015** to inform them of the planned socioeconomic surveys and the supplementary E&S studies process;
- Public information meetings held in Chuberi village on **16 December 2015** and in Naki village on the **17 December 2015**. During these meetings the preliminary findings of the ESIA and of the other Supplementary E&S studies were communicated to the local people;
- Several meetings with the people affected by the land acquisition conducted throughout **2016;**
- Opening and operation of the Project's public information centre in Chuberi village during the **Summer 2017**; followed by formal and informal meetings organized at villagers' request;
- Meetings and consultations undertaken during the disclosure of the Supplementary E&S studies from March to August 2017, in the two valleys and in Tbilisi.

8.7. With regards to the Aarhus Convention, none of these consultations can be viewed as meaningful, effective and timely as they were conducted either after the consent to the Project had been granted. Since the permit was issued in October 2015, the consultation procedure

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47 https://bit.ly/2rwPyni

does not obey the spirit of the Aarhus Convention with regards to an appropriate sequencing of consultations before issuing the final development consent.

8.8. The ADB CRP's Report concluded that records do not provide evidence how inputs were sought from local residents on the preparation of the ESIA complementary studies. The CRP is also of the view that consultations corresponding to supplementary ESIA studies met the requirements of the ADB policies, however, the **very important consultations remain to be conducted, as substantive impact assessments and mitigation measures have not yet been defined**.[48]

8.9. In addition to inadequate consultations on the Nenskra project ESIA, the CRP's Report found that the Environmental and Social Management Plan does not sufficiently detail outstanding mitigation measures and, as these mitigation measures are not presented in the ESMP version disclosed to the public, affected households could also not participate in consultations on these measures.[49]

8.10. It was also the request of local people and CEE Bankwatch Network that the EBRD Board postpones its decision of the Nenskra HPP project until the up-dated E&S Studies (disclosed in November 2017) are presented in Georgian language for consultation with local communities, however, Management disregarded these requests and the need for FPIC of Svans.

Therefore the requesters claim that the project does not meet the EBRD PR 10 as it fails to establish the consultation process proportionally to the nature and scale of the project and its potential adverse impacts on the affected communities, especially with the view they should be treated as Indigenous People.

9. The Nenskra HP project violates a customary right of Svans to lands: Project's non-compliance with PR5 on Land Acquisition, Involuntary Resettlement and Economic Displacement

9.1. PR7 recognises that the identities, cultures, lands and resources of Indigenous Peoples are uniquely intertwined and especially vulnerable to changes caused by some types of investments so that their languages, cultures, religions, spiritual beliefs and institutions may be threatened. This is unfortunately the case for the Nenskra HPP project, however, the EBRD and its client have failed to recognise Svan's indigenous status and thus grant the project affected people additional protections.

9.2. According to PR5 art.1 "*Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and economic displacement (loss of assets or resources, and/or loss of access to assets or resources that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition 1 and/or restrictions on land use*".

9.3. Furthermore, PR5 "*supports and is consistent with the universal respect for, and observance of, human rights and freedoms and specifically the right to adequate housing and the continuous improvement of living conditions*" (art.3) in line with the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

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[48] ADB CRP Report, page 26, https://bit.ly/2IFLpce
[49] ADB CRP Report, page 21, https://bit.ly/2IFLpce

9.4. While the promoters of the Nenskra HPP project have carefully designed the project to avoid physical displacement in the sense of relocation or loss of shelter, the **project could potentially cause such severe economic displacement through loss of assets, resources, income and livelihoods, that is is questionable to what extent these impacts can be mitigated or compensated.** The clients failed attempts to design an adequate Land Aquisition and Livelihood Restoration Plan (LALRP), which have been communicated by local people and Bankwatch to both the EBRD and the PCM, only demonstrate the challenges.

9.5. The EBRD E&S Guidance Note on Hydropower states that "*Downstream resettlement is typically triggered when the operation of a hydropower scheme induces, **without possible mitigation**, any or all of the following:*

- *loss of and/or reduction in livelihoods due to river regime changes and its impacts on water use and other river related activities (fisheries, irrigation, tourism, gravel extraction), including fragile livelihoods and informal market activities*
- *the development of unacceptable risks for people living close to or using the downstream river as a result of rapid flow and level variations*
- *the loss of/reduction in livelihood as a result of water quality alteration, sediments transport disruption or the variations of water availability (daily or seasonal, in terms of flow or water level)*
- *regulatory stipulated exclusion zones within the proximity of power generation facilities.*"

The guidance note does not mention geological risks, which (together with the above mentioned potential impacts) has been of a great concern to the local community. Local people have raised concerns that mitigation of such severe impacts is not possible and the EBRD client has failed to reassure them (including by not providing an up-dated ESIA in Georgian language) or to provide any guarantees. However, resettlement was neither requested, nor proposed – instead local community was offered inadequate compensations and mitigation promises that are hard to trust. While the EBRD claimed that the updated E&S Studies of November 2018 integrated community feedback, the community did not have the opportunity to review how this was done, because the up-dated studies were not available in Georgian language.

