

To: Ms. Erica Bach
PCM Officer
EBRD

16 July 2018

Dear Ms. Bach,

We are writing to request from the PCM to start a compliance review on the Shuakhevi Hydropower Plant project. The project was supposed to ensure energy security for Georgia, however, a year after the construction was complete the project is still not operational. On-going problems with the tunnels of the project raise questions about the robustness of the project design, impact assessment and implementation, as well as about financiers' prudence in conducting due diligence before decisions were made on public money spending, and in monitoring of the project implementation.

It should be noted, that one of the villages heavily impacted by the construction, submitted the request for problem-solving to EBRD, IFC and ADB respective accountability mechanisms. The complainants have brought up concerns of unmitigated negative impacts on community safety and access to water, as well as of inadequate handling of their grievances by the lenders and the client Adjaristsqali Georgia LLC (AGL).

As part of the broader review of the adequacy of stakeholder engagement and social impact assessment, we call on the PCM to review whether or not the EBRD has ensured gender equality and proper safeguarding of women as a vulnerable group, and whether or not local women participated in decision-making and were consulted in an informed, meaningful and culturally appropriate manner.

Additionally, we are concerned about the adequacy of the biodiversity offset measures and would like the PCM to review compliance of these measures with the stated objectives of the EBRD 2008 Environmental and Social Policy's Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources, namely to protect and conserve biodiversity (using a precautionary approach) and to achieve no net loss or a net gain of biodiversity.

As the status of the project is unclear for a year, while the financial prospects of the project are in question, the implementation of the project's environmental, social and stakeholder engagement measures needs to be up-dated and communicated transparently to impacted people and the public.

In view of the continued ambition of the Georgian government to build risky dams¹ and of the lenders like the EBRD to provide public money investments for these projects, we call for transparent process of compliance review to ensure accountability and lessons learned for the institutions involved.

I. Factual Background

1. Status of the Shuakhevi Hydropower Plant (HPP).

The Project Summary Document ([PSD](#)) for the Shuakhevi HPP project (# 45335) was disclosed in February 2014 and it appears that as of 1 July 2018 it has not been up-dated for the four years since. The PSD informs that the project was approved by the EBRD Board of Directors on 30 April 2014 and that currently the status of the Project is "Disbursing" suggesting that the EBRD "*maintains financial interest in the project*"².

According to a [procurement notice](#) from 24 April 2017, the project construction phase has been completed and commissioning activities were underway, as operations were expected to commence in June/July 2017, a year ago.

¹ For example Nenskra HPP and Namakhvani HPP.

² The EBRD's Environmental and Social Policy of 2008 should thus apply to the Shuakhevi HPP project, as per #3 and #36 of ESP 2008.

A [press release](#) from the Ministry of Energy of Georgia from 24 June 2017 announced that project construction was completed, claiming that by adding its 187 MW to the total installed capacity of the country “the Shuakhevi HPP project will significantly contribute to Georgia’s path toward energy independence”.

Following media news about problems with the Shuakhevi HPP tunnel, a [Statement about Skhalta Didachara Tunnel](#) from the client, Adjaristsqali Georgia LLC (AGL), from 31 August 2017 informed the following:

“There appears to be some blockage in the transfer tunnel between Skhalta and Didachara. This blockage is estimated to be around 170 meters away from the tunnel outlet in Didachara reservoir area. However, this blockage will not impact the operations of the Shuakhevi Plant which is ready for commercial operations.”

On 2 November 2017 the company released a [Statement on Tunnel Inspection](#) informing that the entire tunnel system is inspected:

“AGL continues with an inspection of the entire tunnel system on the Shuakhevi HPP. The AGL technical team, together with its international consultants and experts, are inspecting the entire system. At the same time, dewatering of the tunnel is continuing to allow inspections in all sections of the tunnels.”

While other up-dates on the results of tunnel inspection from the company are missing, the reports on environmental flow from October 2017 to January 2018 include a note that from 4th October 2017 the plant is not in operation³.

A PCM Eligibility Assessment report from May 2017 on a problem-solving complaint, which was submitted by negatively impacted local village, does not provide any information on the status of the project or the result of the tunnel inspections. The summary of EBRD Management and clients responses included in the PCM EAR is insufficient to understand whether the environmental and social covenants that are part of the project agreement are currently being properly implemented and monitored. The PCM has since initiated a Problem-Solving Initiative with the EBRD’s client and complainants from local community.

2. Project cost and EBRD investment.

In October 2013 the EBRD disclosed project information on its web site together with the project ESIA. This [information](#) suggested that the bank is considering extending a senior loan to Adjaristsqali Georgia LLC of up to USD 110 million (EUR 83 million).

According to the Shuakhevi HPP PSD, the project is for a senior EBRD loan of up to USD 86.5 million (EUR 63.7 million) for the financing of the development, construction and operation of the Shuakhevi HPP. The total project cost is reported in the PSD as USD 417 million (EUR 307 million).

