

Final Report

**on
Compliance Review Panel Request No. 2016/1
on the
Sustainable Urban Transport Investment Program (Tranche 3)
in Georgia
(Asian Development Bank Loan 3063)**

13 February 2017

ACKNOWLEDGMENTS

The Compliance Review Panel thanks all those who contributed to the completion of the compliance review of the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia: the complainants for their efforts and trust in the process; the implementing agency, the Municipal Development Fund of Georgia; other government agencies in Georgia for their cooperation during the investigation and during our site visits; the Asian Development Bank (ADB) Board of Directors, in particular, the members of the Board Compliance Review Committee; and ADB Management and staff.

ABBREVIATIONS

ADB	–	Asian Development Bank
CRO	–	Complaint Receiving Officer
CRP	–	Compliance Review Panel
EIA	–	environmental impact assessment
IEE	–	initial environmental examination
MDF	–	Municipal Development Fund of Georgia
MFF	–	multitranche financing facility
OCR	–	Office of the Compliance Review Panel
OM	–	Operations Manual
SDCC	–	Sustainable Development and Climate Change Department
SPS	–	Safeguard Policy Statement
TOR	–	Terms of Reference
WBG EHS (Guidelines)	–	2007 Environmental, Health, and Safety General Guidelines of the World Bank Group
WHO	–	World Health Organization

WEIGHTS AND MEASURES

dB	–	A-weighted decibels
km	–	kilometer
km/h	–	kilometer per hour

NOTE

In this report, “\$” refers to US dollars.

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

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I. INTRODUCTION

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for a compliance review of Loan 3063: Sustainable Urban Transport Investment Program (Tranche 3) (Project).¹ The request by at least 81 residents of building 12 in the 12-33 Block, Rustavi Highway, Tbilisi, Georgia was forwarded to the CRP by the Complaint Receiving Officer (CRO) of the Accountability Mechanism of the Asian Development Bank (ADB) on 14 March 2016.

2. The Accountability Mechanism is a last resort mechanism for persons affected by an ADB funded project. It aims to provide an independent and effective forum where persons adversely affected by ADB projects can voice their concerns, seek solutions to their problems, and/or request a compliance review.² Compliance review is one of the functions of the Accountability Mechanism, the objective of which is to ascertain if project affected persons were harmed or will likely be harmed by an ADB project due to ADB's noncompliance with its operational policies and procedures. The review does not investigate the borrower or the executing agency or government agencies of the country where the project is located. The conduct of these parties is considered only to the extent that it is directly relevant to the assessment of ADB's compliance with its operational policies and procedures.³

3. This report provides a description of the Project and the complaint; documents the compliance review process; and elaborates on the findings of the CRP's investigation of the Project. The findings and conclusions of the compliance review are presented in sections V and VI of this report, respectively.

II. THE PROJECT

4. The Project is part of an overall investment program of the Government of Georgia valued at \$1.1 billion to be implemented from 2010-2020. This investment program aims to improve the reach, quality, and continuity of urban transport in Georgia. Partial funding for the program was through ADB loan using a multitranche financing facility (MFF) with a maximum financing amount of \$300 million.⁴ Initially conceived to be structured with three tranches, the investments to be funded under this MFF are expected to improve the transport system and infrastructure in urban areas in Georgia, specifically in Anaklia, Batumi, Kutaisi, Poti, Rustavi, and Tbilisi. The ADB Board of Directors (Board) approved Tranche 1 of the MFF, amounting to \$85 million, on 21 July 2010. Tranche 2, amounting \$64.89 million was approved on 24 July 2012 and tranche 4, amounting to \$20 million was approved on 25 August 2015.

5. This Project, which is tranche 3 of the MFF, was approved on 25 November 2013 with a loan amount of \$73 million from its ordinary capital resources. The loan was signed on 19 December 2013; became effective on 14 March 2014; and is expected to close by 31 December 2018. The total cost of this Project is \$118.2 million, of which \$45.2 million is government counterpart. The Municipal Development Fund (MDF) of Georgia is the executing agency. In ADB, the Urban Development and Water Division of the Central and West Asia Department

¹ The Georgia: Sustainable Urban Transport Investment Program – Tranche 3 project web page is at <https://www.adb.org/projects/42414-043/main>.

² Asian Development Bank (ADB). *2012 Accountability Mechanism Policy*. Manila. para. 103.

³ Footnote 2, para. 130.

⁴ See footnote 1 for a detailed description of this multitranchise facility (MFF).

implements the Project from ADB Headquarters. As of 10 November 2016, \$17.97 million or 25% of the loan amount for the Project has been disbursed.⁵

6. The subject of the complaint is Subproject 1: Tbilisi-Rustavi Urban Road Link (section 2), which is one of the components of Tranche 3. Upon project completion, this 6.8km stretch of the road, referred in project documents as section 2 (km 4.0-10.8) will form part of the Rustavi-Tbilisi Urban Road Link which will be of international standard, "Category I" highway, with 4 lanes and with a general design that can accommodate vehicles with speed of 120km/hour.

7. The Project is categorized as B for environmental impacts; A for involuntary resettlement impacts; and C for impacts on indigenous peoples (IPs) as there are no indigenous people impacted by the Project. Procurement of the civil works contract is ongoing. Construction work is expected to commence in 2017. Based on its design, the Project might potentially affect 204 allotments and 225 buildings (including 81 residential buildings). A number of informal dwellings will also be relocated. The Project will also affect the 10 buildings located at Rustavi Highway in the Ponichala area. Of those ten buildings one will be demolished as it is located in the right of way. Other buildings will be affected by noise and vibration impacts.

8. A draft initial environmental examination (IEE) was prepared by MDF and posted on the ADB website in September 2013. This initial IEE was revised as vibration and noise impacts required additional studies. A revised IEE was posted on the ADB website in December 2015 which included impact modelling for expected vibration and noise impacts. To ensure that involuntary resettlement impacts will be addressed, a land acquisition and resettlement plan (LARP) was prepared and which was consistent with the land acquisition and resettlement framework that was prepared prior to the approval of the MFF. As of 17 October 2016, the LARP was under implementation.

Table 1: Chronology of Project and Complaint

Date	Event
April 2013	During loan inception mission for tranche 2, the Ministry of Finance (MOF) and Ministry of Regional Development and Infrastructure (MRDI) requested ADB to initiate the preparation of the Periodic Financing Request (PFR) for tranche 3.
May 2013	Categorization of project impacts was submitted by CWUW to the Regional and Sustainable Development Department (RSDD) with 'A' for involuntary resettlement; 'B' for environment and 'C' for indigenous peoples.
September 2013	Initial Environmental Examination (IEE) for Section GEO: Sustainable Urban Transport Investment Program – Tranche 3, (Tbilisi-Rustavi Urban Road Link [Section 2]) was posted on the ADB project webpage.
05 September 2013	MOF submitted a PFR for tranche 3 of the MFF to ADB.
25 November 2013	PFR report was sent to and approved by ADB President as part of the MFF for Georgia for the Sustainable Urban Transport Investment Program approved by the ADB Board of Directors on 19 July 2010.
19 December 2013	Loan 3063-GEO: Sustainable Urban Transport Investment Program – Tranche 3 was signed.
14 March 2014	Loan 3063 became effective.
March 2015	Completion of the Investigation of Structural Integrity of, and Impact of Vibration and Noise on Buildings at a Segment of Tbilisi-Rustavi Road Project (Section 2, km 5,2-6,9)

⁵ See footnote 1 for further details.

December 2015	Updated IEE for GEO: Sustainable Urban Transport Investment Program – Tranche 3, (Tbilisi-Rustavi Urban Road Link [Section 2]) was posted on the ADB project webpage.
29 January 2016	Complaint (in Georgian) was sent by the complainants through Irina Svanidze of Green Alternative to the ADB Complaint Receiving Officer (CRO).
14 March 2016	Complaint was forwarded by the CRO to the Compliance Review Panel (CRP).
21 March 2016	CRP informs the complainants, borrower, ADB Board member representing the country concerned, and ADB Management about receipt of the complaint.
21 March 2016	CRP completed initial assessment of the complaint and confirmed that the complaint falls within the mandate of the compliance review function.
22 March 2016	CRP forwards the complaint to ADB Management for response.
11-14 May 2016	CRP conducted eligibility mission to Georgia.
24 May 2016	CRP determines request is eligible and submitted its report to the ADB Board of Directors (Board).
14 June 2016	Board authorized compliance review of the Project.
20 June 2016	CRP provides Draft Terms of Reference (TOR) to ADB Board Compliance Review Committee (BCRC) for clearance.
28 June 2016	BCRC cleared the TOR for compliance review and was posted on CRP website.
July to October 2016	CRP conducted compliance review of the Project.
11-14 September 2016	CRP conducted compliance review mission to Georgia.
10-13 October 2016	CRP conducted technical mission to Georgia.
15 November 2016	CRP issued draft compliance review report to complainants, borrower, ADB Management, and BCRC.

III. REQUEST FOR COMPLIANCE REVIEW

A. The Complaint and Alleged Harm

9. The complaint, which was originally in Georgian, was emailed to the ADB Complaint Receiving Officer on 29 January 2016 by Irina Svanidze of Green Alternative, with copy to Diana Botkoveli, one of the complainants, who has an email address. Green Alternative assisted the complainants in drafting and sending the complaint to the CRO. As I. Svanidze is a conduit and not a representative of the complainants, subsequently, all communications have been addressed to Aniko Nizharadze, the leader of the residential building 12 v/g and D. Botkoveli (either through the latter's email address and/or hard copy) with copy to I. Svanidze, upon complainants' request.

10. The request was presented by 81 residents of building 12 v/g in the 12-33 Block, Rustavi Highway, Tbilisi, Georgia. As the complainants will not be relocated or economically displaced by the Project, they are not part of the LARP. However, the complainants claim that the road construction and operation will adversely impact their physical environment and quality of life because of noise; vibration during construction and operation; and air pollution due to the road construction and very large volume of vehicles which will pass their building when the new road becomes operational. They are very concerned that because of the vibrations during construction work and subsequent road operation, their 9-storey residential building might collapse or be further damaged. Additionally, they state that several of the residents in their building have vision impairment and/or are socially and economically disadvantaged. Their

complaint describes their numerous efforts at communicating with MDF and ADB Georgia Resident Mission for these offices to address their concerns.

11. The complainants state they were not properly consulted about the impact of the Project and the proposed mitigation measures. They allege that their concerns were not heard by the local authorities. Thus, they elevated their concern to the CRP. Upon completion of the basic information and documents necessary for a complaint, the CRO forwarded the complaint to CRP on 14 March 2016.

Figure 1: Apartment Building 12 v/g, Rustavi Highway at Ponichala Where the Complainants Live



Source: OCRP

12. The building is part of a series of buildings located in Ponichala community, which is part of the township of Tbilisi. The buildings were all constructed in the 1970s and were originally designed as buildings for vision impaired people. Buildings are located between the Rustavi Highway which is the present commuter road and Mtkvari river. The new road will be located next to buildings 8, 5, 12 v/g and 16 a/b and will be built into the river on a retaining wall. The complainants live in the building 12 v/g which is encircled in Figure 2.

Figure 2: Residential Buildings Next to New Road to be Constructed Into the River (The encircled building is the building of the complainants.)



Source: Google Map

13. During the CRP's investigation of this complaint, an additional complaint was received on 10 November 2016 from 72 residents of the 5-storey building identified as 16 a/b, Rustavi Highway, Tbilisi, Georgia. This building is located in the immediate vicinity of building 12 v/g, where the first complainants live. Issues raised in the second complaint are very similar to the first. On 16 January 2017, the CRP submitted a report on the eligibility of this second complaint to the Board.⁶ For the second complaint, the CRP found *prima facie* evidence of noncompliance with ADB's operational policies and procedures and *prima facie* evidence that this noncompliance will cause likely, direct and material harm to the complainants when the road construction and operation starts. The CRP is of the view that the issues raised in the second complaint can be consolidated with the first complaint received in January 2016.⁷

14. Para. 106 of the Accountability Mechanism Policy states that "the compliance review function will investigate alleged noncompliance by ADB with its operational policies and procedures that has caused, or is likely to cause, direct and material harm to project-affected people." Moreover, para. 190 of the Accountability Mechanism Policy states that "...If the CRP concludes that ADB's noncompliance caused direct and material harm, Management will propose remedial actions to bring the project into compliance with ADB policies and address related findings of harm." Accordingly, if noncompliance with ADB's operational policies and procedures were found by the CRP, the proposed remedial actions by the Management will

⁶ See The Compliance Review Panel's (CRP's) Report on Eligibility, To the Board of Directors on Compliance Review Panel Request No. 2016/3 on the Sustainable Urban Transport Investment Program Tranche 3 in Georgia (Asian Development Bank Loan 3063), 16 January 2017 at [https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-SUTIP%20T3-2ndComplaint-Eligibility%20Rpt_16Jan_ForBoard.pdf/\\$FILE/GEO-SUTIP%20T3-2ndComplaint-Eligibility%20Rpt_16Jan_ForBoard.pdf](https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-SUTIP%20T3-2ndComplaint-Eligibility%20Rpt_16Jan_ForBoard.pdf/$FILE/GEO-SUTIP%20T3-2ndComplaint-Eligibility%20Rpt_16Jan_ForBoard.pdf)

⁷ Footnote 6, para. 31.

have to address the likely, direct, or material harm to all project-affected people and not just the complainants (whether first group or second group).