9.6. The failure of the EBRD client to comply with the requirements of PR5 stem to a great degree from the failure to consult impacted households in a meaningful way, as required by PR 5 art.12: "*From the earliest stages and through all resettlement activities the client will involve affected men and women, including host communities. This will facilitate their early and informed participation in decision-making processes related to resettlement, and in PR 10:*

• *affected persons shall be given the opportunity to participate in the eligibility requirements, negotiation of the compensation packages, resettlement assistance, suitability of proposed resettlement sites and proposed timing*

• *additional requirements apply to consultations which involve Indigenous Peoples (as provided in PR 7) as well as individuals belonging to vulnerable groups.*"

9.7. Consistent with finding of Bankwatch fact-finding missions and local people's accounts, the ADB CRP's report found that Svans will be impacted by the economic resettlement from pasture land and the loss of eco-services from grazing in forests. It accounts that approximately 588 ha of permanent forestry and pasture land will be lost and that the exact

forest land to be diverted for non-forest purpose and its ecosystem service value have not been identified and mapped with suitable management plans. The CRP further concluded that the ESIA categorizes the pasture land as land where groups of families have customary user rights but cannot acquire ownership rights as the land has already been registered in the name of the State. Families losing access to these pastures thus only receive compensation for loss of income but not for loss of land. The project affected persons are considered displaced persons without recognizable claims to such land.[50]

The CRP did not find the land acquisition process for pasture areas fully prepared as: (i) the number of households affected remains uncertain; (ii) compensation for income lost from pasture use foregone, is adequately compensated by the supply of fodder for the period of seven years, but compensation for permanent loss of pastures, has not been yet been designed and agreed upon with the populations; (iii) comprehensive consultation processes still need to be conducted with the population on these issues.

The CRP rightly pointed that the issue of access to pastures is not trival and must be carefully dealt with: "*The user rights of pasture areas are also an emotionally charged issue in the Svan community. The majority of households hold livestock and livestock herding is considered a traditional activity of the Svan society with long established rights on pastures and forest for grazing of animals*".[51]

In view of the above, we request that the PCM should carefully review the clients implementation of PR5 and the EBRD's compliance with regards to ensuring respect for human rights and freedoms of local communities affected by the Nenskra HPP project, and specifically the right to adequate housing and the continuous improvement of living conditions.

10. A threat to Svan culture and well-being of the community. Non-compliance with the PR 8 on Cultural Heritage

10.1. The aim of PR8 is to protect cultural heritage and to guide clients in avoiding or mitigating adverse impacts on cultural heritage in the course of their business operations. Clients are expected to be precautionary in their approach to the management and sustainable use of cultural heritage. It requires that the intensity of the study of cultural resources should be adequate for characterising the potential impacts and issues of the project and reflecting the concerns of relevant stakeholders.

10.2. With regards to PR8 the E&S Guidance Note on Hydropower notes that "*cultural heritage can be intangible, as well as tangible, and this can be particularly true for the significance of water to a culture or population, including indigenous peoples*".

For example the Nenskra HPP project may impact the Svan language if it undermines cohesive values and traditions of the Svans. UNESCO acknowledges the Svan language as the definitely endangered language, spoken by around 30000 people in Zemo an Kvemo Svneti. However, the ESIA does not address how project would impact the Svan language and its culture.

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[50]CRP Report, page 23, https://bit.ly/2IFLpce
[51]CRP Report, page 25, https://bit.ly/2IFLpce

10.3. Furthermore the Note points that graves, cemeteries, places of worship, sacred sites are culturally sensitive assets. Many Svans bury their dead on the territory of their farm (in their yard practically), which makes every yard a sacred or culturally significant place of worship and respect of the ancestors. In at least one known case the works for expanding of the access road for the project threatened a family graveyard without proper assessment and preliminary consultation with the household. It is needless to say that such situations not only demonstrate inadequate impact assessment, but also can cause significant tensions between local communities and the Nenskra project promoters.

10.4. The project may impact Indigenous People in various ways so the EBRD's procedure was established to help to identify some of the project impacts. The ESIA has not assessed properly, and in some cases did not even identify, all the possible impacts of the project. For example the impact of influx of workers has not been identified and assessed by ESIA.

10.5. The ADB CRP was of the view that the Svan culture will be seriously threatened by this Project. It pointed that the population, with its culture, has already been seriously impacted by the Enguri Hydropower Plant-HPP when several Svan villages have been flooded, and risks being impacted by the Khudoni HPP already approved for the lower part of the valley. It further concludes that local residents and Svan culture will be very seriously impacted by the massive inflow of workers into the narrow valley during at least 5 years of construction period and to some extent by the economic displacement from pasture land and the loss of eco-services from grazing in forests. [52]

The majority of workers will arrive from across Georgia and some of them will stay to live in Nenskra, *which presently is populated by only 268 households and who presently live in a very cohesive Svan culture.* [53] The CRP had no doubt that external workers will have different values and traditions clashing with the cohesive values and traditions of the Svans in a result of which it will fundamentally challenge the social cohesion and values of the impacted communities. These impacts are likely to be very significant while benefits for the local population will be short term. [54]

Therefore we allege that the Nenskra HPP project does not meet the EBRD PR 8, so the EBRD and its client have failed to ensure protection of Svan's cultural heritage.

11. Conclusions

We believe that this request, which alleges non-compliance of the Nenskra project with the EBRD PRs 1, 5, 7, 8 and 10 justifies the following requests:

First, the PCM should assign recognized and independent Indigenous Peoples experts (or a panel of experts), who will review the compliance of the EBRD with its policy commitments, as well as review EBRD's Indigenous Peoples PR coherence with relevant international law and good practice, for example with the UN Declaration on Rights of Indigenous Peoples,

[52] CRP Report, page 7, https://bit.ly/2IFLpce
[53] CRP Report, page 19, https://bit.ly/2IFLpce
[54] CRP Report, page 19, https://bit.ly/2IFLpce

ILO Convention 169 and EU policy approach to Indigenous Peoples. Based on this review, the PCM should make recommendations for necessary steps and improvements on both project and policy level.

Second, the EBRD should trigger PR 7 for the Nenskra HPP project by acknowledging Svans' self-identification and requests to be treated as Indigenous Peoples.

Third, the EBRD should request from the Republic of Georgia conducting an appropriate alternative analysis for the Nenskra HPP project which should be accompanied by meaningful consultations based of the special measures, such as Free Prior Informed Consent, in line with the international law protecting Indigenous Peoples' rights.