The Asian Development Bank (ADB) and the International Finance Corporation (IFC) have co-financed the project. An EBRD [press release](#) from 19 March 2015 reports that the EBRD’s investment is USD 90 million⁴: “The \$250 million debt financing arranged by IFC represents the largest-ever private hydropower investment in Georgia, consisting of two \$90 million long-term senior loans, one each from ADB and EBRD, and \$70 million from IFC. IFC’s total investment in this project is \$104 million, which includes a \$34 million equity investment in the project company.”

3. The Client.

The EBRD’s client is Adjaristsqali Georgia LLC (AGL), a special purpose vehicle established in Georgia for the sole purpose of constructing a cascade of three hydroelectric power plants on the Adjaristsqali river, the first of which will be Shuakhevi HPP. Adjaristsqali Georgia LLC is owned by Norway’s Clean Energy Invest AS (40%), India’s Tata Power (40%), and IFC Infraventures (20%).

4. Project’s Technical Parameters.

3 Environmental flow reports from September 2017 to January 2018 are available on the company’s web site (as of 1 July 2017): <http://www.agl.com.ge/page.php?id=155>

4 Note the differences in project investment reported in the EBRD press release, PSD and ESIA pages (\$ 90, 86.5 and \$110 million resp.)

According to the EBRD's PSD, the hydropower plant is located on the Adjaristsqali river in south-western Georgia and it has an installed capacity of 185 MW with expected electricity output of 452 GWh. The plant is designed as a run-of-the-river plant with capacity for diurnal storage in two reservoirs, allowing Shuakhevi HPP to store water for up to 12 hours and sell electricity at peak demand times. The project includes two dams that are 39 metres and 22 metres high.

The Shuakhevi HPP is part of the Adjariskhali hydropower cascade, so according to the PSD, the area of influence includes another such large dam, the 19-metre Koromkheti Dam, and extensive tunneling at both the project site and within the area of influence.

The ESIA documentation disclosed by the EBRD in October 2017 is for the Adjariskhali Cascade, which includes construction and operation of the Shuakhevi and Koromkheti HPP schemes with total installed capacity of 331 MW. The estimated power output (annual average production) was expected be 930 Gwh of renewable electricity per annum. In this cascade, the Shuakhevi HPP (181MW) includes the following elements:

- Dam and reservoir on the Adjaristsqali river at Didachara;
- Dam and reservoir in the upper reaches of the Skhalta River;
- One weir to allow abstraction and sediment basin on the Chirukhistsqali River;
- Transfer / headrace tunnel between Chirukhistsqali weir and small capacity Hydro Power Plant (HPP) at the Skhalta dam HPP (6MW)
- Transfer tunnel between Skhalta dam and Didachara reservoir;
- Headrace tunnel from Didachara dam to the main HPP unit near Shuakhevi village (175MW).

5. Project's Category

The project has been categorised A in accordance with the Bank's 2008 Environmental and Social Policy, because it includes two dams of 39 metres and 22 metres, which are higher than the 15-metre height cited in Appendix 1 of the 2008 Environmental and Social Policy as indicative threshold for Category A.

6. Project's ESIA package

International consultant Mott MacDonald was responsible for developing the feasibility study for the Adjaristsqali cascade and tender design for the 185 MW Shuakhevi project as well as the Environmental and Social Impact Study (ESIA) for the Adjaristsqali cascade. Gamma Consulting were selected as Georgian engineering and ESIA partners for the project⁵. The consultants prepared an Environmental and Social Impact Assessment (ESIA) package, including:

- Non-Technical Summary (NTS);
- Environmental & Social Impact Assessment (ESIA);
- E&S Management Plans;
- Construction Management Plans;
- Biodiversity Action Plan;
- Land Acquisition and Livelihood Restoration Plan;
- Stakeholder Engagement Plan (SEP);
- Environmental and Social Action Plan (ESAP).

The EBRD claimed in 2013 that its environmental and social due diligence determined the ESIA package was fit for purpose and meets the EBRD's Performance Requirements, as mitigation measures were included in the ESAP. The ESAP, agreed by the EBRD and the client, included key actions that the client agreed to implement in order to achieve the Bank's Performance Requirements throughout the project cycle. The project was to be monitored by the bank in line with the ESAP, Georgia's regulatory requirements and the EBRD's Performance Requirements. An updated ESAP was released in September 2017.

7. Project's Transition Impact.

According to the PSD, among the project's transition impacts is: *"(iii) Setting standards for corporate governance and business conduct from the project's potential for setting improved standards for HPP implementation in Georgia through the application of international best practices."*

5 According to the client's web site, see: <http://www.agl.com.ge/page.php?id=149>

8. Complaints on the Shuakhevi HPP projects

In February 2018 complainants from Rabati Settlement of Makhalakidze Village, Shuakhevi Municipality of Georgia, submitted complaints to the independent accountability mechanisms of the EBRD, the ADB and the IFC. The complainants requested from the mechanisms problems-solving and compliance review alleging that “grave violations” of the lender’s safeguard policies⁶ during the Shuakhevi HPP construction works that have “left no drinking water in the village” and have caused increase of rock falls threatening the life of local population; intensification of landslides; decrease in crops volumes; disappearance from local river of trout and other species of fish protected under the IUCN Red Data List of Threatened Species. The complainants further alleged that the lenders and the client have not dealt adequately with their grievances and that Adjaristsqali Georgia LLC has refused “to assume responsibility and to inquire into the real reasons of the calamity”.

