

To:

Ms. Anoush Begoyan

PCM Officer

Project Complaint Mechanism

European Bank for Reconstruction and Development

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From:

David Chipashvili, authorised representative of Mr. Aleksandre Asatiani

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

March 8, 2011

Dear Ms. Begoyan,

On behalf of Mr. Aleksandre Asatiani I would like to submit this complaint regarding the Tbilisi Railway Bypass Project and the refusal by the Georgian Railway Company to compensate Mr. Aleksandre Asatiani for his property (in the Avchala district).

Because of the project needs, Georgian Railway Company took 123 sq. metres from Mr. Asatiani's property (930 sq. metres) and refused to compensate to Mr. Asatiani, with the reason that he does not have formal legal rights to the property under the national law.

Beforehand, during the public hearing meetings, which the wife of Mr. Asatiani was attending (Because Mr. Asatiani is disabled he could not attend the meeting) the Georgian Railway Company promised the local population that in cases where people do not have formal legal rights to their property but have the necessary documentation they would help them to register their property and cover the registration costs, and that only after receiving legal rights the Georgian Railway company would start negotiations on compensation.

When the preparation works for the project started and no one from the Railway company contacted the family regarding the compensation, the wife of Mr. Asatiani visited several times the Georgian Railway company to clarify the issue. She was told that in order to receive compensation they should register the property and receive formal legal rights to their property. After several attempts at registration of the property Mr. Asatiani could not manage to register the property because of the Tbilisi Railway Bypass Project. The wife of Mr. Asatiani was told that the registration process for land in Avchala had been temporarily stopped because of the project and she should clarify the issue with the Georgian Railway Company. After failure to register the property the wife of Mr. Asatiani visited the office of the Georgian Railway Company and tried to meet with the responsible person in Georgian Railway Company and clarify this issue. Calls were made from the reception of the Railway office to the responsible person but the only answer Ms Asatiani received from the railway was that it was not their problem and that if Mr and Ms Asatiani want to receive compensation they should register their property.

After this failure to clarify the issue with the Georgian Railway Company Mr. Asatiani sent a letter (in Georgian) in January 17, 2011 to the EBRD (the letter was sent by me on behalf of Mr. Asatiani) and the Georgian Railway company describing the whole situation and the reasons why Mr. Asatiani has right to claim the land. In response Ms. Elena Gordeeva, operation leader of the railway project in the EBRD stated that:

*"I hope you understand that the Bank cannot judge on the substance of the grievance and therefore we pass this email with the attached letter from Mr Aleksandre Asatiani to Georgian Railway for further review and follow up."*

In addition she asked representative of the Georgian Railway company, Lasha Abashidze to review and follow up this letter and

*"Please could you advise us of the status/progress on this matter in due time."*

In response to the letter the representative of the Georgian Railway Company, Lasha Abashidze agreed to meet with the wife of Mr. Asatiani and clarify the issue. Unexpectedly at the meeting the representatives of the Railway told her that the land plot in Avchala that the railway needed (123 sq. metres of their property) was the property of Tbilisi City Hall that had already been granted to Georgian Railway Company free of charge so they would not compensate anything to them.

After this meeting, on behalf of Mr. Asatiani on February 4, 2011 I sent a second letter to the EBRD and Railway Company describing the problem and asking them to study this problem in detail in order to not violate Environmental and Social Policy of the EBRD. We did not receive any answer.

In our opinion when an EBRD operation leader receives this kind of letter showing that the problem has not been solved, at minimum she should look at this issue personally to clarify what is happening on the ground. It has now been a month since the letter was sent and there is no indication that the EBRD is taking any action to rectify the situation and avoid a violation of its Environmental and Social Policy. At the very minimum this is a case of poor administrative practice in informing us what is being done, and at worst it constitutes turning one's back to a violation of the ESP.

Despite the fact that Mr Asatiani does not have formal legal rights to the land recognized under the national law of Georgia he fully fits into category (ii) of paragraph 31 of PR 5 (Land Acquisition, involuntary

resettlement and economic displacement) of the Environmental and Social policy of the EBRD, which says that:

*"Displaced persons may be classified as persons: (ii) who do not have formal legal rights to land at the time of the census, but who have a claim to land that is recognised or recognisable under the national laws;"*

Thus the Georgian Railway Company by refusing compensation to Mr. Asatiani in our opinion violates the Environmental and Social Policy of the EBRD according to paragraph 32 of PR 5 (Land Acquisition, involuntary resettlement and economic displacement): "Persons covered under paragraph 31 (i) and (ii) are provided compensation for the land they lose and other assistance in accordance with paragraphs 34 and 35".

Below I would like to show you that Mr. Asatiani has all documentation that is needed for claiming formal legal rights to the land.

### Right to claim the land

On December 12, 1988 as an employee of the "Kavkaselektroqselmsheni" state-owned factory and accordingly as a member of the gardeners' union of the factory Mr. Asatiani received land plot N32 (600 sq metres) and on August 6, 1997 additionally he received 330 sq metres of land plot on which he constructed a one-floor house where currently his son is living.

As evidence that he has legal rights to the land he has:

1. A "gardener's passport"<sup>1</sup> (indicating the area of land he owns with official stamp of Gardeners Union); December 12, 1988;
2. Document indicating that the land (600 sq. metres + 330 sq. metres) was given to Mr. Asatiani, with an official stamp of Georgian State department of Land Management; August 6, 1997;
3. A notarized signed letter by his neighbours stating that since 1988 Mr. Asatiani really owns the one-floor house and the land plot;

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<sup>1</sup> This is a kind of a document that is widely known in the Former Soviet Union especially for people who were working in state owned factories. This document was granted to the employees of the state factories and organizations giving entitlement to land plots or other benefits. After the Soviet Union people started to privatize this property based on such documents. Since the Rose Revolution the property registration process has changed and in order to obtain final legal rights on property (land plots, houses etc.) it is necessary to have either a privatization document received after the Soviet Union ended or these documents received during the Soviet Union (not everyone privatised their real estate after the Soviet Union because of the poor financial conditions of the population of Georgia more than 50% of population were and still are under the poverty line). Today more than half of the real estate of the population is still not registered again because of the poor financial situation in Georgia.

4. Mr. Asatiani as a member of the Gardeners' Union of the factory is also in the list of the members of the Union (Number 33 highlighted);
5. Inquiry on design of the house to construct in the Land plot 32 with signature of chairman of Gardeners Union together with official stamp;
6. He also has paid bills of electricity, natural gas and water for this address.

#### Desired outcome

With this complaint, Mr. Asatiani expects the EBRD Project Compliance Mechanism experts to perform a compliance review and a problem solving initiative of the Tbilisi Railway Bypass project regarding the abovementioned lack of compensation. The final outcome should be compensation for his full property as it will be impossible to live there after the construction takes place.

#### Annex 1: (Georgian)

1. Gardener's passport;
2. Document indicating that the land (600 sq. metres + 330 sq. metres) was given to Mr. Asatiani;
3. A notarized signed letter by his neighbours;
4. List of the members of Gardener's Union;
5. Inquiry on design of the house in the land plot 32;
6. Bills on electricity, water and natural gas;

#### Annex 2:

1. The first letter to EBRD and representative of the EBRD (Georgian), January 17, 2011;
2. The second letter to EBRD (Railway company is included), February 4, 2011.

#### Annex 3:

**Proof of Authorization of David Chipashvili from Mr. Aleksandre Asatiani**

**Name and signature of Authorised Representative:**

David Chipashvili

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**Name and signature of Mr. Aleksandre Asatiani:**

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