Fourth, the EBRD should require a new ESIA and should then commission an independent review of the new ESIA, taking into due account the feedback from affected communities.

Finally, if the above cannot be done, the EBRD should withdraw its commitment to the Nenskra HPP project, as it threatens imminent and irreparable harm to local people and the Upper Svaneti region, and it stands in manifest violations of the EBRD's applicable environmental and social standards.

The complaint signatories :

[redacted], CEE Bankwatch Network

[redacted] Green Alternative,

N	Name, Surname	Address, contact,	ID number	Signature
1.	[redacted]			
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ANNEX 2: BANK MANAGEMENT RESPONSE

EBRD Management Response to "Request to the EBRD's PCM on the Nenskra HPP project" issued by Green Alternatives on 30 May 2018

10th July 2018

INTRODUCTION TO EBRD'S MANAGEMENT RESPONSE

The following response provided by EBRD management to the Complaint is organised as follows:

1. The requests made in the Complaint and EBRD Management's initial response;
2. A brief description of the project followed by a summary the EBRD's appraisal prior to Board approval;
3. A description of the Nenskra E&S governance structure and the Independent Panel of Experts;
4. The ESIA consultation and disclosure process and the achievement of meaningful consultation;
5. A summary of Stakeholder Concerns and Project Sensitivities as presented to the EBRD Board of Directors and during EBRD's consultation prior to approval;
6. Detailed review of the applicability of EBRD's Performance Requirement 7 - Indigenous Peoples – to the Nenskra HPP project;
7. Further summary of EBRD's response to the secondary issues raised by the Complainant; and
8. Closing statement.

THE COMPLAINT AND EBRD MANAGEMENT'S INITIAL RESPONSE

The Complainant commences by making the below requests to the PCM office: EBRD management has provided a brief summary of the position of the Bank with regard to each of these request for consideration by the PCM expert.

1. ***PCM establish a panel of IP experts to review the applicability of PR7 to the Svans in the context of the Nenskra HPP project:*** while it is not for EBRD management to comment on decision making of the PCM office, for the reasons set out in the following sections of the management response, EBRD's position is that PR7 does not apply in the case of Nenskra and can confirm that this issue has been reviewed by multiple IP independent experts who have come to the same conclusion. EBRD does not therefore believe there would be any merit in revisiting this once again.
2. ***EBRD should "trigger" PR7 for the Nenskra HPP project:*** EBRD is confident that the analysis undertaken by the Sponsor and their advisors and the multiple reviews thereafter categorically confirms that PR7 does not apply to the Nenksra project.
3. ***EBRD should request from the Government of Georgia that FPIC should be incorporated into project selection:*** Demands for re-evaluation of the status and recognition of the Svans as IPs using criteria other than PR7 is a matter to be raised by

the Complainant with the Government of Georgia. This is outside the jurisdiction of the EBRD, the Nenskra HPP project and, EBRD management believes, the PCM process.

4. ***EBRD should require a new ESIA … taking into consideration feedback from affected communities***: EBRD has confirmed that the Nenskra HPP ESIA meets the Performance Requirements and that meaningful consultation has been achieved. There is no plan to request that the Sponsor redraft the ESIA.
5. ***EBRD should withdraw its commitment to the Nenskra HPP project:*** The EBRD Board of Directors voted in support of the project with full transparency of the risks, issues, opportunities and stakeholder concerns, and in the knowledge that a PCM may be raised. As such, there is no intention to resubmit to EBRD's Board for reconsideration.

Each of the other aspects of the complaint are addressed in the following sections of this Management Response.

THE PROJECT

The Nenskra HPP Project has been Categorised A in line with EBRD's 2014 Environmental and Social Policy (ESP) thereby requiring a formalised and participatory Environmental and Social Impact Assessment (ESIA) to be prepared by the Project Sponsors in accordance with EBRD's Performance Requirements (PRs). The proposed hydropower scheme includes the construction of a large dam which therefore triggered Category A requirements; in addition the project comprises a large and complex greenfield development with a number of significant environmental and social sensitivities.

A detailed project description is provided in the ESIA and, as indicated, the Project includes a number of "large" (as per International Commission of Large Dams definitions) infrastructure components as well as extensive tunnelling for the transfer of water from a neighbouring catchment. The Project's catchment area is entirely within Georgia, however, it is highly sensitive from both social and environmental viewpoints. The Project footprint is therefore relatively large and complex and has been carefully considered during the preparation of the ESIA by the Sponsors and resulting due diligence by EBRD.

EBRD'S PROJECT APPRAISAL

Environmental and Social Due Diligence (ESDD) was supported by the appointment of an independent firm of international consultants with expert experience in the country and sector. The consultants were in place for the entire ESDD process and will be retained for project monitoring. Each step of the ESDD and monitoring has therefore been subject to independent review.

In 2015 an Environmental Impact Assessment (EIA) was prepared for national permitting needs. The first stage of ESDD was to undertake a Gap Analysis of the EIA against the EBRD's PRs and to set out the requirements of a Supplementary Disclosure Package to ensure that the Project is structured to meet EBRD's ESP. Furthermore, the capacity of the Sponsor and the EPC contractor to implement EBRD's requirements was assessed in detail throughout.

Initial findings of the ESDD indicated that the upper catchment area of the Project is home to a population with a strong identity, some of who oppose the project. In addition, ESDD identified that there was ambiguity around the status of potentially protected areas in which the Project is to be located. As a result the supplementary assessments paid detailed attention to issues associated with local populations and biodiversity.

Following the completion of the Gap Analysis the Sponsor retained an ESIA consultant to prepare the supplementary studies and a disclosure package. ESDD included detailed review of the development and output of these studies which culminated in the disclose of the ESIA in March 2017, bringing together three years of detailed studies and input in order to ensure that the project is structured to meet EBRD's requirements. In parallel the Sponsor assembled a strong team of experts to deliver upon the ESIA commitments.