9. Previous PCM complaints on Georgian hydro projects

The PCM has already reviewed the Paravani HPP project following a Green Alternative complaint from December 2011, as well as the Dariali HPP project following a Green Alternative and Stepantsminda complaint from November 2014. In the case of the Paravani complaint, the PCM found EBRD non-compliant with its Environmental and Social Policy on three of the six elements of the complaint, as two of these elements related to the issue of biodiversity.

The Dariali project experience is of particular relevance, as project construction was interrupted in May 2014 by a geological disaster resulting from the intensive movement of the Devdoraki glacier that caused a mudflow in the Dariali Gorge blocking the Tergi River. The incident was characterised by the EBRD as a force majeure, in spite of the fact that geological problems in the vicinity of the project site were predicted by Georgian geologists. The PCM compliance review expert concluded non-compliance of the EBRD with its policy, as “in contrast to the requirements of EBRD Performance Requirement (PR) 1.9, the ESIA did not adequately consider certain geotechnical risks independent of the Project that might have an impact on the Project”.

With regards to lessons learning from hydropower projects in Georgia the PCM report on Dariali HPP stated that “while compliance review reports in other cases may inform the compliance review here, the Bank’s alleged failure to consider the Paravani HPP Compliance Review Report would not in and of itself establish non-compliance with the Bank’s 2008 Environmental and Social Policy (ESP)”. This may well be true that there was no policy requirement to instruct the EBRD to pay extra caution with Georgian hydropower projects, in view of past problematic experiences. However, by now - with or without a specific policy requirement - the problematic track record is setting a very troubling context and thus calling for a compliance review that questions the EBRD’s overall approach in the hydro sector in the country.

II. Policy Violations: Failure of the EBRD to comply with its policy and to ensure that its client and the Shuakhevi HPP project are compliant with ESP 2008

10. Non-compliance with PR1 on Environmental and Social Appraisal and Management

The ESIA package for the Shuakhevi HPP project, raises a lot of questions during the ESIA preparation, approval by the government of Georgia and later during the EBRD’s due diligence process.

It is important for the PCM compliance review to clarify what went wrong and why the project design and ESIA could not guarantee the functionality of the project (specifically of the tunnels) or community safety and security? This situation requires a hard look at the client’s capacity to implement such complex projects in Georgia, at the consultants’ credibility to assess adequately the project’s risks and impacts, and at the lenders’ ability to conduct due diligence and monitoring in accordance with the objectives of their safeguards policies – particularly of the EBRD’s due diligence.

The EBRD has committed in its ESP 2008 to “ensure through its environmental and social appraisal and monitoring processes that the projects it finances [...] are designed and operated in compliance with

⁶ Failure to assess, communicate and prevent the negative impacts described by complainants suggest non-compliance with PR1, PR4 and PR10.

*applicable regulatory requirements and good international practice*⁷ as “*new facilities or business activities to be financed by EBRD will be designed to meet the PRs from the outset*”⁸.

The question about geological studies and geological risks is particularly pertinent. Adequate project design, impact assessment and mitigation strategy relate mostly to PR 1 on Environmental and Social Appraisal and Management, although there are provisions in PR 3 on Pollution Prevention and Abatement and PR 4 on Community Health, Safety and Security that are relevant for the Shuakhevi HPP problems is relevant from the point of view of communicating these to impacted and interested stakeholders.

10.1. Geological safety: design, assessment, verification and mitigation in high-risk areas

The Shuakhevi HPP ESIA includes 30 pages on Geology, Landslides and Seismic Risk⁹ and acknowledges that the Adjara region is highly sensitive to natural hazards, such as mudflows, erosion and landslides. It also acknowledges that public consultations have identified landslides as a major source of concern for local people, due to catastrophic landslides in the past, however, it claims there would be no remaining significant risks of landslide from the project's activities after mitigation.

Importantly the ESIA claims further that full geological risk assessments were undertaken during the feasibility stage. This claim contradicts interview by Batumelebi¹⁰ with ██████████ deputy head of Adjara region Georgia. When asked about the reason of tunnel collapse, ██████████ responded: “*I would like to underline that tunnel has not collapsed just smashed down. We have not clarified the exact reasons yet but we think that unexpected geological processes developed. Of course geological studies existed but you can not estimate everything in Geology*”.