B. Determination of Eligibility

15. Upon receipt of the complaint, the CRP did an initial assessment of it to ensure that it is within the jurisdiction of the compliance review function. For the eligibility determination, the CRP reviewed the complaint with its 11 attachments, the Management's response to CRP, relevant project documents; met with the complainants, key project staff, and representatives from project executing/implementing agency. CRP member, Arntraud Hartmann who led the eligibility determination and Josefina Miranda, Compliance Review Officer of the Office of the Compliance Review Panel (OCRP) conducted an eligibility mission to Georgia from 11 to 14 May 2016. The mission was done to check on the identity of the complainants; ensure that the complainants are indeed the persons who are potentially directly affected by the Project; and to assess whether there is sufficient *prima facie* evidence of noncompliance with ADB's operational policies and procedures and related likely, direct and material harm which would justify an investigation of the complaint.

16. On 24 May 2016, the CRP determined the complaint eligible and recommended to the Board to authorize a full compliance review of the Project.⁸ The Board considered the CRP's report on eligibility on a no-objection basis and authorized a compliance review on 14 June 2016. The CRP submitted to the Board Compliance Review Committee (BCRC) the terms of reference (TOR) for the compliance review for its clearance on 20 June 2016. After BCRC's clearance, the TOR was sent to the Board and Management and posted on the CRP website.⁹

IV. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW

17. This compliance review is conducted in accordance with the provisions of the Accountability Mechanism Policy 2012. Para. 186 states:

The CRP compliance review report will focus on the specific complaint. It will document the CRP's findings concerning any noncompliance, and alleged direct and material harm. It will include all relevant facts that are needed to fully understand the context and basis for the CRP's findings and conclusions. It will focus on whether ADB failed to comply with its operational policies and procedures in formulating, processing, or implementing the project in relation to the alleged direct and material harm. It will also ascertain whether the alleged direct and material harm exists. If noncompliance is found and the alleged direct and material harm is confirmed, the report will focus on establishing the noncompliance as a cause for the alleged harm.

⁸ See the CRP's Report on Eligibility, To the Board of Directors on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program Tranche 3 in Georgia (Asian Development Bank Loan 3063), 24 May 2016 at [https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-R40-16-FOR%20WEB.pdf/\\$FILE/GEO-R40-16-FOR%20WEB.pdf](https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-R40-16-FOR%20WEB.pdf/$FILE/GEO-R40-16-FOR%20WEB.pdf).

⁹ The terms of reference for the compliance review of Loan 3063-GEO: MFF-Sustainable Urban Transport Investment Program (Tranche 3) is at [https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf/\\$FILE/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf](https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf/$FILE/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf).

18. The CRP reviewed compliance under the Project with the following ADB policies and operational procedures. These policies were in effect when the Project was processed and approved:¹⁰

- (i) Safeguard Policy Statement (2009);
- (ii) Public Communications Policy (2011);
- (iii) Operations Manual (OM) Section F1 (Safeguard Policy Statement) issued on 1 October 2013;
- (iv) OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 6 December 2010; and
- (v) OM Section L3 (Public Communications) issued on 2 April 2012.

19. CRP member, Arntraud Hartmann, was designated as the Lead Reviewer for this compliance review, with assistance from Lalanath De Silva,¹¹ and Dingding Tang, Chair of the CRP. To assist in its work, the CRP engaged a document reviewer and two international consultants (one, a structural engineer and the other, an environment expert). Overall administrative, logistics, and technical support was provided by OCRP.

20. Throughout the compliance review process, the CRP consulted, as appropriate, all relevant parties concerned, including the complainants and other project affected persons, Green Alternative (the NGO which assisted the complainants in lodging the complaint), the borrower, MDF, project consultants, other relevant government officials, the Board member representing Georgia, ADB Management, and staff. (See Appendix 3 for the list of persons met or contacted by the CRP for this compliance review.)

21. In conducting the compliance review, the CRP (i) reviewed relevant project files and (ii) interviewed ADB staff at the ADB Headquarters and at the ADB Georgia Resident Mission. The CRP also conducted two site visits to Tbilisi. The first mission was from 11-14 September 2016 when the CRP met with the complainants, other affected persons and key government officials from agencies that are directly related to the Project, including the Minister for Regional Development and Infrastructure of Georgia. All three CRP members joined the mission with support from Josefina Miranda, Compliance Review Officer, OCRP. The second was a technical mission conducted by A. Hartmann and two international consultants from 10-13 October 2016 which validated measurements in the IEE, especially the noise and vibration impact assessments and reviewed additional environmental impacts.

V. FINDINGS

22. In this section, the compliance review assesses whether ADB has complied with its operational policies and procedures which are relevant to the complaint. The section also assesses whether there is evidence of likely, direct and material harm. The CRP findings will be discussed as follows:

¹⁰ References to ADB operational policies and procedures in succeeding sections of the report are only to those enumerated in this paragraph.

¹¹ Lalanath de Silva participated in the compliance review of this Project only until the end of his term on 31 October 2016.

- A. Noise impacts
- B. Vibration impacts
- C. Air pollution impacts
- D. Impacts on vulnerable groups
- E. Impacts on water and the river ecology
- F. Consultations
- G. Environmental categorization of the Project
- H. Evidence of likely, direct and material harm

A. Noise Impacts

RELEVANT ADB POLICIES AND PROCEDURES

Safeguard Policy Statement, para. 16: *“...ADB’s role is to explain policy requirements to the borrowers/clients, help borrowers/clients meet those requirements during the project processing and implementation through capacity-building programs, ensure due diligence and review, and provide monitoring and supervision....”*

Safeguard Policy Statement, para. 56: *“...ADB will conduct safeguard reviews,... as part of its overall due diligence. ADB’s safeguard due diligence and review emphasizes environmental and social impact assessments...Through such due diligence and review, ADB will confirm (i) that all key potential social and environmental impacts and risks of a project are identified; (ii) that effective measures to avoid, minimize, mitigate, or compensate for the adverse impacts are incorporated into the safeguard plans and project design; (iii) that the borrower/client understands ADB’s safeguard policy principles and requirements as laid out in Safeguard Requirements 1–4 and has the necessary commitment and capacity to manage social and environmental impacts and/or risks adequately;...”*

Safeguard Policy Statement, Appendix 1, para. 8: *“The environmental assessment will examine whether particular individuals and groups may be differentially or disproportionately affected by the project’s potential adverse environmental impacts because of their disadvantaged or vulnerable status, in particular, the poor, women and children, and Indigenous Peoples. Where such individuals or groups are identified, the environmental assessment will recommend targeted and differentiated measures so that adverse environmental impacts do not fall disproportionately on them.”*

Safeguard Policy Statement, Appendix 1, para. 33: *“During the design, construction, and operation of the project the borrower/client will apply pollution prevention and control technologies and practices consistent with international good practice, as reflected in internationally recognized standards such as the World Bank Group’s Environment, Health and Safety Guidelines.⁷ These standards contain performance levels and measures that are normally acceptable and applicable to projects. When host country regulations differ from these levels and measures, the borrower/client will achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, the borrower/client will provide full and detailed justification for any proposed alternatives that are consistent with the requirements presented in this document.”*

⁷ World Bank Group, 2007. *Environmental, Health, and Safety General Guidelines*. Washington, DC.

OM Section C3 (Incorporation of Social Dimensions into ADB Operations)/Bank Policies (BP), para. 6, (iii): *“... integrates social analysis in preparing country partnership strategies and regional strategies and programs; identifies potential social issues during project preparation to ensure that the project design maximizes social benefits and avoids or minimizes social risks, particularly for vulnerable and marginalized groups; ...”*

23. Complainants argue that they will be harmed by high noise levels. The IEE proposes mitigation measures which supposedly would reduce noise impacts by the road to 65 dBA during the day and 55 dBA during the night. The standards of 65 dBA and 55 dBA were defined in the IEE as threshold levels which need to be achieved. But are noise levels of 55 dBA and of 65 dBA consistent with ADB policies? Appendix 1, para. 33 of the SPS refers to the World Bank Group’s Environment, Health and Safety Guidelines¹ (WBG EHS Guidelines) which set permissible noise standards of 55 dBA for residential, institutional and educational areas during day time, and 45 dBA during night time.² The area where the new road will be built is a densely populated residential area.³ The apartment building of the complainants is located in an area consisting of a series of apartment buildings between two and nine storeys high in the immediate vicinity of a large school with about 800 students and a community center. About 640 households live in this group of buildings.⁴ Thus, according to ADB policies for residential areas, noise standards of 55 dBA day time and 45 dBA night time standards apply. These standards are more stringent than the 65 dBA day time and 55 dBA night standard specified in the IEE.

¹ World Bank Group 2007, *Environmental, Health, and Safety General Guidelines (WBG EHS Guidelines)*, at http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ehsguidelines.

² There might be other WB sources such as Sourcebooks and WB Technical working papers which discuss noise standards in different country context. But ADB’s Safeguard Policy Statement (SPS), Appendix 1, para. 33 refers only to the 2007 WBG EHS Guidelines and through this reference makes the WBG EHS Guidelines an integral part of the ADB’s SPS. Secondary sources, such as WB sourcebooks and technical papers, are not part of ADB’s SPS and thus not part of applicable ADB policy. Any information provided in these secondary sources cannot substitute for the ADB SPS provision. Secondary sources might generally be used for interpretation of policies, but noise standards are defined in the World Bank’s Environment, Health and Safety Guidelines as numeric dBA values and are thus not subject to interpretation. See WBG EHS Guidelines section 1.7 on Noise Management, p. 53 at <http://www.ifc.org/wps/wcm/connect/06e3b50048865838b4c6f66a6515bb18/1-7%2BNoise.pdf?MOD=AJPERES>.

³ This was also recognized in the brief project description which was an attachment to the environment categorization form for the project prepared by the project team and which was cleared by the ADB Chief Compliance Officer which states that “the 6.8-km section crosses a 2 km stretch in the residential and densely populated areas of Ponichala in Gardabani district. The selected alternative bypasses the residential area and 2.5 km of the alignment passes along the river Mtkvari.”

⁴ Figure taken from N.E.P., Part 1, Final Consolidated Project Completion Report and Recommendations, March 2015, page 2.

Figure 3: School Building Located in the Vicinity of Complainants' Building



Source: CRP

24. Appendix 1, para. 33 of the SPS further states that national standards need to be applied if these are more stringent than ADB standards. The CRP has been informed that Georgian legislation limits the noise standard to 55 dBA in residential areas for 7 am-11 pm and to 45 dBA for 11pm-7am. However, if certain criteria are applicable, the noise standard can be increased to 65 dBA for 7am-11pm and to 55 dBA for 11 pm-7 am.⁵ This exception clause which – so the IEE argues – is applicable to the Project, and would allow noise standards which are less stringent than the ADB defined standards. Even if one were of the view that these exception criteria apply to the Project, ADB policies would not permit the application of these less stringent standards, as according to Appendix 1, para. 33 of the SPS, national standards are only applicable if they are more stringent than ADB standards. The CRP thus finds that for the road to be constructed under the Project, the ADB standard of 55 dBA during the day and the 45 dBA during the night apply.

25. Appendix 1, para. 33 of the SPS allows the application of less stringent levels if specific project circumstances warrant such a lower level. But in such cases, a full and detailed justification for the deviation has to be provided. The CRP has examined the project documentation and finds no such justification. The IEE does not point out that ADB requires a different noise level than the applied thresholds of 65 dBA and 55 dBA. The IEE does not provide any justification why this less stringent noise standard, which deviates from the ADB standard, is appropriate in view of specific project circumstances. In interviews conducted with ADB staff, reference is made to a note to Table 7.7 of the IEE where conditions are listed which supposedly allow for less stringent standards in Georgia than the general Georgian standards of 55 dBA day and the 45 dBA night standards. But this footnote is at best an explanation why the regular Georgian standards have not been applied. It is not a justification why the Project merits a deviation from normal ADB standards. Justifications for deviations from ADB standards need to go further than simply stating a national standard. The justification would need to demonstrate that the adoption of the less stringent national standard will, in essence, serve the intended purpose of the ADB standard and would not result in likely, direct and material harm, over and above what is expected under the ADB standard. In the absence of an appropriate justification, no less stringent standards than the ADB standards of 55 dBA and 45 dBA can be applied.

⁵ The criteria are: (i) if the noise is generated by transport (road or railway); (ii) if the building used by residents is a noise-protected construction, (iii) if the building is directly facing the regional roads or railway roads or railway line; (iv) at a distance of 2 meters from the noise protection barrier. It is doubtful whether the complainant's building complies with these exception criteria.

26. The SPS (paras. 16 and 56) requires that ADB explain SPS policy requirements to borrowers/clients, help them meet those requirements during project processing and implementation through capacity-building programs, by ensuring due diligence and review. However, the MDF has informed the CRP during the investigation mission, that ADB has not advised them that the IEE assumes noise standards which are inconsistent with ADB standards and requirements. MDF has also informed the CRP that no discussions took place with ADB on why a standard other than the standards specified in ADB policies would be appropriate in Georgia.