ESDD completed by the Lender group and the independent consultants has confirmed that the ESIA meets the EBRD's ESP and PRs although it is recognised that this is a complex project with a number of E&S sensitivities.

E&S Governance & International Panel of Experts

Due to the complex and sensitive nature of the project it was concluded that it would be beneficial for all stakeholders if an independent panel of experts (IPoE) be convened to provide additional oversight and transparency into the project design and implementation arrangements. The IPoE is at liberty to provide professional judgement of the Project E&S performance without influence from the Sponsor or any other stakeholder. The IPoE has issued a number of reports on items such as dam safety and stakeholder engagement which have been disclosed alongside the ESIA package.

The IPoE is chaired by the vice-president of the International Hydropower Association and assisted by a pool of experts in geological and natural hazards, asphalt faced rock fill dams stability, seismic risks and social assessment. The IPoE has completed several reviews of the Project documents, and, all recommendations made by the IPoE were taken into account into the revised Project design. The IPoE opined on the latest version of the technical documentation, and the Sponsor agreed to involve the IPoE into the next project stages, until Project operation commences.

A significant benefit of the IPoE's review of the Project has resulted in design changes which removed the requirement for physical resettlement of local communities which was anticipated under previous designs. In addition, several recommendations regarding dam design and public safety have significantly mitigated risks associated with the project design and future operation.

ESIA Disclosure & Pubic Consultation

The ESIA has been subject to public disclosure and the IPoE and lender's E&S consultant confirmed that meaningful consultation has been achieved. A large number of comments have been addressed to the Sponsor, and the EBRD, from local populations and CSOs and an extensive explanation of how each and every enquiry has been addressed has been prepared, and

disclosed, by the company in the form of a Public Consultation Report (PCR) which is disclosed alongside the ESIA package. As a result of this public consultation and feedback mechanism several additions to ESIA chapters have been made during the consultation period and the Sponsor remains fully committed to continued dialogue and transparency when addressing stakeholder concerns.

STAKEHOLDER CONCERNS AND PROJECT SENSITIVITIES

Specific concerns raised by CSOs include issues associated with: adequacy of previous versions of the EIA; absence of the classification of local populations as "Indigenous Peoples"; construction of the Project in a potentially protected area; level of assessment of natural hazards; the way cumulative impacts have been assessed; and the way in which stakeholder engagement has been conducted. Each of these concerns has been addressed by the Sponsor in the ESIA and the PCR. A selection of pertinent issues are briefly summarised below although it should be noted that extensive information on these topics is presented in the ESIA and is not fully duplicated here:

- Community safety, natural hazards: the area in which the Project is to be located is mountainous and natural hazards exist. The ESIA and the Project's technical documentation have been reviewed by the IPoE and recommendations were made which resulted in further reducing such risks impacting the Project and therefore community safety. The dam construction method, location, and foundation design have all been adapted to mitigate the risks of natural hazards impacting on dam integrity.
- Physical Resettlement: physical resettlement of local populations has been avoided in entirety through mitigation by design. While a relatively large footprint is still required, the minimisation of resettlement related activities is an example of a positive outcome of the ESIA and ESDD process. In addition, of the land that is required, there is limited loss of pasture land. In Nenskra valley the Project land-take represents 5% of arable land (cultivated and noncultivated) out of which 0.75% will be affected permanently, and 2% of pasture land, of which 0.8% will be affected permanently. In Nakra valley, the land take represents a loss of 1% of the land used for pasture only, of which 0.16% will be affected permanently, and there is no loss of arable land..
- Indigenous Peoples: Complainant CSOs strongly believe that Svans meet the defined criteria of Indigenous People as stipulated by the EBRD's ESP and thus should be treated as such for the purposes of the Project's analysis. The ESIA provides detailed analysis of the identity of the Svans vis-a-vis lender policies which confirms that Performance Requirement 7 is not triggered.
- Protected Areas: the Project area was formerly within a proposed protected area, the boundaries of which were later refined. The Sponsor adopted a precautionary approach and has assessed the project both as if it is located within and outside a protected area. The resulting studies demonstrate that the impacts can be appropriately mitigated under either scenario.
- Regulatory environment and capacity of the Sponsor: EBRD has worked closely with the Sponsor throughout and indicated the need for a robust E&S governance and reporting structure to be developed. This is now in place in readiness for project construction.

APPLICABILITY OF EBRD'S PERFORMANCE REQUIREMENT 7 – INDIGENOUS PEOPLES TO THE NENSKRA HPP PROJECT

A large proportion of the complaint relates to the applicability of PR7. As such, EBRD management provides the following summary of the ESIA content and the decision making when confirming that PR7 is not applicable to the project.

The proposed Project is located in the Nenskra and Nakra valleys, situated in the north-western part of Georgia in the Samegrelo-Zemo Svaneti Region. The Nenskra valley, comprised of Chuberi village, and two hamlets which are part of the Khaishi village, has 1,148 permanent residents (268 households) living in 13 hamlets along the river. The Nakra valley encompasses Naki village and one hamlet from Lakhalmula village, and has 300 permanent residents (85 households) living in 5 hamlets. About 30 to 40 families now reside outside the two valleys, and return only for the summer months. The vast majority of people in the valleys were born there, identify themselves as Georgians and as belonging to Svan ethnographic group.