On the question about detail geological studies, Gerard responded “*We conducted detailed geological studies. In parallel of tunneling Geologists were working. They were studying rock layers after every three meters and making reports. We were making decisions based on their conclusions. If they were telling us that we are facing complex layers we would be using concrete coating or metal constructions for making tunnel stable, but geologists have not seen necessity of such measures.*”

This raises questions to how full were the full geological studies before construction started and why important geological studies were carried out in parallel to tunneling? We invite the PCM to clarify through the compliance review:

- if detailed geological studies were conducted before construction started?
- if they were sufficient to ensure that the project design was adequate?
- what kind of geological studies were conducted during construction?
- what role did the EBRD play in ensuring that the geological studies and project design were robust and justified the backing of public lenders?
- did the EBRD identify any risks with regards to geological stability and tunnel design?
- how did the EBRD respond to calls from local communities and interested stakeholders, like Green Alternative (see correspondence), to ensure proper geological studies were in place to guarantee the safety of nearby villages and prudent spending of the bank's resources?

In this regard, PR4 on Community Health, Safety and Security requires that “*structural elements will be designed and constructed by qualified and experienced professionals, and certified or approved by competent authorities or professionals*” and for high-risk locations “*the client will engage one or more qualified experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, and commissioning*”¹¹.

Furthermore, PR 4 requires: “*The client will identify and evaluate the risks and potential impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favour the prevention or avoidance of risks and impacts over minimisation and reduction.*”¹²

7 ESP 2008 #3

8 ESP 2008 #29

9 Volume II, Chapter 11

10 “Batumelebi” <http://batumelebi.netgazeti.ge/news/108711/> December 27, 2017, own translation

11 ESP 2008, PR4 #10-11 on Infrastructure and equipment safety

12 ESP 2008, PR4 #7

PR 3 on Pollution Prevention and Abatement #10 requires that “[d]uring the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider technical characteristics of the installation concerned, its geographical location and local/ambient environmental conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimise or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective.”

We ask the PCM's review to take a closer look at the independence and competence of the experts responsible for project design and impact assessment, as well as the independence and competence of the authorities or professionals who approved or certified the project plans. Did the EBRD pay special attention to issues such as track record, conflict of interest or impartiality of consultants, particularly of the Georgian experts involved? Ultimately, we hope the PCM compliance review will throw some light on where did it all go wrong and can EBRD due diligence ensure good industry practice is applied that guarantees project functionality and safety?

The project impact on local communities

We ask the PCM to review the following questions:

1. How without full geological studies the company and the EBRD assessed the risks when deciding to proceed with the project in the geologically unstable area?
2. What steps did the EBRD take after it has been notified a number of the times by Green Alternative and CEE Bankwatch Network that the geological studies were not comprehensive and needed additional studies to address the issue;
3. Why despite of requirements of EBRD policy, the developer did not take these comments into account?

Particularly, in June 2014 we informed the EBRD team that the English version of the EIA did not contain the detailed geological studies, while a Georgian version of the ESIA, that has been used by the ministry of environment for permission, directly indicated on page 163: “5.3.6.5 Skhalta Transfer Tunnel - No mapping or intrusive work has been undertaken along the Skhalta to Didachara transfer tunnel.”

It should be stressed that according to chapter 6.9.4 of the Georgian EIA report, “the geomorphologic maps and landslide hazard maps have been prepared from aerial photo interpretation supplemented by ground trothing and are not the result of detailed field mapping with full ground coverage. Both maps should therefore be used to indicate the general condition of the land surface over large areas. Detailed ground investigations may be necessary for assessment of small areas and specific sites.”

Moreover, chapter 6.9.5 of the same report says that “to the extent that some of the assessment in this report is based on information gained in ground investigations, persons using or relying on this report should recognize that any such investigation can examine only a fraction of the sub-surface conditions.” According to the same report, “unexpected ground conditions may be encountered during the course of the construction works”.

It should be mentioned, that Green Alternative / CEE Bankwatch Network also informed the EBRD's board of directors regarding the irregularities with Shuakhevi HPP ESIA and due diligence process on 28.04.2014.

As the locals fear that the Shuakhevi HPP project site is characterized by landslides and the construction of derivation tunnels and reservoirs below the village of Ghurta, or in the vicinity of the villages Didachara or Tsalana, may activate slides. The same conclusions were drawn by the department of Geology of the Autonomous Republic of Adjara in 2013, that has been also sent to EBRD's management on April 25.2014.

However, it should be noted that ESIA does not assess the impact of the project implementation on the adjacent villages, including ones under which company plans to drill the derivation tunnels. These villages have not been defined as the part of the project impact area by company and it was endorsed by EBRD management.