27. The application of less stringent noise standards creates likely, direct and material harm. The complainants live in an apartment building immediately adjacent to a river bank where ambient noise levels are low.⁶ The CRP visited the complainants' building and entered several apartments. Many of the residents including the complainants have their bedrooms facing the river, where there is no noise from traffic. Residents of building 12 v/g typically have their bedrooms facing this direction and thus presently enjoy quiet sleep. On the opposite side of the building, and at a distance of about 70 meters is the current Tbilisi-Rustavi road. Beyond the road is a railway. Both generate a considerable amount of noise which is audible from the complainants' building. The construction of the new road and its day-to-day operations will significantly increase the noise levels on the river side for the residents of the building. While, the new road will reduce the traffic on the current road, during rush hours, it is likely that some traffic will divert to the old road. In effect, the complainants' building and other buildings along that strip of land will be sandwiched between the new road on the one side and the old road and railway on the other. Both these motorways will generate noise. During and after the construction of the road, the complainants will no longer enjoy the quiet sleep and rest they currently enjoy at least on the river side of their building.

28. Studies show that noise above a certain level creates annoyance and can have significant health impacts. The Dutch National Institute for Public Health and the Environment has carried out a comprehensive study to evaluate the health implication of road, railway and aircraft noise in the European Union.⁷ The study found that noise level above 42 dBA reach annoyance and above 55dBA reach severe annoyance. Sleep disturbances occur above levels of 35 dBA within the room (ear of the sleeper). Cardiovascular reactions are caused by noise levels within 60 dBA to 70 dBA during the day, while a significant impact could be observed at levels above 50 dBA during the nights.⁸ Furthermore people are exposed to a 20 percent higher risk of heart diseases and stroke, if they are exposed to more than 65 dBA during daytime.

29. The IEE modeled the noise impact on buildings adjacent to the new road and proposed mitigation measures to reduce noise impacts to the defined threshold of 65 dBA during the day and of 55 dBA during the night.⁹ Technical designs reviewed by the CRP during its mission in October 2016 provide for the construction of a 9-meter high noise barrier. This noise barrier would be located very close to the house of the complainants, at a distance of 19.8 meters at

⁶ The IEE finds ambient noise levels above 55 dBA for buildings located near the road which is presently used for transit traffic from Tbilisi to Rustavi. But the building where the complainants live is not located at a road and thus has lower ambient noise levels.

⁷ National Institute for Public Health and the Environment, Health Implication for road, railway and aircraft noise in the European Union, 2014 at http://www.bullernatverket.se/wp-content/uploads/2015/02/RIVM_report_noise_health_2015.pdf.

⁸ Sachverständigen Rat für Umweltfragen (2005): Umwelt und Verkehr (Expert opinion on environmental issues regarding traffic).

⁹ Municipal Development Fund of Georgia, 2015, Initial Environmental Examination GEO: Sustainable Urban Transport Investment Program – Tranche 3 Tbilisi-Rustavi Urban Road Link (Section 2), pp. 115-126 at <https://www.adb.org/sites/default/files/project-document/179597/42414-043-iee-03.pdf>.

one end of the building and 26.3 meters at the other end of the building. But even with the construction of this noise barrier, noise levels at the upper floors of the buildings where the complainants live would be higher than the 65 dBA and 55 dBA defined in the IEE. Noise modeling exercises conducted by the expert engaged by the CRP showed that even with the mitigation measures proposed in the IEE, noise levels below 55 dBA at night could not be achieved for the upper two floors of the buildings where the complainants live. At least one other building (8 Rustavi Highway), would be located significantly closer to the road and the noise barrier. According to technical designs reviewed during the CRP's October 2016 mission, this building would be 11.7 meters away from the noise barrier at one end of the building and at 20.1 meters from the other end of the building. The CRP has not modelled noise impacts at this building, but given the closer proximity of this building to the road and the noise barrier, it can be assumed that noise impacts would be higher than the ones modeled for the building of the complainants.

30. ADB will need to advise and assist the borrower to design measures to ensure that noise levels comply with ADB standards. The CRP, through its expert, modeled the noise reduction impact which could be achieved through the installation of an additional noise barrier of 9 meters in height with refraction panels in the middle of the road combined with a speed reduction and the use of noise absorbing asphalt. With these measures a significant reduction in noise impacts could be achieved, but ADB noise standards of 45 dBA during the night would still not be achieved in the upper floors of the buildings where the complainants live. Other options could be the enclosure of the road over a stretch of 1.5km through a noise shield gallery or resettlement of people impacted by noise levels above the permissible standards. There might be other options on achieving ADB noise standards. ADB would need to discuss with the borrower on the most cost effective, efficient, and socially acceptable measure to comply with ADB noise standards.

31. A further concern is the absence of an assessment in the IEE of noise impacts during the construction phase. The IEE only describes the noise impacts during the construction period in qualitative terms. Noise impacts will be considerable. The building closest to the road (8 Rustavi Highway) will only be about 7 meters away from the construction site. It is estimated that the densely populated area where the complainants live, will be significantly impacted by noise during construction for about one year. A particular severe impact is to be expected on the vision impaired people who live in the area where the complainants reside. The CRP was informed that 129 of vision impaired people¹⁰ live in the group of buildings in Ponichala adjacent to the road, of which 8 vision impaired persons live in the complainants' building. As vision impaired people depend importantly on hearing for orientation, a very significant noise impact during the construction period would surely disorient them in their daily life, probably to an extent that they would not be able to manage their daily lives. Without adequate mitigation measures, these vision impaired people will experience significant likely, direct and material harm. Para. 8, Appendix 1 of the SPS requires that mitigation measures be designed for disadvantaged and vulnerable groups to ensure that adverse environmental impacts do not fall disproportionately on them. The IEE has neither assessed the impacts on vision impaired people nor designed mitigation measures.

32. The CRP is concerned that ADB did not seem to have advised the borrower about the noncompliance with ADB noise standards in spite of the requirements stated in para. 16 and 56 of the SPS. ADB also needs to confirm that effective measures to avoid, minimize, mitigate, or

¹⁰ The list received by the CRP shows 168 persons registered as vision impaired (see para. 55).

compensate for the adverse environmental impacts are incorporated into project design. In respect to noise impacts, this has not been done under this Project.

33. **Finding.** The CRP finds that ADB has not assured compliance with its SPS, as projected noise levels are expected to be significantly above the maximum noise levels permitted under ADB policies and requirements. ADB has also not done due diligence in assuring that borrower knows about these standards and requirements and has not assisted the borrower that the required standards can be reached through mitigation measures. As high noise impacts cause likely, direct and material harm to people, noncompliance with maximum permitted ADB noise standards is likely to cause harm to the affected people.

B. Vibration Impacts

RELEVANT ADB OPERATIONAL POLICIES AND PROCEDURES

Safeguard Policy Statement, Appendix 1, para. 42: *“The borrower/client will identify and assess the risks to, and potential impacts on, the safety of affected communities 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 favor the prevention or avoidance of risks and impacts over their minimization and reduction. Consideration will be given to potential exposure to both accidental and natural hazards, especially where the structural elements of the project are accessible to members of the affected community or where their failure could result in injury to the community...”*

Safeguard Policy Statement, Appendix 1, para. 33: cited above

34. The complainants allege that road construction activities and subsequent operation of the road will cause vibrations which will damage their building and could potentially lead to its collapse. The complainants argue that their building is in very poor structural condition, with numerous cracks and signs of instabilities. The building was constructed in the 1970s and the deterioration is caused by poor construction, leading to corrosion, and lack of maintenance work. As part of the IEE, a modelling study was conducted to assess the likely impacts of vibrations caused by the proposed road on the building. The study concluded that while the quality of the building is poor, the vibrations caused by the road during construction and subsequent operations would not cause damages to the core structure of the building.¹¹

35. The study concluded that all core structures of buildings were in good conditions and would withstand vibrations. This statement, however, only refers to the core structure of the building. The study also states that voluntary additions made to the buildings are unstable, cannot be verified from the static point of view. The study therefore concludes that these additions need to be removed or reinforced.¹² Most of the affected buildings have additions to the building core structure. Many of these additions are of very significant size, in some buildings amounting up to 40 percent of the space which residents use, and annexes have become an integral part of the living area of the residents. In other buildings, these annexes are

¹¹ See Final Consolidated Project Completion Report and Recommendations N.E.P. Nord Est Progetti S.r.l. Società di ingegneria, March 2015 which is Annex 10 of the Initial Environmental Examination (December 2015) for the Project.

¹² See N.E.P. Nord Est Progetti S.r.l., Part I, Final Consolidated Project Completion Report and Recommendations, page 5.

small and represent, for example, enclosed balconies. The building of the complainants is one of the two buildings which hardly has any annexes.

36. The CRP during its investigation mission engaged a structural engineer to assess whether the findings of the vibration study, conducted as part of the IEE, are plausible. Since there is no vibration standard defined in ADB policies, the CRP made its assessment based on internationally recognized standards with particular reference to European vibration threshold levels. The CRP with its technical expert recognized the methodology pursued under the IEE study. The CRP also finds that the model used for the calculation of vibration impacts is suitable for such assessment. However, the CRP is concerned about data and assumptions entered into the model. Specifically, the model made assumptions about the stiffness of the buildings. The CRP, through its expert, carried out measurements of natural frequencies for building 12 v/g to verify whether assumptions about the stiffness of the building that were used in the IEE vibration study are roughly consistent with measured values. Measurements of natural frequencies indicate the stiffness of a building, which is one of the important parameters required to assess the impacts of vibrations. The IEE vibration study did not measure the natural frequencies in any of the affected residential buildings. The results which the CRP obtained from measurements of natural frequencies in building 12 v/g, showed very substantial deviations from the assumptions made in the model in the vibration study which was carried out as part of the IEE. The measured natural frequencies were significantly lower than what was assumed in the model. This means the building is much less stiff than what has been assumed in the vibration impact assessment.

37. The impacts of vibrations on the building could thus be significantly greater than the results calculated in the model. Moreover, the longitudinal natural frequency of building 12 v/g is lower than the natural frequency in cross direction. This is unusual for such a tall and long building and the calculations made in the vibration study indicate the opposite. As the CRP, through its technical expert, found very significant deviations from key assumptions of the model, the CRP cannot conclude whether the findings of the IEE vibration study are plausible or not. Given the very significant deviations between observed and assumed, the CRP is of the view that natural frequencies need to be measured for all project-affected buildings and that vibration impacts need to be recalculated for all these buildings using actual measured data instead of assumptions. These recalculations need to be done for the building of the complainants (building 12 v/g) as well as other project affected buildings for which natural frequencies have not been measured. If recalculations show that buildings will not be able to withstand the impacts of vibrations during road construction and operation, appropriate mitigation measures will need to be taken.

38. In addition, the CRP, with technical support from its expert, carried out visual inspections of the building 12 v/g. Apart from some typical vibration-caused cracks in the masonry walls of some lift operating rooms on the roof of the building, no cracks from dynamic impacts could be identified. In general, no indication of global structural problems could be detected during the visual inspection of the building. The building had withstood the impacts of a magnitude 4.8 earthquake on 25 April 2008 without major damage.

39. The complainants requested the CRP to carry out tests on the concrete to assess its quality. Based on its site visit and initial investigation of the building, the CRP does not consider such a test necessary. The CRP is advised by its expert that the stiffness of the precast panels of the building is not the leading cause for stiffness of the building. Even poor concrete can have adequate stiffness. Total stiffness of a building can be better measured by the test of natural frequency than by laboratory tests of concrete samples of some panels from the building.

40. The building, however, is badly damaged by corrosion. There is *prima facie* evidence that this corrosion is caused by a combination of several factors and will over time lead to the decomposition of construction elements. This decomposition will take place independently of the construction of the road. The *prima facie* evidence of reasons for the corrosion are listed below:

- (i) The concrete coverage of the steel reinforcement is too low. The concrete chemistry prevents the steel to corrode if it is embedded in the basic environment of concrete with sufficient coverage thickness. Thus, the right distance of the reinforcement to the formwork and to the surface should have been ensured when the prefabricated panels were fabricated. That was not the case and the steel bars are too close to the surface, sometimes directly on the surface.
- (ii) With carbonation, the concrete will lose the capability of rust protection through time. This process starts at the surface and goes into the depth through time. This effect is related to the cement content and quality. The carbonation depth was measured in the survey on samples of boring cores.
- (iii) The steel rebars increase their volume when they corrode. Due to this effect the covering concrete is chipping and the steel loses its last rust protection, accelerating the decomposition of the concrete element.
- (iv) The static appreciation for the reinforcement is the coaction with the concrete. For this reason, there has to be a continuous interconnection between steel reinforcement and concrete. If that connection gets successively lost, the concrete element gets weaker causing deformations.
- (v) The inadequate tightness of the roof and missing water protection of concrete elements over decades combined with occasional frost effect led to the decomposition of concrete elements especially in the roof and attic area.
- (vi) This corrosion causes chipping of the concrete, falling down of loose concrete parts in increasing dimensions, deformations and finally the local failure of the concrete element. It is, however, not related to vibrations. Moderate vibration not exceeding the applied thresholds will not affect the described decomposition process.