Through the environmental and social supplementary studies, the Project assessed whether Lenders' "Indigenous Peoples" policies apply. In addition to various social experts who worked on the environmental and social supplementary studies for the Sponsor, an anthropologist[1] from the Institute of History and Ethnology of Iv. Javakhishvili State University of Tbilisi was engaged by the Project to study the Svan's identity, language, history, customs, traditions, way of living, and livelihoods. The study also reviewed the set of characteristics from the potential Lenders' policies. An additional review of the findings was provided by an independent international social expert appointed as part of International Panel of Experts. Furthermore, the Lender's social experts reviewed the output of the ESIA as did an Independent E&S Consultant all of who confirmed that the IP chapter in the ESIA was sufficient and that PR7 did not apply. Prior to EBRD Board approval this was re-reviewed by USAIDs social specialists and latterly by ADBs compliance function. All parties conclude that PR7 does not apply.

The following experts have therefore been engaged in the review of the applicability of PR7:

1. ESIA authors social specialists;
2. Independent anthropologist from Tbilisi University;
3. Independent Panel of Experts (social specialist);
4. Lenders social specialists (ADB, EBRD, EIB and AIIB in particular);
5. Lenders Independent E&S Advisor (two firms, one for due diligence and one for monitoring);
6. USAID social specialists; and
7. ADB compliance function.

In addition, the ESIA disclosure to the general public did not raise any additional concerns on the applicability of PR7 other than to the Complainant. Each of the above has confirmed and reconfirmed that PR7 does not apply to the Svans and this is presented in a number of publically available documents.

[1] The lender group also consulted with two more local anthropologists who wrote publications about Svans.

Further Explanation

EBRD's PR7, para 3, uses the term "Indigenous Peoples" is used in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of the following characteristics in varying degrees:

1. self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
2. collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories
3. descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations
4. customary cultural, economic, social or political institutions that are separate from those of the dominant society or culture
5. a distinct language or dialect, often different from the official language or dialect of the country or region.

On numerous occasions by a variety of experts it has been confirmed that all of these criteria do not apply to the Svans. The short note below provides further justification.

1. ***Self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others.*** The Svans are an ethnographic group of Georgians (Kartvelians or Karts) who are predominantly concentrated in the northwestern mountainous part of Georgia, but who also live dispersed throughout Georgia. Together with other Kartvelian ethnic sub-groups such as Mingrelians and Lazes, and ethnographical groups such as Imeretians, Tushs, Khevsurians, and Kakhetians, the Svans form the Georgian nation and the state. Like other ethnographic groups in Georgia, Svans – including people living in the Project area – identify themselves as Svan (and also identify themselves as Georgian at the same time), are identified as such by others, and have kept specific ancient traditions and ethnographic features. Their affiliation to the ethnographic group of Svans is recognized by others. The Georgian state recognizes the Svans as an integral part of the Georgian ethnos and modern Georgia they are included into the official census as Georgians.

The first characteristic therefore partially applies.

2. ***Collective attachment to geographically distinct habitats, or ancestral territories in the project area and to the natural resources in these habitats and territories.*** The Svans have been historically attached to the territories where they currently live. They have lived many hundred years on the territory known as Svaneti, and their cultural traditions have evolved in this environment. They display a collective attachment to their distinct habitat which they consider as their ancestral territory. Svans' traditional occupations included a combination of land cultivation (barley, oat and millet), cattle breeding, hunting, and artisanal activities. The Svan way of life has evolved with time: farming has diminished and new income sources have appeared, including logging and formal employment in the public and private sectors. At present, household incomes include salaries from both public and private sector jobs and national assistance schemes. Svan are involved on dominant sectors of society (i.e. tourism) and are

active participants in waged activities. The majority of families in the Project area engage in several remunerative activities. About 30% of families in the two valleys (133 HHs or 38%) have at least one member employed either in public service or by private companies. Few household reportedly depend exclusively on subsistence farming (25 families or 7% of 353 households). Two-thirds of the families are receiving pensions or other government payments. Logging was recognized as a key income source in the economy of the valleys by most informants. Agriculture and livestock farming are largely for home consumption. This multiple activity pattern is typical of mountainous regions in Georgia.

The second characteristic therefore partially applies.

3. ***Descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations.*** The Svans are descended from populations who have traditionally pursued non-wage subsistence strategies (although their contemporary subsistence strategies are diversified and include waged livelihoods). However, the Svan society has been linked to, and integrated into the rest of Georgia since the 9th century AD, from a legal, political, social, economic and administrative perspective, without specific laws or regulations.

The third characteristic does not apply.

4. ***Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture.*** The Svans are fully incorporated into the legal, political, social, economic and administrative systems of Georgia. Being a component of the Georgian society, they do not maintain customary economic, social or political institutions distinct from those of the Georgian society. The Svans enjoy all rights that the 1995 Constitution of Georgia bestows on all citizens of the country. Like other communities in the mountainous regions of Georgia, Svans have their specific traditions and customs, spiritual culture, agricultural practices, and pre-litigation conflict resolution measures involving consultation with respected elders. But these traditions and customs are also an integral part of Georgian cultural heritage. In terms of religious identity, Svans are Orthodox Christians and the local orthodox clergy is attached to the Georgian Orthodox Church. They adhere to the Georgian Orthodox faith along with other Georgians, together contributing to about 83% of Georgian Orthodox Christians in the country's population, based on 2014 census.

The fourth characteristic does not apply.

5. ***A distinct language often different from the official language of the country or region.*** The Svan, Mingrelian and Laz languages belong to a family of Georgian (Kartvelian) languages, of which Georgian is a part. According to some scientific opinion, Svan, Mingrelian and Laz are considered as dialects of the Georgian language. The Svans believe that Svan has retained lexical units from the proto- or the Old Georgian language The Svans and Mingrelians frequently posit they speak the variations of the same old Georgian language. The Svans in the project area are bilingual: They speak Svan, and Georgian, the official state language. Georgian is the only

Kartvelian language that is formally written and taught, and is the literary language used by all Georgians.

The fifth characteristic applies to Svans.