PR1 of the EBRD's ESP 2008 states that #6: “Environmental and social impacts and issues will be appraised in the context of the project's area of influence. This area of influence may include one or more of the following, as appropriate:

[...] (v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project

or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken;

(vi) *Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.*"

The project implementation has caused damage for local communities, that has been disregarded in ESIA, and those impacts have been experienced not only by the PCM complainants from Makhalakidzebi, but also by other villages and damaged state infrastructure"¹³

The EBRD has been keen on showing that inherently risky dam projects can be implemented in challenging environments in line with best standards, however, there have been one too many *force majeure* geology problems with its hydro projects in Georgia¹⁴. Who should be held accountable for the potentially massive waste of public money and unmitigated (and possibly unmitigatable) adverse impacts on people living in the "shadow" of hydropower projects in Georgia.

In view of the continued ambition of the Georgian government to build risky dams¹⁵ and of the lenders like the EBRD to provide public money investments for these projects, we call for transparent process of compliance review to ensure accountability and lessons learned for the institutions involved. While the geology in other places in Georgia and the proposed technologies may be different, it is no surprise that communities fear for their safety and do not trust high-quality ESIA's.

10.2. Gender impact, participation of women in decision-making

The Non-Technical Summary¹⁶ of the Shuakhevi HPP project, which is meant to inform stakeholders such as local communities, includes two pages on social impact. Section 3. The Project and People includes no information on gender impact, it mentions no special provisions for protection of women from local communities, no consideration for cultural barriers to their participation in consultations, no mention of women-headed households or opportunities for women entrepreneurs. The ESIA's Social Impact Assessment includes literally one line on 7.2.4.4. Womens Rights and Gender Equality and while the ESIA includes some information on gender and women, an assessment of impact is practically lacking. The Land Acquisition and Livelihood Restoration Plan makes a reference to the number of female-headed households, however, it does not analyse the land ownership and land use patterns or the impact on women's livelihoods if compensation is given to male property owners.

Green Alternative published in 2016 a report¹⁷ *Gender Impact of Shuakhevi HPP Project And Its Compliance With EBRD Requirements*, which presents project documentation analysis and the findings from a Fact-finding mission and 34 interviews with local people. It concludes that:

"The Shuakhevi HPP construction has revealed a lot of gender-sensitive problems, on which the project developer failed to respond adequately, as comprehensive social and environmental assessment including gender analysis and assessments has not been conducted at the stage of the project development. [...] In addition, there are no evidence that can verify the fact that the project brought sustainable benefits to the affected population and simultaneously strengthened women in Adjara." The report recommended that the lenders, in close coordination with the Georgian government, demand from the project developer to draft gender assessment and action plan, and then strictly monitor its implementation.

It appears that this recommendation was never followed, as is visible from the Shuakhevi HPP projects ESAP, which represents non-compliance with PR 1 #14: *"where stakeholder groups were identified as disadvantaged or vulnerable during the appraisal process, the ESAP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project"*.

13 Ajara TV, Harm caused by HPP, February 2018, http://ajaratv.ge/news/ge/25734/hesebit-gamotsveulizi.html.html#_WqKg2-DnLig.facebook

14 See PCM Compliance Review on the Dariali HPP project.

15 For example Nenskra HPP and Namakhvani HPP.

16 Project NTS is available here: <http://www.agl.com.ge/upload/Adjaraistsqali%20ESIA%20NTS%20rev%20F%20September%202013%20updated.pdf>

17 Green Alternative report on Shuakhevi HPP project gender impact can be found here: <http://greenalt.org/publications/gender-impact-of-shuakhevi-hpp-project-and-its-compliance-with-ebrd-requirements/>

Regardless the high quality of impact assessments for some EBRD-financed projects, we are yet to see a good quality of gender impact assessment. It is high time that the bank takes a more ambitious approach in safeguarding women and we hope that the PCM's compliance review will provide useful recommendations in this regard.

10.3. Non-compliance with PR10 on Information Disclosure and Stakeholder Engagement

The project was characterized with flawed information disclosure and public participation process, as well as public unrest and protests along the project implementation, as there were a number of protest actions in all villages impacted by the project. However, both the client and the EBRD failed to take into account those protests and to investigate the causes of the people's dissatisfaction with the project and to adequately address them.

The Shuakhevi HPP project was supported by the Georgian government on the highest level. For example on Saturday, March 8, 2014 about 500 villagers, who staged a road blockade in the Adjara region, were violently dispersed by an equal number of policemen and special forces. The Deputy Minister of Energy, ██████ stood by after ordering the intervention, even though the reasons for his presence at the scene are unclear. The incident, as well as other causes for people's anger and concerns, were not properly addressed by EBRD's management and the company, refusing to connect the project with increased geological risks in the area.

Since 2014 there has been intense media reporting on damages that local communities have experienced as the Shuakhevi HPP project construction started, as well as a number of protests, however, the company's and lenders' response was inadequate and insufficient.

Therefore, the project does not support EBRD's own rationale regarding Shuakhevi project loan in terms of transition impact, especially "*Setting standards for corporate governance and business conduct from the project's potential for setting improved standards for HPP implementation in Georgia through the application of international best practices*", in terms of encouragement of public participation and treatment of locals.