Figure 4: Loose Parts in Danger of Falling off on Buildings of Complainants



Source: CRP

41. The visual inspection showed some critical substructures in the building. Among these are prefabricated concrete slabs under the roof which are decomposed; decomposition of the porches at the entrance; balconies that are in poor condition with loose parts of concretes in danger of falling off; sinking down of floors; and decomposition of ceilings. All of these decompositions are not caused by vibrations and will not be further deteriorated by the vibrations caused by the road project. However, there are very serious concerns that the loose concrete parts, bricks, steel rods and other insufficiently fixed elements at the building will fall during construction work. Falling of these elements pose danger for persons staying near. While the decay of the building will not be further accelerated by the vibrations, the vibrations might cause the already loose parts to fall down during the construction period. The CRP notes, that parts which could fall off during construction are not only the additions attached illegally by the residents as is noted in the IEE. Parts falling off could include a variety of components in the general building structure which are already loose as a result of corrosion. The IEE has not proposed mitigation measures on how people could be protected from parts falling down. The danger of people being hurt can be averted by: (i) removing all loose parts outside of the building; (ii) fixing loose parts; (iii) repairing or changing problematic substructures; (iv) propping up problematic substructures; (iv) barricading dangerous areas; (v) removing problematic stores

on the top of the building or the entire building; and (vi) communicating to the inhabitants of the building the dangers.

Figure 5: Porch at Entry of Building in Danger of Falling Down



Source: CRP

Figure 6: Poor Preservation of Balconies in Danger of Falling Down



Source: CRP

42. The CRP through its expert, did make an assessment of building 16 a/b which is the building of second complaint and is located in the vicinity of building 12 v/g in the Ponichala area (see Figure 2). This assessment was done during the eligibility mission for the second complaint. As concluded by the CRP Eligibility Determination Report for the second complaint, the CRP is of the view that this second complaint should be consolidated with the first complaint (see paras. 13 and 14). As the first complaint raised issues regarding building 12 v/g where the group of complainants live, and the second complaint raised issues regarding building 16 a/b, the CRP only made more detailed assessments on these two buildings.

43. The Eligibility Report of the second complaint lays out that the building 16 a/b is in very poor condition. The report states: "The construction of building 16 a/b is characterized by negligent workmanship. A key issue is the decomposition of concrete elements due to corrosion which has several causes. Some substructures such as the roof, the stair case, the entrance area and various ceilings are – mostly due to corrosion – in critical conditions and in danger of breaking down." Moreover, the eligibility report also states: "Of particular grave concern is the condition of the annexes to the building. Based on visual inspection, these annexes are not safe and are in danger of collapsing. Due to corrosion, poor workmanship and design faults, these annexes are highly unstable....The shaking of the building resulting from vibrations caused by road construction and operation could accelerate the decomposition of the building, which has already taken place.... Given the very poor condition of the building, the danger for persons being hurt by the decomposition of the building is significant."¹³

¹³ See footnote 6, paras. 20 and 21.

44. The IEE vibration impact study found that the core building 16 a/b will be able to withstand the impacts of vibrations caused by road construction and operation. However, the study raised concerns about the voluntary additions to the building. It states: *“Building has voluntary additions and added terraces and structures, sometime even important ones. Those modifications are unevenly distributed and realized by different types of materials. They show very thin bearing structures, mostly the metal ones, showing important bending and flexures. The assembling of elements forming the voluntary additions show many faults: the cements is very poor, the aggregates have different sizes and most important, it clearly appears that no vibration was done during the pouring of the cement mixtures. The reinforcement rebars are not protected and there are several detachments of weathered and damaged concrete slabs.”* The IEE vibration impact study states that the *“additions are not verifiable from the static point of view-that is, the voluntary additions should be either removed or reinforced.”*¹⁴

45. The IEE vibration study did not assess vibration impacts on the annexes but only on the core structure of the building. But residents in building 16 a/b live in the core structure and annexes and in most apartments, annexes have become fully integrated into the living space of the residents. They have, for example, bedrooms or living rooms in these annexes. Unstable annexes will thus pose a severe safety risk to the residents. Removal of these annexes, as stated in the IEE, would correspond to demolition of a significant share of the living space of residents and would possibly trigger the application of SPS, Appendix 2. Reinforcement of these annexes would be a very significant construction project which would need to be completed before the commencement of road construction work.

Figure 7: Annexes attached to the complainants' building.



Source: OCRP

46. Due to the absence of the inclusion of the annexes in the vibration survey, the impacts of vibration on the residential buildings, consisting of core buildings and annexes, are not known. The results of the IEE vibration studies are thus not meaningful for buildings which have significant annexes. The CRP is of the view that for all project-affected buildings which have significant annexes, vibration impact calculations have to be carried out on the building, including the core structure and the annexes. Vibration impacts have to be recalculated entering

¹⁴ N.E.P. S.r.l. Part 1, Final Consolidated Project Completion Report and Recommendations, March 2015, pages 10-11.

the building parameters for the core structure and the annexes into the model and not only the parameters for the core structures. If revised calculations show, that buildings with annexes will be damaged as a result of vibration impacts by the Project, appropriate mitigation measures need to be taken. To assure the safety of people, these mitigation measures will need to have been taken before any road construction work starts.

Figure 8: Open foundation situation in some locations and some foundations have been undercut losing all their effectivity.



Source: OCRP

47. The complainants also raised concerns about the vibration impacts on humans. The CRP accepts the findings presented in the IEE which conclude that vibrations are unlikely to surpass thresholds considered acceptable for people. During the construction period, these thresholds are likely to exceed internationally recognized thresholds only in building 8 Rustavi (see Figure 2), in the part of the building which is nearest to the road. The vibrations expected to be caused by road operation are predicted to remain below the thresholds. Only in case of significant bumps would these vibration thresholds be exceeded. Any bumps therefore need to be avoided on the road. These general conclusions on the impacts of vibration on humans are not applicable to the group of vision impaired people residing in the buildings. Paras. 31, 55 and 56 lay out the need to identify the impacts of the Project to vision impaired people and to identify appropriate mitigating measures.

48. **Finding.** The CRP finds that there is noncompliance with SPS (Appendix 1, para. 42) as mitigation measures as presently designed would not suffice to protect people from pieces falling down that may be caused by the project during road construction. Moreover, the CRP finds significant variation between observed variables about the stiffness of building 12 v/g and assumed variables in the vibration study which was conducted as part of the IEE. Results of the IEE vibration impact study might thus not be correct. The vibration impacts need to be reassessed using measured data rather than assumed data. These recalculations of impacts need to be conducted for all project-affected buildings for which assumptions rather than actual measured data have been used. If revised calculations show that some buildings cannot withstand impacts of vibration by the Project without damages, appropriate mitigation measures need to be taken.

49. Moreover, vibration impacts need to be reassessed for all project-affected buildings which have significant annexes (in terms of building size) and where vibration impacts have only been measured on the core structure of the building but have not included the annexes. The correct parameters, which consist of core structure and of annexes, need to be entered into the model and impacts need to be recalculated. If revised calculations show that the building with annexes cannot withstand vibration impacts by the Project during road construction and operation, mitigation measures need to be taken. Such mitigation measures, which would adequately secure the buildings, would need to be implemented prior to the commencement of road construction.

C. Air Pollution Impacts

RELEVANT ADB OPERATIONAL POLICIES AND PROCEDURES

Safeguard Policy Statement, Appendix 1, para. 33: Cited above.

50. Complainants argue that they will be impacted by high levels of air pollution. The IEE concludes that there will not be a significant impact on air quality resulting from the construction and operation of the road. The CRP, with the support of its expert, reassessed the air quality impacts.

51. SPS, Appendix 1, para. 33 refers to the WBG EHS Guidelines. These Guidelines on Ambient Air Quality provide that *“projects with significant impacts to ambient air quality, should prevent or minimize impacts by ensuring that: Emissions do not result in pollutant concentrations that reach or exceed relevant ambient quality guidelines and standards by applying national legislated standards, or in their absence, the current WHO Air Quality Guidelines or other internationally recognized sources.”*¹⁵ The IEE presents Georgian national threshold standards for NO₂ of 600 ug/m³ (annual) and of PM₁₀ 100 ug/m³ (annual).¹⁶ The WHO (2005) guidelines differentiate between “air quality values” and “interim target values”. The interim targets have been established to allow a gradual approach in areas that are presently impacted by poor air quality. The interim targets aim to promote a shift from high air pollution concentration with high acute and serious health consequences to lower air pollution concentrations. The monitoring of air quality in Asia has particularly identified PM₁₀ as a critical pollutant for most Asia cities. Table 2 below presents the interim values judged appropriate for the city of Tbilisi.

52. The present air quality of Tbilisi is poor in accordance with monitoring data. Due to its topography, Tbilisi does not benefit from the effective air mass exchange and air circulation as the city is located in a valley and shielded in two directions against large-scaled wind systems. The city has a preload significantly above the WHO interim targets. Table 2 points to the high preload value for all SO₂, NO₂, and PM₁₀.

¹⁵ WBG EHS Guidelines – Air Emissions and Ambient Air Quality Guideline, p. 4 (30 April 2007) at <http://www.ifc.org/wps/wcm/connect/532ff4804886583ab4d6f66a6515bb18/1-1%2BAir%2BEmissions%2Band%2BAmbient%2BAir%2BQuality.pdf?MOD=AJPERES>

¹⁶ See IEE page 111-113, where reference is made to “Georgian Permissive Threshold Concentrations of Air Pollutants in Populated Areas - Hygiene Normative Standards P.N. 2.1.6.002-01).

Table 2: Air Pollution Interim Targets and Preload for Tbilisi

Pollutant	Target values WHO Interim standard 2 (IT-2) ($\mu\text{g}/\text{m}^3$)	Preload (Tbilisi) ($\mu\text{g}/\text{m}^3$)
SO ₂ (24-hour)	50 ⁴	60 (<100) ³
NO ₂ (1-year)	40 ⁴	76 ¹
PM ₁₀ (1-year)	50 ⁴	55 ²

¹ Data adopted from the IEE 2015 (Sampling point No.2 in Ponichala, p.45),

² Data adopted from WHO Global Urban Ambient Air Pollution Database (update 2016), Figures for Tbilisi

³ IEE only mentions a value < 100 $\mu\text{g}/\text{m}^3$ but not specify the value. The value of 60 was derived from sources of information for Tbilisi.

⁴ = relevant are IT-2 standard

53. The CRP, through its expert, modelled the impacts of the road on air quality assuming different levels of traffic flows; that noise barrier be erected, and that European combustion technology will have been introduced in Georgia by the year 2030. The model assesses the incremental levels of SO₂, NO₂, and PM₁₀ caused by the operation of the new road by 2030. The modeling shows only a very small impact on air quality. The incremental level of SO₂ based on emissions is very low as the model assumes that the fleet of vehicles by 2030 will be equipped with combustion technology similar to European standards. For the same reason, the level of NO₂ will not increase and might even decrease. The level of PM₁₀ increases but because of the construction of the noise barrier (or possibly barriers), the incremental level of PM₁₀ in the area will remain below the level of irrelevance. A level of irrelevance is assumed if respective air pollutants are not increased by more than 3% in comparison to the preload. Model results indicate that the PM₁₀ value will remain below this 3% threshold and thus should not be considered as relevant in terms of impact on air quality. Moreover, levels measured will remain below the PM₁₀ and NO₂ national threshold levels defined in the IEE.

54. **Finding.** The CRP finds that the environmental policies regarding air quality standards and requirements have been complied with as the residents in the respective locations will not be impacted by a deterioration of air quality which exceeds the level of irrelevance.

D. Impacts on Vulnerable Groups

RELEVANT ADB POLICIES AND PROCEDURES

Safeguard Policy Statement, Appendix 1, para. 8: Cited above.

OM Section C3/BP, para. 5: “ADB operations incorporate social dimensions to ensure the following social development outcomes, especially for the poor, vulnerable, and excluded groups:

- (i) policies and institutions that recognize and promote greater inclusiveness and equity in access to services, resources, and opportunities;
- (ii) greater empowerment to participate in social, economic, and political life; and
- (iii) a greater sense of security and ability to manage risks.”

OM Section C3/Operational Procedures (OP), para. 5: “The process of identifying likely social dimensions, including potential beneficiaries and people likely to be adversely affected by an ADB-supported project will start during project identification and will continue with increasing refinement during project preparation and implementation.”

55. The group of buildings on Rustavi Highway in Ponichala where the complainants live was originally constructed to provide housing for vision impaired people. Prior to privatization of these buildings, they were owned by the Union of the Blind. Since privatization of the buildings, the number of vision impaired persons has been significantly reduced, but even today the area houses a significant number of vision impaired persons. According to a list which the CRP received on 12 October 2016 from the Union of the Blind (Ponichala Branch), a total of 168 persons are registered as vision impaired who live in the project affected buildings. This list might be somewhat out of date as other estimates obtained from CRP interviews point to about 129 residents registered as vision impaired. With a total number of 642 households living in the 10 project affected buildings,¹⁷ one out of five households has a household member which is vision impaired. In the building of the complainants, only eight persons are vision impaired which is a lower share than in many other buildings.

56. The IEE does not mention the presence of vision impaired residents and does not make an assessment of the impacts of the road construction and operation on these people. But people who have very reduced vision or are blind depend very significantly on other senses, such as hearing. Increased noise levels will have much stronger impacts on them than on non-vision impaired people. The vibrations which are expected to be felt during road construction will have a very significant impact on this special group. Based on technical designs reviewed by the CRP during its October 2016 mission, some construction sites will only be 7 meters away from apartments where vision impaired people live. The CRP was informed by residents met during site visits that the building which is located nearest to the road to be constructed (only 11.7 meters-20.1 meters away from the edge of the new road), has a relatively high share of vision impaired people. It is highly probable that vision impaired people living so near to the construction site will become very disoriented and will not be able to conduct their life without ongoing assistance. As such, special targeted mitigation measures will need to be designed and implemented. ADB will need to advise and support the borrower on the design of such mitigation measures, which could include, among others, the provision of social services to guide vision impaired people throughout their daily lives, or alternatively, the temporary or permanent relocation of these particularly impacted people.