As a result only one of the five characteristics defined under PR7 applies in full, two do not apply and two partially apply. In order for PR7 to be triggered all of the characteristics should apply which is clearly and justifiably not the case.

Another key aspect of PCM complaint relates to the Svan's vulnerability. Vulnerable social and cultural groups can be defined as social and cultural groups that experience a higher risk of poverty and social exclusion than the general population. This is not found to be the case for the Svans and the people living in the Project area. There is no available record that shows the Svans were a marginalized and vulnerable social and cultural group vis-à-vis other ethnographic groups in Georgia. Also, livelihoods of the Svans in the Project area are generally similar to those found in other remote mountainous region of Georgia. The Svans have access to, and benefit from, the same modern commodities as the rest of Georgian population. In conclusion, although Svans do show to a certain degree some of the characteristics of "Indigenous Peoples", mainly because of the difficult accessibility of Upper Svaneti, the affected Svan communities are not considered to meet the EBRD's PR7 definition of "Indigenous Peoples", and therefore the policy is not triggered.

The above presents a comprehensive summary of the Svans in relation to the Nenskra Project and EBRD's PR7. A large proportion of the complaint registered with the PCM regarding demands for re-evaluation of the status and recognition of the Svans as IPs using alternative criteria is a matter to be raised by the Complainant with the Government of Georgia and is outside the jurisdiction of the Nenskra project, the EBRD and the wider lender group, and – in the opinion of EBRD management – outside the function of the PCM.

The various publically available documents confirming the above position can be viewed below:

- Nenskra ESIA: Social Impact Assessment includes the analysis of PR7: http://nenskra.ge/en/reports/
- EBRD PSD with explanation of PR 7 decision making: https://www.ebrd.com/work-with-us/projects/psd/nenskra-hpp.html
- USAID Report which includes a review of the applicability of PR7: https://ecd.usaid.gov/repository/titlexiii/2017/Trip_Report_32.pdf
- ADB Compliance Review Report: https://lnadbg4.adb.org/dir0035p.nsf/alldocs/JABM-ATX46V?OpenDocument

As an aside, it is worth noting that during the early phases of the Project preparation (prior to EBRD's involvement) it is understood that there was an issue with English-to-Russian linguistic confusion stemming from the fact that the term "indigenous" might have been mistakenly translated and related to the local population, as "**местный**" (which means "local") rather than "**коренной**" (which means "indigenous"). The Svan community (who are Russian speaking)

naturally consider themselves local, and thus strongly resist any perceived challenges of them being local to the region. The Bank's due diligence, assessment and conclusions do not relate to the term "local" but rather to "indigenous".

EBRD Response to Secondary Issues raised by the Complainant

The remaining items raised by the Complainant can be grouped as follows:

- Performance Requirement 1: Adequacy of the ESIA process
- Performance Requirement 1: Alternatives Analyses
- Performance Requirement 1: Gender Assessment
- Performance Requirement 5: Land acquisition & Economic Displacement
- Performance Requirement 8: Cultural Heritage
- Performance Requirement 10: Stakeholder Engagement / Meaningful Consultation

EBRD notes that each of the issues raised by the complainant related to the above have been directed to the company and the EBRD previously. Each of the above were received prior to and during the ESIA consultation period and a Public Consultation Report (PCR) was issued and disclosed alongside the ESIA package. Where necessary, the ESIA chapters were modified to assist the reader in clearly understanding each of these issues. The PCR can be found at the following link and provides detailed answers and justification to each and every comment received during the ESIA consultation period from a range of project stakeholders.

http://nenskra.ge/inc/uploads/2017/04/ES-Nenskra_PCR_-27-October-2017.pdf

In addition, the company and the EBRD provided specific feedback to Green Alternatives outside the consultation period, bilaterally, on each of these items. While EBRD does not intend to repeat all of these justifications in this management response a brief summary of each of the issues follows. EBRD management does appreciate the feedback provided and the project and the ESIA has benefited from the inputs of all project stakeholders.

Adequacy of the ESIA process

As detailed previously, in 2015 an Environmental Impact Assessment (EIA) was prepared for national permitting needs and presented to the lenders during the early stages of project appraisal. A Gap Analysis of the EIA against the EBRD's PRs was subsequently undertaken and the requirements of a Supplementary Disclosure Package were established to ensure that the Project is structured to meet EBRD's ESP. The Sponsor and the Lenders therefore acknowledged that additional works were required to meet the Lenders requirements in addition to the national permitting needs.

Following the completion of the Gap Analysis the Sponsor retained an ESIA consultant to prepare the supplementary studies and a disclosure package. The following ESDD covered an extensive appraisal which included detailed review of the development and output of these studies which culminated in the disclose of the ESIA in March 2017, bringing together three

years of detailed studies and input in order to ensure that the project is structured to meet EBRD's requirements.

ESDD completed by the Lender group and the independent consultants has confirmed that the ESIA meets the EBRD's ESP and PRs although it is recognised that this is a complex project with a number of E&S sensitivities.

Alternatives Analyses, Gender Assessment & Cultural Heritage

Contrary to the statements made in the complaint a detailed Alternatives Analysis is included in the ESIA as is a Gender Assessment and an impact assessment to Cultural Heritage. EBRD encourages any interested parties to read the chapters in detail. As with all aspects of the ESIA, this has been reviewed by a range of specialists and advisors all of whom have confirmed that Performance Requirements 1 & 8, as they relate to these issues, have been met in full.

With specific regard to the Gender Assessment, EBRD has worked with a range of stakeholders to go beyond compliance with the ESP and EBRD has developed a Technical Cooperation project to support the Project to improve equal opportunities through development and implementation of a gender action plan.