There are several Stakeholder Engagement Plans (SEP) for the Shuakhevi HPP project. The September 2013 SEP-Final Report¹⁸ commits that "*AGL will ensure that stakeholders are well informed about the Project throughout its lifecycle.*"

This commitment is not so clearly stated in the newest SEP for the Operational Stage released in April 2017¹⁹. It is not clear if the project is technically in the operational stage or not and if this SEP covers ongoing testing and inspections.

In this context it is unclear how a number of commitments in the SEP are met, for example those regarding "*disclosure of information regarding operations phase impacts and regular engagement with affected communities on these impacts, including the type and success of associated mitigation measures*" and "*running a company website www.agl.com.ge which will be updated regularly to ensure that the operation related documentation is available to the public*".

The latest SEP states that it "*is a living document and will be regularly monitored, reviewed and updated on an annual basis*", however, a May 2017 up-date was not disclosed by the EBRD client on its website in spite of uncertainty about the project status and the considerable public interest about its fate. There is a contradiction in the SEP as it finishes with the commitment of the client to "*update the SEP when needed (preliminarily, every second year)*". The September 2017 ESAP states about the that SEP that it should cover the "*prior to commencement of operations*" and it should be "*reviewed and modified as necessary throughout operations*", which suggests that the SEP should still be binding during the testing and inspections period, while the delay with operational phase should perhaps render modifications necessary.

The fact that impacted people had to request facilitated problem-solving by the EBRD's, IFC's and ADB's complaints mechanisms also suggests that AGL's grievance mechanism is either inaccessible or ineffective in dealing with community grievances, in spite of the claim in the 2017 SEP that "*AGL social team members have been effectively applying it*".

18 It is no longer available on the client's web site, but still on EBRD's website:

<https://www.ebrd.com/english/pages/project/eia/45335sep.pdf>

19 Can be found on the client's web site: <http://www.agl.com.ge/uploads/media/AGL-SEP-for-Shuakhevi-OP-Final.pdf>

The SEP does not acknowledge the cultural, religious and practical barriers to participation of Adjara women in decision-making and proposes no special measures to ensure that women are consulted in an informed, meaningful and culturally appropriate manner. Green Alternative published in 2016 a report *Gender Impact of Shuakhevi HPP Project And Its Compliance With EBRD Requirements*. It presented the results of 34 interviews with local women and men, that suggest the stakeholder engagement and consultations did not safeguard sufficiently the rights of women to participate in the project design and implementation. Moreover, it quotes the experience of men in consultations that were far from meaningful – for example the experience with negotiating the Memorandum of Understanding between local communities and the client.

The latest SEPs for the project from April 2017 summarises the EBRD ESP 2008 requirements in the following way: *“EBRD requires the project sponsor to provide the public, including NGOs, with information about the project during scoping stage and to prepare an SEP. The 2008 EBRD policy requires project sponsors to engage with stakeholders from the earliest stages of the project throughout the life of the project. Stakeholder engagement must be open, meaningful, and in an appropriate manner acceptable to the potentially affected communities. The engagement program must actively address the needs of vulnerable populations who may be affected by the project. The EIA documents must remain in the public domain for the life of the project, and if changes to project plans are necessary, these have to be made public as well.”*

We believe that the above requirements were not met by the Shuakhevi HPP project and constitute violation of PR10 on Information Disclosure and Stakeholder Engagement. The EBRD and its client have not engaged with stakeholders throughout the life of the project²⁰.

While initial disclosure of project documentation complied with the requirements for Category A projects²¹, the EBRD and its client failed to inform stakeholders about the changes to project plans²² since the operational stage got delayed due to tunnel collapse. The consultation process has not been informed and iterative²³ and as the PCM complaint by local impacted people suggests, stakeholder engagement for the Shuakhevi HPP project has not been open, meaningful²⁴ and in an appropriate manner acceptable to potentially affected communities²⁵.

According to ESP2008 #7 *“The EBRD is strongly committed to the principles of corporate transparency, accountability and stakeholder engagement. It will disclose, on an ongoing basis, information about the Bank’s performance on environmental and social issues and will engage in meaningful dialogue with the Bank’s community of stakeholders. The Bank will promote similar good practices amongst its clients. In particular, the EBRD expects clients to identify and interact with their stakeholders on an ongoing basis, and to engage with potentially affected communities through disclosure of information, consultation, and informed participation in a manner deemed by the Bank to be commensurate to the impacts associated with the project.”*

The lack of transparency on behalf of the bank and its client with regards to the Shuakhevi HPP project comes in stark contradiction to this commitment. In view of insufficient information in the public domain, we believe that the burden of proof should be on the EBRD and its client to demonstrate in a transparent way what measures were taken to communicate to impacted and interested shareholders the status of the Shuakhevi HPP project, changes in project implementation plans and consequences of these changes on the agreed environmental and social measures as presented in the project’s ESMP, ESAP and SEP.