57. Another issue of concern is the reduced light which apartments might receive if the road alignment will be at the height of the second floor of the complainant's building and not on the ground floor. The CRP has been informed during the review of the technical designs and during its joint site visit with the technical consultants engaged by MDF and MDF technical staff that the road alignment will be on the level of the second floor of the buildings. This information was provided during the September and October 2016 missions. If this alignment will be maintained, then people living on the ground floor would receive less light as a concrete wall, carrying the road, will be built in front of their buildings.¹⁸ Moreover, the planned noise shield wall of about 9 meters will reduce light available in the apartments behind this barrier even if it will be constructed with transparent material. Some vision impaired people, who still have residual vision, might be handicapped by this reduced light, especially if they live on the ground floor, below the highway line and in future, will face a concrete wall very near their building. The impacts of reduced light due to the alignment of the road and the proposed noise shield barrier need to be assessed and mitigation measures need to be designed.

¹⁷ Total household number see N.E.P. Nord Est Progetti S.r.l, Part 1, Final Consolidated Project Completion Report and Recommendations, March 2015, page 2.

¹⁸ The CRP has been informed by MDF in December 2016 that the alignment of the road might be changed with the road constructed at the same level as the ground floor apartments. A final decision on the alignment will be taken when technical designs will be finalized.

58. **Finding.** The CRP finds that there is noncompliance with SPS, Appendix 1, para. 8 and OM Section C3/OP, para. 5. Vision impaired people are vulnerable people who will be differentially and differently impacted than other people. The IEE has not identified this group of people; has not assessed the impacts of noise and vibration and the possible impacts of reduced light resulting from the road alignment along the second floor of the building; and of the construction of the noise shield barrier. The IEE has not recommended targeted and identified measures so that the impacts do not fall disproportionately on the vision impaired people. There is no evidence that ADB staff has guided the borrower to assess the special impacts and to design mitigation measures.

E. Impacts on Water and the River Ecology

RELEVANT ADB POLICIES AND PROCEDURES

Safeguard Policy Statement, Appendix 1, para. 4: *“Environmental assessment is a generic term used to describe a process of environmental analysis and planning to address the environmental impacts and risks associated with a project. At an early stage of project preparation, the borrower/client will identify potential direct, indirect, cumulative and induced environmental impacts on and risks to physical, biological, socioeconomic, and physical cultural resources and determine their significance and scope, in consultation with stakeholders, including affected people and concerned NGOs.”*

Safeguard Policy Statement, Appendix 1, para. 7: *“The assessment will identify potential transboundary effects, such as air pollution, increased use or contamination of international waterways, as well as global impacts, such as emission of greenhouse gases and impacts on endangered species and habitats.”*

Safeguard Policy Statement, Appendix 1, para. 24: *“The borrower/client will assess the significance of project impacts and risks on biodiversity and natural resources as an integral part of the environmental assessment process..... The assessment will focus on the major threats to biodiversity, which include destruction of habitat and introduction of invasive alien species, and on the use of natural resources in an unsustainable manner. The borrower/client will need to identify measures to avoid, minimize, or mitigate potentially adverse impacts and risks and, as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity.”*

Safeguard Policy Statement, Annex to Appendix 1: *“An environmental assessment report is required for all environment category A and B projects. Its level of detail and comprehensiveness is commensurate with the significance of potential environmental impacts and risks.”*

59. The new road in the section where the building of the complainant is will be constructed along the Mtkvari River and will reach into the river. A retaining wall with a total length of 1.66 km will be built into the river to support the road. The CRP has been informed that this wall will be built 5-6 meters into the river. As part of the IEE, a hydrological impact assessment has been carried out. The hydrological impact assessment concludes that there are no additional flood risks resulting from the retaining wall which will be built into the river. The study estimates that water level will rise by about 20 cm only in the area where the retaining wall will be built and the velocity of the river will increase due to the narrowing of the river. But as there are flood plains

about 5 km downstream, the river will regain its natural flow when it reaches these flood plains. As rocks are the predominant material of the river, the danger of deepening of the water bed and erosion is low. The CRP recognizes that the methodology applied to assess the flood risk is appropriate and the results are plausible.

60. The CRP is concerned that the IEE does not provide for specific measures for storm water treatment from the road and no provisions were made on how the water in the river can be protected in case of traffic accidents. Untreated water would be discharged directly into the Mtkvari River. This could endanger the water quality of the river, and its aquatic life, but also could contaminate crops in agricultural areas that are flooded. The potential contamination could endanger spawning areas in floodplains approximately 5 kms further downstream with a high ecological value. A storm water retention basin with oil separators has to be included into the project design. The storage volume of the retention basis has to be sufficiently large to store the content of one tank load in case of an accident. Para. 691 of the IEE includes a provision for prevention and mitigation of accident risks associated with vehicular traffic and transport. It says *“RDMRDI in conjunction with the Ministry of Interior should facilitate development of legislation and emergency response plans regulating transportation of hazardous materials. The system of measures may include but not limited to: (i) design and implement safety measures and an emergency plan to contain damages from accidental spill; (ii) designate special routes for hazardous materials transport, (iii) Regulation of transport of toxic materials to minimize danger; (iv) prohibition of toxic waste transport through ecologically sensitive areas.”* These legislative measures and plans could be useful, but storm water retention basins with oil separators have to be included in the project design now, so that they can be constructed together with the road. Section 8.1.2 of the IEE also includes some pollution and prevention measures but these only refer to road construction activities and do not address pollution resulting from traffic accidents during road operation.

61. The IEE did not collect baseline data and did not assess the ecological impact on the river. It comes as a surprise to the CRP, that no baseline survey has been conducted on the ecological resources of the river for a project which seeks to construct a 1.66 km long retaining wall about 5 meters-6 meters into the river. The Mtkvari River is an international waterway or transboundary river. The Project is located close to the Azerbaijan border.

62. While no doubt the river is polluted, in the National Biodiversity Action Plan,¹⁹ the government has recognized the importance of protecting, preserving and improving the remaining biodiversity of its river systems. The Plan states:

Inland water ecosystems and their inhabitants are heavily affected by the construction and operation of major infrastructure such as dams, roads, railways, bridges and pipelines. Therefore, all infrastructure projects need to be conducted in full compliance with environmental requirements and any possible negative impacts must be avoided. Potential serious impacts from infrastructure development typically include: blocking of fish passages; limiting of fish breeding and/or movement of the breeding season; depletion of fish food bases; water pollution and the reduction of its quality; a decrease of water flow; overall degradation of water ecosystems, etc. Any activity at or near water bodies needs to consider the ecological characteristics and values of the given water body as well as those of its whole basin. Relevant means, technologies and project

¹⁹ <https://www.cbd.int/doc/world/ge/ge-nbsap-v2-en.pdf>.

design "features must be applied to reduce the impact to a minimum."²⁰ (emphasis added)

63. It is therefore important that when projects such as these are constructed that ecological evaluations are done so as not to make an already poor ecological situation even worse. Precaution must be exercised to study the ecology of such a body of water and then to identify species and habitats that may be affected. The retaining wall will encroach into the riverbed and construction activities are more than likely to result in oil, concrete, and other materials escaping into the river. The CRP cannot judge how significant the ecological impacts will be. The river is highly polluted and critically endangered species, such as the sturgeon, cannot travel anymore to their previous spawning grounds as their access to it is interrupted by power projects where no fish bypasses have been built.²¹ But it is difficult to imagine that a major road construction project which will be built into the riverbed will have no impacts on the river ecology. The CRP is of the view that at least a baseline survey on the ecological resources should have been conducted and that, based on the findings of the survey which would reflect the stock of ecological resources; an assessment should have been made whether a further impact assessment is required. As the Mtkvari river is an international river, the IEE also needed to consider whether there are any trans-boundary effects, for example, increased pollution. (See SPS Appendix 1, para.7). An assessment of potential trans-boundary effects has not been done.

64. **Finding.** The CRP finds that ADB has not been compliant with its environmental safeguard policies as no baseline survey has been conducted on the ecological impact on the Mtkvari River, based on which potential impacts on the international river could have been assessed and, if considered necessary, an impact assessment could have been conducted. The IEE has not considered whether there might be any trans-boundary effects. Moreover, measures for storm water treatment and on how to protect the river water in case of traffic accidents need to be introduced under the Project.

²⁰ Footnote 30, p. 45, clause 8.1.4.

²¹ See US-AID Caucasus (2010): Biodiversity Analysis Update for Azerbaijan and Georgia. Prosperity, Livelihoods and Conserving Ecosystems (PLACE).

F. Consultations

RELEVANT ADB OPERATIONAL POLICIES AND PROCEDURES

Safeguard Policy Statement, Appendix 1, para. 19: *“The borrower/client will carry out meaningful consultation with affected people and other concerned stakeholders...Meaningful consultation is a process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle;¹ (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and **tailored to the needs of disadvantaged and vulnerable groups**; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures.....”* (emphasis added)

¹ For environment category A projects, such consultations will necessarily include consultations at the early stage of EIA field work and when the draft EIA report is available during project preparation, and before project appraisal by ADB.

OM Section F1/OP (October 2013), para. 19: *“The project team advises the borrower/client that meaningful consultation with affected people will be carried out, and the consultation processes will be appropriately documented in the EIA, IEE...The operations department, through due diligence and review, determines how the borrower/client has met or will meet the requirements on consultation and participation **The project team pays special attention to ensure that vulnerable groups have sufficient opportunities to participate in consultations.**”* (emphasis added)

65. Complainants argue that they have not been appropriately consulted on the Project. Complainants provided the CRP a list of meetings which they attended and described the meetings as information meetings rather than consultation meetings. They stated that they were not given a chance to present their main concerns, especially their concern that their building would not be able to withstand vibrations and that they wished to be resettled as they fear that the building might be unsafe if a road is constructed in such close vicinity. They believe that their views were not taken into account during the meetings. They stated that they left the August 2013 and September 2015 meetings in protest.

66. The CRP has carefully reviewed the meeting records provided by MDF. Records point to a series of meetings which started in August 2013 with the presentation of the draft IEE. Subsequently, meetings were conducted with people living in buildings in the right-of-way where residents would need to be resettled. In September 2015 residents of the building of the complainants were invited to a meeting to receive information about the results of the vibration and noise impact modelling study and the proposed mitigation measure, namely the construction of a 9-meter high noise barrier. On 7 June 2016, a public hearing was held in the building of the Municipality of Ponichala. In addition, the complainants informed the CRP that – upon their request – they had meetings with the MDF in November 2015, albeit no records on these meetings were available from the MDF. The complainants state that an additional meeting was held with the MDF in February 2016. The draft IEE was uploaded in Georgian language on the website of the MDF in August 2013 and in English language in September 2013. The revised IEE was uploaded in December 2015 in Georgian language and in April 2016 in English language.

67. The CRP recognizes that a series of meetings has taken place and that the draft IEE and revised IEE were disclosed. The disclosures are consistent with ADB disclosure policies for category B projects.

68. The CRP assessed whether consultations met the concept of “meaningful consultations” as defined in SPS, Appendix 1, para. 19. It calls for consultations which enable the incorporation of all affected people and other stakeholders into decision making, such as project design and mitigation measures. Complainants argue that their views have not been taken into consideration and that during the meetings they were informed but not consulted. Records on the consultations are short and provide limited information. It is, however, noteworthy that records do not provide evidence of a discussion of the main concern of the complainants, namely their request for resettlement. The meeting records of September 2015 simply states that residents of building 12 v/g do not agree with the findings of the vibration and noise modeling studies and wish to be resettled. Given the centrality of this concern, the CRP would have expected more in-depth treatment of this issue in the meeting records. Absent from the records is also a discussion of the impact of the noise shield wall on the quality of life of the residents. Questions of residents about the proximity of the road to their buildings has been responded by emphasizing that an urban boulevard with trees and green areas will greatly improve the physical environment; improve the quality of life of residents; and value of buildings. The CRP agrees that a well-kept urban boulevard would improve the living area. But for buildings located very close to the planned noise shield wall, there will simply not be enough space to build such an urban boulevard, especially as emergency exit roads will also have to be constructed on that very narrow space. The CRP thus has some concerns whether the meetings conducted enabled the incorporation of all relevant views of affected people as stated under SPS, Appendix 1, para. 19. But the CRP recognizes that quite an extensive consultation effort has been made by the MDF and supported by ADB staff. A total of 12 meetings were conducted between July 2013 and February 2016 with minutes prepared and attendance sheets signed. The CRP thus does not find a general consultation failure in this Project.