Land acquisition & Economic Displacement

A Land Acquisition and Livelihood Restoration Programme has been drafted and disclosed and project affected people have been consulted extensively. As is the case with all LALRPs, this process will evolve overtime and stakeholders will continue to be consulted widely. The LALRP indicates that loss of land will be compensated at full replacement cost, which is in line with PR5. For permanent loss non legalisable lands used by affected people, the project has committed to paying for land at full replacement although most of this land is not in private ownership. The Complainant issued a report into the LALRP previously and the company and the EBRD have provided detailed answers on this issue several times, including clarifying factual inaccuracies in the statements made by Green Alternatives. ESDD has confirmed that PR5 has been met in full.

Stakeholder Engagement / Meaningful Consultation

EBRD notes that the Complainant did not attend the open-house information sessions as part of the ESIA disclosure process which were well attended by local communities and conducive to open and frank discussions. These sessions were attended by the lenders, the lenders advisors and the Independent Panel of Experts, all of who confirmed that meaningful consultation had been achieved. The company and the EBRD remain open to stakeholder feedback outside of the ESIA disclosure process and welcome all and any enquires and suggestions for project improvements. Such engagement continues outside of the ESIA disclosure process.

EBRD Closing Statement

EBRD welcomes the opportunity to provide further explanation regarding the assessment and appraisal of the Nenskra HPP that informed EBRD management's key decision making prior to presenting the project to EBRD's Directors for consideration. EBRD is fully committed to receiving stakeholder feedback and in the case of the Nenskra HPP this has strengthened the

project in a number of areas. The Complainant in particular has contributed considerably in the strengthening of the Nenskra HPP and constructive NGO feedback is very welcome.

The due diligence process for the Nenskra project undertaken by the EBRD spanned more than three years and each and every issue has been considered in upmost detail, not only by the company and EBRD, but the wider Lender group and a host of independent advisors, consultants, specialists and academics. EBRD is therefore confident that the project has been structured to meet the Performance Requirements. With specific regard to Indigenous Peoples, this is the first time that the applicability of PR7 to an EBRD project in Georgia has been reviewed in such detail and it has clearly attracted considerable attention. As a result this subject has been reviewed and re-reviewed on numerous occasions and EBRD's view is that there is little benefit in reopening the issue again. EBRD believes that the requests made in the PCM with this regard are a matter to be raised by the Complainant with the Government of Georgia, not the project, the lenders or the PCM process.

ANNEX 3: CLIENT RESPONSE

JSC Nenskra Hydro

JSC NH Response to the EBRD's PCM "Opportunity to Comment"

Below our response to the complaint letter sent by Green Alternative to the EBRD May 30, 2018. Note we are not commenting on the recommendations Green Alternative made to the EBRD since this is specifically addressed to the EBRD. The main issues that JSCNH is addressing in the response to the PCM are:

- Consultation process.
- Adequacy of impact assessment and mitigations.
- Land access.
- Cultural Heritage.
- Indigenous people.

The ES Supplementary Package followed extensive consultation and disclosure process. A multi-modal approach was used to ensure that a maximum number of people were informed about the existence of the supplementary packages so that they could raise their concerns, questions and recommendations. The recommendations and concerns of stakeholders were taken into account either in the revision of the ES Supplementary Package (SP), the project design or in project plans, for example the Community Investment Program. The disclosure period was from 14 March to 24 August, 2017, allowing sufficient time for people to comment. Many different means were used to consult with stakeholders, including:

- Large public consultation meetings in Tbilisi and in the project area.
- Distribution of USBs to community members including the Supplementary Packages and issue-based brochures.
- Provision of physical copies at the Mestia Municipality and in the project information centers in Georgian and in English.
- Focus group meetings with vulnerable people.
- Uploading the SP on the JSCNH website and potential lenders website.
- Conducting surveys to determine level of understanding or information requests.
- Disclosing information through social media and press releases.
- Open house focusing on the key issues raised by the communities.

JSC Nenskra strongly believes the level of effort to inform and consult stakeholders far exceeded the potential lender requirements. In addition, JSC Nenskra made an effort to engage with Green Alternative to address their concerns through a face to face meeting, however unfortunately, the invitation was not accepted. Also note that ADB's CRP personally mentioned to JSC Nenskra their satisfaction with the 2017 consultation process. In early 2017, the potential lenders requested from JSC Nenskra the need to improve the engagement with the communities, this request was accepted by JSC Nenskra and consequently JSC Nenskra established an E&S department, hiring additional resources to ensure more meaningful consultation was achieved. We believe we have been responsive to lender requests and stakeholder comments.

Further information on the consultation and disclosure process is available in the JSC Nenskra Public Consultation Report available at http://nenskra.ge/en/reports/, including the questions raised by stakeholders and the responses provided by JSC Nenskra and experts. The final ES package is available at the Mestia Municipality, Information Centers and in the project website in both English and Georgian.

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We would like to point out that at the moment there is stakeholder fatigue, in other words, the communities have numerous times told us that they do not wish to be consulted every single time, that they would like the project to start immediately so that the benefits can be shared amongst the population *("enough of consultation and start the project")*.

The claim that the project lacks proper impact assessment and mitigation measures. As noted by Green Alternative, the project received the Environmental Permit in October 2015. Since then, the Potential Lenders were approached as potential investors and the project was asked to prepare additional studies to supplement the 2015 approved EIA. Prior to preparing the additional ES documentation, the lenders requested independent consultants undertake a gap analysis of the 2015 EIA and establish the additional requirements to meet lender's standards. This work was undertaken by Mott MacDonald's. The ES Supplementary Package was done by SLR Consulting, a company with a proven track record in ESIAs. The first draft of the ES Supplementary Package was reviewed and approved by Mott MacDonalds prior to disclosure. To ensure a proper due diligence process, the 2nd draft and final versions were reviewed by Artelia, the Independent Panel of Experts (IPOE) and the potential lenders. This verification process ensured that the ES package was compliant with lenders' requirements.