10.4. Non-compliance with PR 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources

EBRD’s ESP 2008 #8 states that the EBRD *“supports a precautionary approach to the conservation, management and sustainable use of natural biodiversity resources (such as wildlife, fisheries and forest products) and will seek to ensure that its operations include measures to safeguard critical habitats and, where feasible, enhance natural habitats and the biodiversity they support”*.

20 PR 10 #11

21 PR10 #12-13

22 PR10 #14: *Additional information may need to be disclosed on an ongoing basis, as the project progresses, in case of any material changes in the nature of the project or its impacts, or if material new risks and impacts arise.*

23 PR10 #17: *informed participation involves organised and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.*

24 PR10 #15-16 & #20

25 PR10 #13

The Shuakhevi Biodiversity Action Plan claims that “[t]hrough wise application of the mitigation hierarchy, measurable adverse residual impacts on the critical habitat features are unlikely on this project.”

In 2017 Green Alternative commissioned an evaluation of impacts on biodiversity during the construction phase of the Shuakhevi HPP project. Experts of Balkani Wildlife Society carried out biodiversity surveys on fish, mammal, bird species and natural habitats in the area of Shuakhevi HPP, Adjara, Georgia in July 2017. Field surveys were complemented with literature review and questionnaires with people who visit the natural habitats regularly for determining the relative number of mammals and fish and aquatic fauna in the most favorable habitats for them and for identifying threats to their conservation.

The findings of Balkani were presented in a Report on the environmental problems of Shuakhevi HPP, Adjara, Georgia²⁶ that concluded the following:

- 93 ha of natural habitats were destroyed during construction of Shuakhevi HPP, which is several times higher than assessed.;
- With regards to habitats, offsetting or compensation was proposed only for forest habitats; the tree planting was not done before the habitats were destroyed as it is required according to EU Directives; the forest offsetting/compensation will not ever create habitats with similar ecological functions like the destroyed habitats;
- While tree planting was done poorly, not creating a natural habitat at all, the loss of key river and riparian habitats was not offset/compensated at all and grassland habitats were not restored, even worse - some additional areas were destroyed during afforestation activities;
- By the end of the construction stage of the project fish populations are almost completely extinct for several kilometers below the 2 dams and the weir, while the remaining fish populations above the dams/weir are in a bad state. Special conservation measures are needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that any aquatic life is left in the basin;
- With regards to the Eurasian otter, a red list species in Georgia, the Adjaristsqali basin is of great importance for the conservation of the species. Even before the Shuakhevi HPP operation starts otter is extinct below the 2 dams and the weir. Special conservation is needed for the unconstructed middle section of Adjaristsqali river and the remaining tributaries so that otter remains in the basin, however a healthy population would be unlikely, if the minimum ecological flow of 10% only remains in the rivers and if there are daily changes in the Shuakhevi powerhouse water release. Otter population surveys show very similar results to fish and aquatic fauna questionnaires as fish is the main prey of the species;
- With regards to birds and bats, the installation of bird and bat measure is totally inadequate as it can't offset the loss of natural habitats, especially riparian habitats. The natural habitat where the boxes were put in November 2016 have enough old trees with hollows so rare species of birds and bats are unlikely to occupy them. Two main impacts on bird species are not addressed adequately - the migration barrier effect and the impact on the Chorokhi delta because of changed hydrological and sedimentation regime;
- With regards to other species, in three days along the river shores traces were found of 6 different individuals of brown bear and a pack of 4 wolves; at least 3 golden jackals, 1 Eurasian nightjar and 4 Caucasian rosefinches were heard, 1 kingfisher and 1 red-breasted flycatcher were spotted; this leads to the conclusion that the river shores are a biodiversity hotspot and no offsetting is possible, as there is no "free" space for creation of new rivers.

Balkani's findings call into question the adequacy of the proposed mitigation and offsetting measures for the Shuakhevi HPP project, as well as the compliance of the project with the EBRD's PR6. The EBRD has not published any up-dates to disclosed project information in four years and the compliance review should bring to light in the public domain evidence, if it exists, that the EBRD and its clients have taken an approach to biodiversity conservation that indeed ensures no net loss of biodiversity. We ask that the Balkani report on the Shuakhevi HPP is regarded as part of this complaint – it was communicated to the EBRD as part of a complaint to the Bern Convention on the Nenskra HPP project.

11. Conclusion

In view of the considerable public resources invested in the Shuakhevi HPP project and in view of the negative impacts on local people's safety and livelihoods, as well on local resources needed for sustainable development of the Adjara region and Georgia, the status and future of the Shuakhevi HPP project is not a

26 Balkani Report on environmental problems with Shuakhevi HPP project, Adjara, Georgia, July 2017, see: http://greenalt.org/wp-content/uploads/2016/10/Report_Shuakhevi_HPP_environmental_problems.pdf

trivial matter, but one of considerable public interest. In addition, the EBRD and other public lenders are continuing to develop risky hydropower projects in Georgia, so the way the Shuakhevi HPP project is handled is a test to the banks' safeguards, while transparency is a prerequisite for ensuring public trust and support for the decisions of planners and investors in Georgia's energy sector.