69. The CRP, however, is concerned that consultation efforts have not adequately incorporated the views of vision impaired persons and other vulnerable people and that no special outreach efforts have been made. Meeting records do not address any issues of vision impaired people. The MDF informed the CRP that in both the public hearing in August 2013 and in the meeting of September 2015, one vision impaired person was present. In the public hearing of June 2016 three vision impaired people from the complainant's building and one representative of blind/disabled people attended. However this representation level is very low and the CRP is concerned that no special efforts have been made to reach out to this disadvantaged group of people and that no special consultations have been scheduled in a location close to their buildings. It is unlikely that without special assistance, vision impaired people would have known about the scheduled meetings and would have been able to travel to MDF where the 2013 and 2015 consultations were held. The CRP is of the view that early and targeted efforts should have been made to consult with the vision impaired people for them to fully understand likely impacts of the Project on their lives and to discuss with them how these impacts could be mitigated. Based on records available to the CRP, these consultations efforts have not been done.²² Para. 19 of OM Section F1/OP requires that ADB project teams pay

²² The MDF has given the CRP a copy of a letter from the Union of the Blind, dated 4 May 2016, in which the Union expresses gratitude to the MDF for the handling of the acquisition of land plots under the ownership of enterprises, established by the Union of Blind in Georgia. This letter refers to the LARP consultations which are separate consultations conducted with residents which will be resettled as their building is in the Right of Way and needs to be demolished.

special attention to ensure that vulnerable groups have sufficient opportunities to participate in consultations. The ADB project team is of the view that there is not a disproportionate group of vision impaired people among the project affected households and that participation of individual vision impaired people in a few of the general consultation meetings is adequate. The CRP differs from that assessment. As laid out in para. 53, records provided to the CRP from the Union of the Blind (Ponichala Branch), located in the immediate vicinity of the buildings, point to a significant number of vision impaired people. As the mobility of vision impaired people is highly restricted, special consultation efforts should have been made with this particular group of vulnerable people.

70. **Findings.** The CRP finds that the consultations conducted fall short of the requirements of the SPS as consultations have not been tailored to the needs of vulnerable groups. The CRP thus finds noncompliance with SPS as described above.

G. Environmental Categorization of the Project

RELEVANT ADB OPERATIONAL POLICIES AND PROCEDURES

Safeguard Policy Statement, para. 50. *“ADB uses a classification system to reflect the significance of a project’s potential environmental impacts. A project’s category is determined by the category of its most environmentally sensitive component, including direct, indirect, cumulative, and induced impacts in the project’s area of influence. ...Projects are assigned to one of the following four categories:*

(i) Category A. A proposed project is classified as category A, if it is likely to have significant adverse environmental impacts that are irreversible, diverse or unprecedented. These impacts may affect an area larger than the sites or facilities subject to physical works. An environmental impact assessment is required:

(ii) Category B. A proposed project is classified as category B if its potential adverse environmental impacts are less adverse than those of category A projects. These impacts are site-specific, few if any of them are irreversible, and in most cases mitigation measures can be designed more readily than for category A projects. An initial environmental assessment is required.”

Safeguard Policy Statement, Appendix 1, para. 7: *“the assessment will identify potential transboundary effects, such as air pollution, increased use or contamination of international waterways,”*

Safeguard Policy Statement, Appendix 1, para. 24: *“the borrower/client will assess the significance of project impacts and risks on biodiversity and natural resource as an integral part of the environmental assessment process specified in paras. 4-10.”*

OM Section F1/OP, para. 18: *“The operations department ensures that the following safeguard documents are posted on the ADB website: (i) draft EIA report at least 120 days before Board consideration for an environment category A project...”*

para. 19: *“.... For projects classified as category A for environment..., the project team participates in consultations to understand the main concerns of the project affected people so that these concerns and recommendations can be adequately addressed in project design and safeguard plans.”*

71. The Project has been classified as B for environmental impacts. The CRP is of the view that the Project should have been classified as A for environmental impacts as there are significant adverse environmental impacts that are irreversible and diverse and affect an area larger than the sites or facilities subject to physical works. The road passes through densely populated areas where with more than 7,000 people and the highway section includes a new road to be constructed along and into the Mtkvari River that is an international waterway across three countries (Turkey, Georgia, and Azerbaijan). The road will be supported by a retaining wall of 1.66 km in length and which reaches 5 meters to 6 meters into the river and is between 3 meters to 12 meters high. The construction of a retaining wall of such significant length is an irreversible impact on the river. Moreover, the road construction and operation creates significant noise impacts and vibration impacts on 10 multi-storey residential buildings with 642 apartments. An estimated 2,000 people live in the buildings directly adjacent to the new road to be constructed on and in the river. Noise impacts will be significant and continuous during construction and subsequent operation of the road and require costly mitigation measures. The road construction into the river bed creates environmental impacts which may affect an area larger than the sites or facilities subject to physical works. As no assessment was done on the ecological impacts on the river in the IEE, it is at this time not known how significant and how wide these impacts are. (See para. 63.) In addition, the Project needs to cross a Forest Park in which 68 trees will be cut. Those trees are categorized as red data species under the Georgia legislation. These are 39 Wych elms (*Ulmus minor* Mill) and 29 walnut trees (*Juglans regia* L). During the meeting with MDF, the CRP was informed that MDF intends to implement an eco-compensation program in line with Georgian legislation. Importantly, many detailed assessments and the design of specific mitigation measures relating to the impacts of noise and vibrations caused by road construction and operation have been delegated by the IEE to the contractors. However such delegated measures will be very difficult to review and monitor by ADB and the project affected people.

Figure 7: Forest Park



Source: CRP

72. As part of the categorization procedure in May 2013, the checklist for Roads and Highways was completed by the ADB project team and approved by the ADB Chief Compliance Officer. The categorization sheet does not indicate that 1.66 km of the highway will be built into the Mtkvari River as originally, a revetment along the river was planned. The categorization sheet identifies the “river bank revetment” as the only environmentally sensitive aspect of the Project that should be carefully analyzed in respect to erosion of non-protected sections of the river bank and channel stability. The classification notes the impacts of vibrations and noise on three to four apartment buildings, which somewhat understates the expected impacts on the 10 affected buildings housing about 640 households. The CRP is of the view that a reclassification should have been considered after the decision was taken to build a retaining wall into the river instead of a river revetment, as well as if current alignment is retained.

Figure 8: Mtkvari River in Front of the Complainants' Building



Source: CRP

73. As the Project was classified as category B for environmental impacts, an IEE rather than an environmental impact assessment (EIA) was prepared to assess the environmental impacts. The IEE for this Project was very comprehensive. However, as the Project was not classified as category A, the disclosure requirements for environment category A projects were not adhered to which require EIAs to be reviewed by ADB's Regional and Sustainable Development Department (RSDD, which is now, Sustainable Development and Climate Change Department-SDCC) and posted on the ADB website 120 days prior to tranche approval by the President. But from the CRP's point of view, the most significant consequence of the failure to categorize the Project as category A for environmental impacts is the fact that the ADB project team did not benefit from advice and guidance of RSDD, as well as an opportunity for the Project to be reviewed by other environment specialists in ADB in a peer review. An EIA is carefully reviewed by RSDD staff while the review of IEE is confined to the department level. Unfortunately, several of the noncompliance issues highlighted in this compliance report should have been noted by ADB staff in the review of the environmental assessment, most prominently the noncompliance with ADB noise standards. The fact that ADB has not commented on the noise standards applied in the environmental assessment and not advised and discussed with the borrower that the noise thresholds used in the IEE are inconsistent with ADB standards is the most significant noncompliance issue in this Project. The absence of an ecological impact assessment on the river might also have been noted by a careful review of the environmental assessment. A reluctance of staff to categorize projects with significant impacts as category A projects, thus preempts them from the support from RSDD and other environment experts which category A projects receive in the review process. But project risk management and support to the borrower requires informed guidance and careful reviews.

74. **Finding.** With the discussion above, the CRP finds that there has been noncompliance with the classification requirements and principles of ADB's environment safeguard policies.

H. Evidence of Likely, Direct and Material Harm

75. The CRP finds that there is likely, direct and material harm as a result of:

- (i) expected noise impacts which are significantly above the permissible ADB noise standards; (See paras. 25-33.)
- (ii) loose building components possibly falling down during construction if no appropriate mitigation measures are taken; (See para. 41.) and

- (iii) vibrations during construction, reduced light resulting from the road alignment²³ and construction of the noise shield barrier close to the apartment on vision impaired people (See paras. 31 and 55 to 57.)

76. This harm has not yet materialized as the construction work has not started. The harm laid out in para. 75 above, is thus “likely harm”. This harm will materialize if no action is taken to bring the Project into compliance until construction work commences and road operation begins. Harm as defined under the AM 2012 policy is a generic expression, which includes “likely harm” as well as “materialized harm.”²⁴ According to the AM 2012 policy, the CRP must be satisfied that there is evidence of the coexistence of (i) direct and material harm caused by the ADB assisted project; (ii) noncompliance with ADB policies and procedures, and (iii) the noncompliance as a cause for such harm. The harm laid out in para. 75 constitutes substantial harm which will materialize if the noncompliance with ADB policies, which have been laid out in this report, will not be corrected until construction work commences and road operation begins. The noncompliance with ADB policies directly causes the harm. If, for example, noise impact levels will not be reduced to the levels prescribed under ADB policies, the harm resulting from high noise level will be directly attributable to the noncompliance with ADB policies.

77. There are a number of areas where the extent of likely, direct and material harm cannot be determined now, as required impact assessments have not, yet, taken place. Only the assessments will conclude whether there are negative impacts which will lead to likely, direct and material harm. Assessments might point to negative impacts and likely, direct and material harm:

- (i) on the river ecology if impact assessments yet to be conducted, if found necessary after completion of a baseline survey, point to negative impacts on the river ecology; (See para 63.)
- (ii) on the structure of the buildings if reassessments of vibration impacts show that there will be impact of vibrations on buildings during road construction and operation; (See paras. 37 and 46.) and
- (iii) on the water quality as a result of inadequate treatment of storm water and measures to deal with accidental spills unless adequate mitigation measures are taken. (See para. 60)

²³ This assumes that the road alignment will be above the ground level as was evident in the technical designs presented to the CRP by DOHWA consultants and the MDF during a field visit to the project site during the September 2016 mission and the reviewed again during the October 2016 mission. If the technical design will be changed, reduced light impacts can be mitigated with transparent noise shield barriers. (See also para. 56.)

²⁴ According to para. 106 of the AM 2012 “*The compliance review functionwill investigate alleged noncompliance by ADB with its operational policies and procedures that has caused, or is **likely to cause**, direct and material harm to project-affected people.*” (emphasis added). Para. 103 , which lays out the objectives and guiding principles of the AM, uses the same language on “noncompliancethat may have caused, or is likely to cause,...harm.”

VI. CONCLUSIONS

78. This section summarizes the conclusions arrived at by the CRP as a result of the foregoing analysis and findings. The CRP finds noncompliance with the environment section of ADB's Safeguard Policy Statement as:

- (i) the Project will create noise impacts on people living in a densely populated area above the ADB allowed maximum noise standards; (See para. 33)
- (ii) people might be endangered from loose parts of buildings falling down during road construction; (See paras. 41 and 48.)
- (iii) Vibration impacts have to be reassessed for all project-affected buildings which have annexes which – in terms of size – are a significant part of the building, and where impacts have only been modeled on the core structure of the building. Vibration impact assessments need to consider the core structure and the annexes. Moreover, natural frequencies need to be measured for all project-affected buildings included under the vibration impact studies. Measured data then need to be entered into the vibration impact model (rather than assumed data) to assess the vibration impacts on buildings. If revised calculations of the model show that the project affected buildings will be damaged by the impacts of vibrations, adequate mitigation measures need to be taken. Mitigation measures need to be implemented prior to the commencement of road construction to secure the buildings and assure safety of residents; (See paras. 48 and 49.)
- (iv) impacts on vulnerable and disadvantage groups have not been assessed and no mitigation measures have been designed; (See para. 58)
- (v) insufficiently targeted consultations have been conducted with vulnerable groups, especially vision impaired people; (See para. 70)
- (vi) ecological impacts of the project on the Mtkvari River have not been assessed; and (See para. 64)
- (vii) the Project has not been appropriately classified for environmental impacts (See para. 74)

79. The CRP finds that the Project is compliant with ADB air quality standards and requirements. (See para. 54.)

80. The CRP finds that noise levels impacting people above the ADB maximum noise standards will create likely, direct and material harm. The CRP also finds that vibrations levels and high noise levels will create likely, direct and material harm to vision impaired people. And that there is likely, direct and material harm resulting from loose building parts falling down from buildings during road construction if no appropriate mitigation measures are taken. The CRP finds that the likely, direct and material harm is caused by ADB's noncompliance with its policies and procedures as outlined above.

VII. SOME LESSONS LEARNED

81. The CRP provides below some important lessons that the CRP learned based on experiences in this case. These would also feed into learning reports and other institutional learning activities, which OCRP, jointly with the Office of the Special Project Facilitator, the Independent Evaluation Department, and the Sustainable Development and Climate Change Department:

- (i) ADB staff needs to guide and support the borrower in complying with ADB policies. For this purpose ADB staff needs to tell the borrower what ADB safeguard requirements are and needs to help the borrower to design projects and mitigation measures in accordance with ADB policies. Required is an active “hands-on” engagement in supporting the borrower.
- (ii) Draft EIAs and IEEs need to be adequately reviewed so that non-application of ADB safeguard policies are noted on a timely basis and corrective actions can be taken.
- (iii) Appropriate classification of sensitive projects into environmental categories is important. Category A classifications should not be avoided even if category A projects require more cumbersome procedures. The more in-depth reviews which category A projects receive through SDCC, mitigates risks and helps ADB staff in adequately supporting the borrower in the implementation of ADB safeguard policies.
- (iv) The SPS pays particular attention to vulnerable and disadvantaged people, requires that adverse impacts on them are particularly assessed, mitigated and that vulnerable people are consulted. ADB staff needs to learn whether there are particularly groups of vulnerable and disadvantaged people which require special considerations. Field visits by ADB project team and staff and direct interactions with project affected people are essential to find out whether there are groups of disadvantaged and vulnerable people.