The mitigation measures are described in a comprehensive Environment and Social Management Plan, which includes a list of 180 commitments, more than 500 actions during the construction phase, about 75 actions during the operations phase and 29 conditions established by the Ministry of Environment Protection and Agriculture in the 2015 EIA. These actions are established within specific plans and procedures that the project is required to prepare including:

- Reservoir Vegetation Methods Statement
- Traffic Management Plan
- Site Decommissioning and Rehabilitation Plan
- Recruitment and Labour Management Plan, which explains an approach to maximize local content.
- Community Safety plan and Community Health Plan, which explains the approach that will be taken to ensure no impact on health and safety of communities. The draft version of the document will be consulted with the communities.
- Reforestation Management Plan
- and many others

JSC Nenskra strongly objects to the comment by Green Alternative that the project did not assess the alternatives nor cumulative impacts. In 2015, the Georgian approved EIA included a section on alternatives, it reviewed hydro, solar, wind and geothermal options. In addition, it evaluated different HPPs alternatives. This review was also undertaken in 2017. It is important to note that the ES Supplementary Environmental and Social Studies was done to complement the 2015 EIA, it was not intended to replace it. Furthermore, Volume 10 of the ES Supplementary Environmental and Social Studies is specifically meant to assess and address the project's Cumulative Impacts.

The claim that the ES package does not include economic or gender data is incorrect p. 5. P. 18 7.2 of the Green Alternative claim does recognize that the ESIA includes gender disaggregated data, therefore the statement in page 5 of the report is incorrect. The SIA includes issues such as traffic, safety, economy, labour, and gender. The E&S documentation includes detailed surveys of the entire population, not just those that are directly impacted by the project. This database is and will be maintained by the project for monitoring purposes. The following

measures have been put in place and/or are in the process of implementation:

- 15% of all job positions will be women.
- Community Health and Safety Management Plan that addresses gender specific measures. This plan is part of the Environment and Social Management Plan conditions, which requires the project to prepare a plan to amongst other things, manage gender related issues due to influx and/or other.
- Inclusion of labour policies that apply equal opportunities.
- Ensuring the Community Investment Program addresses gender issues and that women are represented in fair numbers in the committees. For example, to date the program has trained guest house owners and the large majority of trainees are women.

The ESIA identifies risks which need to be developed further through the project's management system, this is the normal process of an ESIA. The project has made a commitment to develop this management system, which is already well underway. Management of risks is an integral component of a management system.

The claim that the project did not follow EBRD's PR 5 is incorrect. A draft Livelihood Restoration Programme has been proposed which will need to be consulted extensively with the project affected people. This programme will be developed with livelihood restoration consultant and the project affected people and in alignment with the construction schedule. The project has committed to paying for loss of residential land and/or arable land at full replacement cost, whether the land is registered or not. For permanent loss of pasture areas, the project has committed to paying for land at full replacement cost, although most of this land is state land.

The claim that the project did not follow EBRD's PR 8 is incorrect. The project has undertaken an assessment of tangible and intangible cultural heritage. In addition, through the Land Acquisition and Livelihood Restoration Process, surveys have been undertaken to identify the location of cultural sites, such as graves to minimize impacting these sites. Furthermore, the project has prepared a Chance Find Procedure which has been communicated to all workers, this Chance Find Procedures provides details on how to manage cultural sites if they are found accidentally. It should also be noted that in the project area there are no typical Svan tower-houses.

The project has put in place a Community Investment Program (CIP), this program could be used, if the CIP Advisory Committee agrees in collaboration with the local government, to develop initiatives supporting the preservation and promotion of the local intangible cultural heritage.

To minimize impacts regarding influx, the project recognizes that this is a risk and the importance of controlling movement of traffic, people and behavior of workers. Therefore, the project requires all workers from outside the area to be accommodated in the project housing, in addition the project has put in place a Code of Conduct which will need to be respected by all employees. JSC Nenskra will enforce this Code of Conduct and monitor it and when appropriate disciplinary action will be taken.

The claim that the project did not follow EBRD's PR 7 is incorrect. The process used by the project was comprehensive and involved multiple consultants including Dr. Liana Bitadze, a highly qualified Tbilisi based anthropological researcher. She undertook desk top research, which together with national and international experts, was examined to determine if the lender's IP policies applied. Dr. Bitadze used more than 50 different sources (as shown below) to write her report and in addition, worked with different experts from the University.

The consultants reviewed the lender policies regarding Indigenous Peoples (IPs) and reached the conclusions that lender policies do not apply to Svans. In addition, Mott MacDonald and

Independent Panel of Experts also reviewed the analysis and agreed with the conclusions made by the experts. The examination undertaken by expert consultants consisted in determining if lender policies applied to the project, this was done diligently and in compliance with lender policies.

JSC Nenskra feels that mentioning other policies or multilateral banks is irrelevant, for example discussing the United Nations Permanent Forum on Indigenous Issues (UNPFII), since this is not relevant to lender policies and the project, and these comments would be better addressed directly to the Government of Georgia. We therefore see no relevance in quoting the UNPFII. It is not up to the project to determine whether Svans are IP or not, but rather examine lender policies and determine whether they apply to the project or not. It is also not up to the project to request Government review policies which are outside the requirements of potential lender policies.

Overall, the experts have concluded that Svan's today have very similar practices to the rest of Georgian society in terms of families, management of conflicts, integration in legal state rules, laws and regulations, events, etc. Finally, we question, why this issue of IP is being raised now by the local population, since this issue has not been raised in the past. Svans are Georgians and they have always been part of the Georgian ethnos. We question whether there is an ulterior agenda or the local population is being influenced by outside parties.

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