We kindly ask the PCM to conduct a compliance review and to thus ensure accountability of the EBRD to its shareholders, to impacted people, to interested shareholders and to the public.

Respectfully,

Dato Chipashvili
for Green Alternative

Petr Hlobil
for CEE Bankwatch Network

ANNEX 1

Additional information to be reviewed for evidence on communication of public concerns regarding the Shuakhevi HPP project

1. Green Alternative / CEE Bankwatch Network communication with EBRD

Meetings on Shuakhevi HPP

- Meeting with ██████████ ESD in “Holiday Inn” regarding Shuakhevi and Dariali HPPs – **October 2013**;
- Meetings with Bank management and Executive Directors during two annual meetings of the EBRD - **May 2014 and May 2015**;
- Issue has been raised during a public consultation on the good governance policies of the European Bank for Reconstruction and Development with Bank Management in Tbilisi – **February, 2014**.

Email correspondence with the Company and the EBRD

- Comments sent to the Adjaristskali Georgia LLC – **July 29, 2013**;
- Email correspondence with Environmental and Social Advisor of EBRD – **16 and 26 September, 2013**;
- Email correspondence with Environmental and Social Department on collective letter of Ghurta and problematic issues of Shuakhevi and Dariali HPPs – **April 25, 2014; May 27, 2014; June 2, 2014; June 4, 2014**;
- Letter to Executive Directors of the EBRD regarding Shuakhevi and Dariali HPPs – **April 28, 2014**;

Comments, issue papers, reports

- Comments on ESIA of the Shuakhevi HPP in Georgian: **July 1, 2013**: http://greenalt.org/wp-content/uploads/2013/07/Shuakhevi_HPP_on_Adjaristskali_GA_comments.pdf
- Resume of the comments: <http://greenalt.org/wp-content/uploads/2013/07/reziume.pdf>
- Issue Paper: The Shuakhevi hydropower plant project, Georgia; **May, 2014**
<https://bankwatch.org/wp-content/uploads/2014/05/briefing-ShuakheviHPP-Georgia-2May2014.pdf>
- “Risky business: hydropower plant construction in Georgia” – **November 2014**:
http://greenalt.org/wp-content/uploads/2014/12/Risky_business_hydropower_plant_constructi_on_in_Georgia.pdf
- Issue Paper: “Georgia swept by protests against EBRD-backed hydropower”; **May 10, 2016**
http://greenalt.org/wp-content/uploads/2016/06/Georgian_hydro.pdf
- Balkani’s Report on environmental problems of Shuakhevi Hydro Power Plant, Adjara, Georgia; **July 2017**; http://greenalt.org/wp-content/uploads/2016/10/Report_Shuakhevi_HPP_environmental_problems.pdf

2. Press releases and blog posts

- Georgian hydro projects are a test case for the EBRD’s good governance policies; **12 February 2014**; <https://bankwatch.org/blog/georgian-hydro-projects-are-a-test-case-for-the-ebdrs-good-governance-policies>
- Georgian Ministry of Energy orders use of force against local protesters who fear landslides from hydro construction; **March 14, 2014**;
<https://bankwatch.org/blog/georgian-ministry-of-energy-orders-use-of-force-against-local-protesters-who-fear-landslides-from-hydro-construction>
- Georgia’s hydropower revolution far from rosy for communities, the environment and the economy; **May 14, 2015**; <https://bankwatch.org/publication/georgias-hydropower-revolution-far-from-rosy-for-communities-the-environment-and-the-economy>

3. Additional information: TV Media and response of the company on Geology:

- Adjara TV; “Part of the tunnel of Shuakhevi HPP collapsed”; **September 2, 2017**;
<http://www.ajaratv.ge/share.php?id=3590&lang=ge>
- 1TV “Shuakhevi HPP livelihood of village Chanchkhalo”; **November 20, 2014**; <https://www.youtube.com/watch?v=ZCSNDgAP-RA>

- 1TV; "Construction of Shuakhevi HPP"; **November 20, 2014**; <https://www.youtube.com/watch?v=hjl-GuPc1V4>
- 1TV; "In Khulo village Kinchauri protest HPP construction"; **November 14, 2016**; <https://www.youtube.com/watch?v=0z7De0hjhpq>
- AdjaraTV; **December 21, 2017**; http://www.ajaratv.ge/_share.php?id=4042&lang=ge
- Batumelebi; "Shuakhevi HPP after the tunnel collapse"; **December 27, 2017**; <https://bit.ly/2KY40BG>
- Adjara TV; "Harm caused by the HPP-Changed livelihood in 12 villages"; **February 6, 2018**; <http://ajaratv.ge/news/ge/25734/hesebit-gamotsveuli-ziani.html.html#.WqKg2-DnLig.facebook>