/S/ Dingding Tang

Chair, Compliance Review Panel

/S/Arntraud Hartmann

Part-time Member, Compliance Review Panel

Manila, Philippines

13 February 2017

REQUEST FOR COMPLIANCE REVIEW¹

January 29, 2016

**Complaint
Of
the residents of 12-33 Block, Rustavi Highway, Tbilisi, Georgia**

To: Complaints Receiving Officer

Asian Development Bank

6 ADB Avenue, Mandaluyong City 1550, Metro Manila, Philippines

Tel.: (+632) 632 4444

Fax.: (+632) 636 2086

E-mail: amcro@adb.org

Dear Sir/Madam,

We would like to hereby inform you that our residential block located on Rustavi Highway, Tbilisi, Georgia, is under the influence of Tbilisi-Rustavi Highway project middle section (Ponichala). The block is deformed and continuing the project in its current form (according to the information we hold, the distance between the road and the block is determined to be 14 m.) may inflict to it disastrous damage. In addition, it should also be considered that the part of the residents of the block are people with limited abilities. Consequently, constructing a road with the distance of 14m. from the block will significantly affect their everyday lives (will make movement harder for blind residents; increase noise and vibration levels).

Below is our correspondence with the Municipal Development Fund (MDF) of Georgia and Asian Development Bank in a chronologic manner:

Originally, we learnt about the project at a public review held by MDF in August, 2013. The review was also attended by the residents of other blocks located along the road. The representatives of MDF told us that a several meter-wide wall would be constructed between the blocks and the road and they would also put PVC windows in the flats which looked out on the road. The proposal was not acceptable for us and we immediately expressed our concerns towards the project. As long as we (the residents and the representatives of MDF) could not arrive to an agreement, we left the meeting.

¹ The appendix to this request for compliance review is available upon request.

From time to time we received information from the employees of local executive body (via telephone) that the project would still be implemented, though nobody ever came to us since then for continuing negotiations.

In 2014, through the help of the local executive body (“Gamgeoba”) we (the residents of our block) hired an independent company “Laboratory” LLC to conduct a study on the technical condition of the block (See appendix N1).

In February, 2015 the representatives of the MDF visited us with the intention to carry out inventory of the block. We did not let them do so until the Head of the local executive body (“Gamgebeli”) and a member of Tbilisi City Assembly (Beqa Natsvlishvili) arrived. They promised us that we would not be affected by implementation of the project. After that we allowed the representatives of MDF to carry out inventory and they took samples to establish resistance level of the block. It is important to highlight that the specialists hired by MDF (who took samples), told us that the resistance level of our block was 180 units even though the standard was 500 units. On the same day they told us that they would inform us with the final conclusion and results on April 18, though we have not been provided with the above-said information to this day.

In May 2015 we blocked Tbilisi-Rustavi road to express our protest. We insisted on meeting with the Mayor of Tbilisi and demanded that he guaranteed our interests be protected if the project were to be carried out. Unfortunately, our protest rally was left without attention by respective persons. None of the representatives of any of the responsible agencies except for the head of the local municipality and journalists (Maestro and Rustavi 2 – local broadcasters) visited us. Head of the local municipality promised us that Gamgebeli would visit us on June 1 and make inquiry of the issue though it did not happen so.

On June 1, 2015 we gathered to protest against the project in front of a “Blinds’ Club”; this time the protest rally was visited only by patrol police (they threatened us with imprisonment if we opposed implementation of the project).

In September 2015 MDF called us again at the public review. Some of the representatives of the block’s initiative group participated in the public review and voiced our above-mentioned demands again. The response from the MDF representatives was the same: despite our opposition to the project the route of the road would not be changed and they would not ensure allocation of alternative residential area either. It is important to mention that at the review the representatives told us the following: if the implementation of the project jeopardized the condition of the block no one would take responsibility.

On November 10, 2015 we met ADB Georgia Resident Mission representatives: Ms. Tea Papuashvili and Mr. Medgar Chelidze. Mr. Chelidze told us that he fully agreed with our demands but we had to apply to him in writing and formulate our demands clearly. They also promised us that they would arrange a meeting with foreign staff of ADB.

On November 16, 2015 we met Mr. David Tabidze from MDF. Mr. Tabidze told us that our resettlement has never been a subject of discussion and neither did the block need any fortification. He also added that changing wooden windows with PVC, as it was considered in the previous project, would not be possible for it might have caused damage to the building.

On the same day we met foreign employees of ADB. They also told us that it was a governmental project and making changes to it was impossible. They said that the project did not have direct influence on us and plus, we lived in a city and things like this might happen in a city and we had to get accustomed to it. Considering all the above-said, ADB employees told us that our block was not subject to resettlement and that instead of a concrete wall they might construct a better noise cancellation barrier of some sort and we should be grateful for that. They said that by that time they could not help us as the Georgian legislation did not allow them to. They then called us to continue negotiations with MDF and agree on compensation amount.

Couple of days later we had a meeting with Mr. David Tabatadze from MDF who instead of determining compensation amount offered us a study establishing resistance level of the block. He also added that those who would receive compensation should not have any claims later on. He said that we should wait for the cracks to appear on the building and if they did, only then they would resettle us. We had another meeting with Mr. David Tabatadze, though without achieving any agreement.

On December 19, 2015 we held another protest rally, although no one came or paid attention to it except for the Rustavi 2 journalists.

In addition to protest rallies since June, 2015, we started communication in writing with MDF and other state institutions.

1 On June 24, 2015 we submitted an application to the Chairman of the Parliament of Georgia, Mr. Davit Usupashvili. In our application we asked for a motion with respective agencies and alternative residential area if the route of the project were to remain the same (See appendix N2). We have not received response to our letter until now.

2. On June 24, 2015 we submitted an application to the Chair of the Human Rights and Civil Integration Committee, Ms. Eka Beselia (See Appendix N3), who diverted our letter to the Ministry of Regional Development and Infrastructure of Georgia (See Appendix N4). In response, on August 14, 2015 we received a copy of a letter sent by MDF to the Ministry. The letter said that at that stage the project did not consider granting alternative residential area to the residents of multistory block (See Appendix N 5).

3. On June 24, 2015 we submitted an application to the Prime-Minister of Georgia, Mr. Irakli Garibashvili. In the application we asked for motion with respective agencies and alternative residential area if the route of the highway were to remain the same (See Appendix N6). We have not received an answer to this letter until now.

4. On June 24, 2015 we submitted an application to the majoritarian deputy of Krtsanisi District, Mr. Shota Khabareli. In our letter we asked him to raise the issue at the Parliament session for discussion (See Appendix N7). Within several days after submitting the application Mr. Khabareli visited us and promised that he would raise the issue before the Parliament. However, the issue was never brought up before the Parliament.
5. On July 14, 2015 we submitted an application to the Executive Director of MDF, Mr. Ilia Darchiashvili and asked him to consider an alternative of widening the highway on the other side of the road or grant us alternative residential area (See Appendix N8). We have not received response to our letter so far.
6. On July 14, 2015 we submitted an application to the Architecture Service of Tbilisi City Hall and requested to consider an alternative of widening the highway on the other side of the road or grant us alternative residential area (See Appendix N9). We have not received response to this letter either.
7. On July 14, 2015 we submitted an application to the Minister of Regional Development and Infrastructure of Georgia, Mr. Nodar Javakhishvili and asked him to consider an alternative of widening the highway on the other side of the road or grant us alternative residential area (See Appendix N10). We have not received response to this letter either.
8. On November 9, 2015 we submitted a complaint to Ms. Yesim Elhan-Kayalar, Country Director of ADB Georgia Resident Mission and Mr. Medgar Chelidze, Resettlement Specialist of ADB Georgia Resident Mission (See Appendix N11). We have not received response to this letter either.

We would like to inform you that we are very well aware of the importance of widening the highway and the project as a whole. However, we firmly believe that our rights and interests should not be disregarded because of the project. Our right – to live in an environment safe for life and health – should not be violated because of the implementation of the project.

Based on the above-said we hereby ask you to review the influence of Tbilisi-Rustavi Highway Ponichala section on our residential block, on the lives, health condition, safety as well as property of its residents. We ask you to study and propose us the alternatives of the project that would save our lives and property from damage.

Please see the copies of the letters sent by us and the results of the study carried out by “Laboratory” LLC on the technical conditions of our block.

Appendix: 66 pages (Note: Available upon request from Compliance Review Panel)

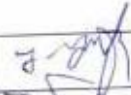

Sincerely,

1.	ანიკო ნიჯარაძე	Ms. Aniko Nijaradze	599 99 06 27	ა. ნიჯარაძე
2.	ნათია ბიწკინაშვილი	Ms. Natia bitskinashvili	568 76 73 10	ნ. ბიწკინაშვილი
3.	ლამარა იორდანაძე	Ms. Lamara Iordanidze	593 38 02 70	ლ. იორდანაძე
4.	ზაზა ბიგიაშვილი	Mr. Zaza Bigiashvili	558 24 99 37	ზ. ბიგიაშვილი
5.	მარინე შუბითაძე	Ms. Marine Shubitidze	551 13 66 93	მ. შუბითაძე

6.	აიდა მარჯარიანი	Ms. Aida Marqariani	597 10 12 65	მარჯარიანი
7.	დიანა ბოტკოველი	Ms. Diana Botkoveli	593 60 37 12	ბოტკოველი
8.	მედეა სიდამონიძე	Ms. Medea Sidamonidze	568 99 63 70	სიდამონიძე
9.	ეკატერინე ფანცხავა	Ms. Ekaterine Phanckhava	551 67 01 11	ე. ფანცხავა
10.	მერი დალაქიშვილი	Ms. Meri Dalaqishvili	2 40 36 81	დალაქიშვილი
11.	აბას ავდალოვი	Mr. Abas Avdalovi	2 40 43 29	ავდალოვი
12.	რუსუდან დეკანოიძე	Ms. Rusudan Dekanoidze	2 40 39 67	დეკანოიძე
13.	იზაბელა კაზარიანი	Ms. Izabela Kazariani	599 87 32 07	კაზარიანი
14.	ნაირა მაგრადე	Ms. Naira Magradze	558 04 44 04	მაგრადე
15.	თეა მესტვირიშვილი	Ms. Tea Mestvirishvili	599 72 35 71	მესტვირიშვილი
16.	სირანუშ ჩტჩიანი	Ms. Siranush Chtchiani	2 40 34 61	ჩტჩიანი
17.	ირაკლი მაისურაძე	Mr. Irakli Maisuradze	597 72 97 09	მაისურაძე
18.	აკაკი ფირცხალავა	Mr. Akaki Phirckhalava	568 86 10 71	ფირცხალავა
19.	გოჩა ზაფირიდი	Mr. Gocha Zaphiridi	557 64 83 28	ზაფირიდი
20.	ალბერტი ვართანიანი	Mr. Albert Vartaniani	592 07 37 36	ვართანიანი
21.	თენგიზი ამირიძე	Mr. Tengiz Amiridze	598 71 07 67	ამირიძე
22.	თეა დემეტრაშვილი	Ms. Tea Demetrashvili	579 02 10 65	დემეტრაშვილი
23.	მარინე გალუსტიანი	Ms. Marine Galustiani	579 09 18 92	გალუსტიანი
24.	ემა ვართანიანი	Ms. Ema Vartaniani	2 40 30 07	ვართანიანი
25.	ზინა შამოევა	Ms. Zina Shamoeva	2 40 45 04	შამოევა
26.	ვიქტორია კაროლ	Ms. Viktoria Karol	574 01 03 78	კაროლ
27.	კობა ჭილაძე	Mr. Koba Chigladze	593 26 58 23	ჭილაძე
28.	რაულ მაყაძე	Mr. Raul Maqadze	593 33 25 48	მაყაძე
29.	ნანა დინგაშვილი	Ms. Nana Dingashvili	555 53 51 12	დინგაშვილი

30.	ნინო შუკაკიძე	Ms. Nino Shukakidze	568 82 15 02	მ. შუკაკიძე
31.	ლელია ხოსიტაშვილი	Ms. Leila Khositashvili	558 54 09 05	ლ. ხოსიტაშვილი
32.	ლია ვეკუა	Ms. Lia Vekua	599 73 03 67	ლი. ვეკუა
33.	ვალენტინა შლეირე	Ms. Valentina Shleire	599 95 67 58	ვ. შლეირე
34.	რატჩიკ სარქისიანი	Mr. Ratchik Sarkisiani	593 42 32 06	რ. სარქისიანი
35.	დარეჯან ნიკოლიშვილი	Ms. Darejan Nikolishvili	599 92 17 49	დ. ნიკოლიშვილი
36.	გურამ გვანიძე	Mr. Guram Gvianidze	599 42 43 86	გ. გვანიძე
37.	ნინო შალიბაშვილი	Ms. Nino Shalibashvili	555 99 22 23	ნ. შალიბაშვილი
38.	ჯონი ცერცვაძე	Mr. Joni Cercvadze	514 37 76 67	ჯ. ცერცვაძე
39.	ქეთო ჭკადუა	Ms. Keto Chkadua	579 21 37 84	ქ. ჭკადუა
40.	ივეტა ნავტიკოვა	Ms. Iveta Navtikova	555 72 98 15	ი. ნავტიკოვა
41.	კახა ახვლედიანი	Mr. Kakha Akhvlediani	599 78 92 34	კ. ახვლედიანი
42.	არმიკ ავდალიანი	Mr. Armik Avdaliani	593 15 62 52	არ. ავდალიანი
43.	ალიონა სინეროვა	Ms. Aliona Sinerova	579 18 95 50	ა. სინეროვა
44.	მარია კოზმოვა	Ms. Maria Kozmova	579 10 04 14	მ. კოზმოვა
45.	ემა ხათოევი	Ms. Ema Khatoevi	579 70 73 12	ე. ხათოევი
46.	ნუგზარ ყელბერაშვილი	Mr. Nugzar Yelberashvili	2 40 28 54	ნ. ყელბერაშვილი
47.	ნატალია რატიანი	Ms. Natalia Ratiani	599 11 19 28	ნ. რატიანი
48.	ალვინა კოჩიძე	Ms. Alvina Kochidu	2 40 45 61	ალ. კოჩიძე
49.	ლოვა პანასიანი	Mr. Lova Panasiani	2 40 36 72	ლ. პანასიანი
50.	ზაირა აბაზოვა	Ms. Zaira Abazova	2 72 99 79	ზ. აბაზოვა
51.	ცირა ხიტაროვა	Ms. Cira Khitarova	555 97 98 06	ც. ხიტაროვა
52.	მაია მიკირტიჩიანი	Ms. Maia Mikirtichiani	593 65 59 57	მ. მიკირტიჩიანი
53.	მანანა ფანცულაია	Ms. Manana Phanculaia	2 40 43 21	მ. ფანცულაია

54.	ვაჯა ხადური	Mr. Vaja Khaduri	574 01 03 78	ხადური
55.	ქრისტინა კურგიანი	Ms. Kristina Kurgiani	2 40 28 86	კურგიანი
56.	ედუარდ ბეგოევი	Mr. Eduard Begoevi	2 40 45 04	ბეგოევი
57.	თემური შუბითიძე	Mr. Temur Shubitidze	597 54 80 08	თ. შუბითიძე
58.	მარინა მარტიროსიანი	Ms. Marina Martirosiani	555 18 58 55	ელია
59.	ლელა ილიაევა	Ms. Lela Iliaeva	591 41 04 07	ე. ილიაევა
60.	ფიქრია გოგიშვილი	Ms. Phiqria Gogishvili	557 13 50 21	ფიქრია
61.	ალა დევიატკინა	Ms. Ala Deviatkina	555 37 66 07	ა. დევიატკინა
62.	ნიკოლოზ ლალიაშვილი	Mr. Nikoloz Laliashvili	557 93 88 13	ნი. ლალიაშვილი
63.	შორენა მაჩიტაძე	Ms. Shorena Machitadze	555 50 69 44	შ. მაჩიტაძე
64.	ანზორ გვიშანი	Mr. Anzor Gvishiani	595 11 15 22	ან. გვიშანი
65.	მანონი სართაია	Ms. Manoni Sartaia	2 40 28 78	მ. სართაია
66.	შოთა არჩაია	Mr. Shota Archaia	555 58 08 06	შ. არჩაია
67.	ლალი ფიქრიშვილი	Ms. Lali Peikrishvili	557 95 94 94	ლ. ფიქრიშვილი
68.	გრეგორი გალიანი	Mr. Grisha Galoiani	568 70 39 65	გ. გალიანი
69.	ლეილა კაზაროვი	Ms. Leila Kazarovi	2 40 33 72	ლ. კაზაროვი
70.	ზინა ავდალოვი	Ms. Zina Avdalovi	2 40 23 29	ზ. ავდალოვი
71.	ცისანა კავთელაშვილი	Ms. Cisana Kavtelashvili	555 21 61 93	ც. კავთელაშვილი
72.	სამანა დგებუაძე	Ms. Samana Dgebuadze	599 73 03 67	ს. დგებუაძე
73.	ჯუმბერ სეკანია	Mr. Jumber Sekania	558 35 60 27	ჯ. სეკანია
74.	ნუგზარ ზუბალოვი	Mr. Nugzar Zubalovi	577 73 05 53	ნ. ზუბალოვი
75.	შორენა სარიშვილი	Ms. Shorena Sarishvili	599 92 17 49	შ. სარიშვილი
76.	ევგენია პოგოსოვი	Ms. Evgenia Pogosovi	2 40 30 51	ე. პოგოსოვი
77.	ქრისტინე კალაშოვი	Ms. Kristine Kalashovi	2 40 28 43	კ. კალაშოვი

78.	ნიაზ ბეჭვაია	Mr. Niaz Bechvaia	558 78 77 32	
79.	სილვა ვართანია	Mr. Silva Vartaniani	2 40 42 11	

80. ნინო ჩაპიძე Ms. Nino Chapidze 555363824 6. ლ

81. ლედი გელაშვილი Ms. Ledi Gelashvili 593683665 6. პეპე

TERMS OF REFERENCE FOR THE COMPLIANCE REVIEW

CRP Request No. 2016/1 – Request for Compliance Review on the Loan 3063-GEO: MFF-Sustainable Urban Transport Investment Program Tranche 3

I. INTRODUCTION

1. These Terms of Reference (TOR) were prepared by the Compliance Review Panel (CRP) for the compliance review of Loan 3063-GEO: MFF-Sustainable Urban Transport Investment Program Tranche 3 (Project) following a request for compliance review (the Request) (Appendix) received by the CRP on 14 March 2016.
2. On 24 May 2016, the CRP determined the Request eligible and recommended to the ADB Board of Directors (Board) to authorize a compliance review of the Project. The Board considered the CRP's report on eligibility on a no-objection basis and authorized a compliance review on 14 June 2016.
3. Per para. 183 of the Accountability Mechanism Policy (AMP) and para. 76 of Operations Manual (OM) Section L1/Operating Procedures (OP), these TOR, which provide the scope, methodology, estimated review time frame, budget, assignment of CRP members, and other necessary information for the compliance review are submitted for clearance by the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and Management, and post them on the website, within 10 working days of the Board's authorization of the compliance review.

II. THE REQUEST FOR COMPLIANCE REVIEW

4. Brief particulars of the Request and the Project are summarized below:

Project Name	Loan 3063-GEO: MFF-Sustainable Urban Transport Investment Program Tranche 3
Country	Georgia
Borrower	Government of Georgia
Project approval date	25 November 2013
Project closing date	31 December 2018
Requesting parties	Aniko Nizharadze, Diana Botkoveli, and 79 other residents in the 9-storey apartment building at 12-33 Block, Rustavi Highway, Tbilisi, Georgia They are persons directly affected by the Project who are not represented by any other person.
Allegations	The complaint refers to subproject 1, the Tbilisi-Rustavi Urban Road Link (section 2) of the Project which involves the modernization of an existing and construction of a new road from Phonichala to Rustavi. When finished, the total road length for this Project will be 6.8 km, of which 3.8 km is new road construction along the Mktvari river. Once completed, it is expected that the road will be of international standard, Category I highway, with 4 to 6 lanes and with a general

	<p>design that can accommodate vehicles with speed of 120km/h. In some areas, a reduction of speed is anticipated to mitigate noise impacts.</p> <p>The complainants alleged that the construction and operation of the proposed road will harm them as (i) vibrations will negatively impact the structural integrity of their residential building; and (ii) noise will disturb their previously quiet community. The complaint further described some residents in the building as blind or with visual impairment and/or socially vulnerable.</p> <p>The complainants are not among those to be involuntarily relocated by this subproject. However, due to their relative proximity to the proposed new portions of the road, they will likely be impacted by the noise and air quality deterioration during construction and operation of the new road.</p>
ADB operations department responsible	Central and West Asia Department (CWRD)
Project safeguards categorization	<p>Category B for environmental impact</p> <p>Category A for resettlement impact</p> <p>Category C for indigenous peoples' impact</p>
Project description	<p>The Project is part of an overall investment program valued at \$1.1 billion to be implemented from 2010-2020 and aims to improve the reach, quality, and continuity of urban transport in Georgia. To partially fund it, a multi-tranche financing facility (MFF) with a maximum financing amount of \$300 million was approved by ADB in July 2010. The Project, which is Tranche 3 of this MFF, specifically aims to improve the transport system and infrastructure in urban areas through two subprojects: (i) section 2 which will upgrade 6.8 km of the Tbilisi-Rustavi Urban Road Link to a 4-lane road of international standard, Category I highway; and (ii) phase 2 of Anaklia Coastal Improvement. Under Tranche 3, ADB lent to the Government of Georgia from ADB's ordinary capital resources an amount of \$73 million. Implemented by the Municipal Development Fund of Georgia (MDF), the Project is expected to be completed by 30 June 2018, with loan closing on 31 December 2018.</p> <p>Based on the design, the 6.8 km section 2 crosses a 2 km stretch in the residential and densely populated areas of Ponichala in Gardabani district, and the selected alternative bypasses the residential area and 2.5 km of the alignment passes along the Mtkvari river as well as the Krtsanisi Forest Park. The subproject on the road upgrade and construction might potentially impact 312 land plots with 29.5 hectares of land areas, demolition of 692 structures (82 residential structures, 90 industrial and commercial structures, and 520 minor structures). A total of 282 households and 33 businesses will be affected as it entails the construction of new road portions on the Mtkvari river side, road widening, pavement strengthening, drainage improvement, construction of new bridges and underpasses, retaining walls, interchanges, and overpass for local people to easily and safely cross the road.</p>

Project status	Detailed design has been done. Project construction, which is expected to last for 17 months, has not yet started as contract is yet to be awarded.
Lead reviewer	Arntraud Hartmann, part-time member of CRP, will be the Lead Reviewer for this compliance review, with assistance from Lalanath De Silva, part-time member of CRP, and Dingding Tang, Chair, CRP.
Contact person	Dingding Tang Chair, CRP, concurrently, Head, OCRP Email: crp@adb.org Tel: (+63 2) 632 4336

III. SCOPE OF THE COMPLIANCE REVIEW

6. Per paras. 183-187 of the AMP and paras. 76 to 80 of OM Section L1/OP, the compliance review will investigate alleged violations by ADB of its operational policies and procedures that directly, materially and adversely harm or will likely harm project-affected persons in the course of the formulation, processing, or implementation of the Project. It will probe whether ADB has or has not complied with its operational policies and procedures in connection with the Project. It is not intended to investigate the borrower. After carrying out a compliance review, the CRP will issue to the Board, through BCRC, its findings and recommendations after seeking and considering comments from the borrower, complainants, and Management.

7. Based on the CRP's findings in its eligibility review, the CRP will consider ADB's operational policies and procedures that were in effect at the time of Board approval of the loan regarding project formulation, processing and implementation. These include, among others, the following:

- (i) Safeguard Policy Statement 2009;
- (ii) Public Communication Policy 2011;
- (iii) OM Section F1 (Safeguard Policy Statement) issued on 1 October 2013; and
- (iv) OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 2 April 2012.
- (v) OM Section L3 (Public Communications Policy)

IV. CONDUCT OF COMPLIANCE REVIEW AND METHODOLOGY

8. Throughout the compliance review process, the CRP will consult, as appropriate, all relevant parties concerned, including the complainants, the borrower, concerned government agencies, relevant NGOs and civil society organizations, the Board member representing Georgia, Management, and staff.

9. The compliance review will include the following:

- (i) review of relevant project files;
- (ii) site visits with prior consent of the Government of Georgia;
- (iii) consultation, including interviews, with:
 - ADB Management, staff and consultants;
 - complainants;
 - other project affected persons;
 - the borrower;

- officials from relevant government agencies, as necessary;
 - relevant NGOs and civil society organizations, as necessary; and
 - the Board member representing Georgia;
- (iv) engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work; and
- (v) any other review or investigatory methods that the CRP considers appropriate in carrying out its work.

V. TIMEFRAME

10. The CRP plans to complete the compliance review process for this Project within 7 months from clearance of this TOR by the BCRC. Below is the estimated timeframe of the review.

Step	Event	Timeframe
4	Conducting compliance review (Contingent on the issuance of mission concurrence by the government, site visit is planned by 3rd to 4th week of September 2016.)	July 2016 – October 2016
5	Compliance Review Panel's draft report. CRP will issue its draft report with findings and recommendations to the Management, the borrower, and the complainants for comments, with copy to BCRC. (Comments/responses to CRP draft report are expected by 24 January 2017.)	15 November 2016 (comment period is 45 working days)
6	CRP Final Report. After considering the Management's, borrower's and complainants' comments, CRP finalizes its report and submits a Final Report to the Board, including the responses from the complainants, the borrower, and Management; and a matrix prepared by the CRP summarizing how it has responded to such responses.	13 February 2017 (within 14 working days from receipt of responses from Management, borrower and complainants)
7	Board consideration of Compliance Review Panel's Report.	within 21 calendar days from receipt of CRP Final Report by the Board

11. This timeline does not take into account any additional time required for translation; requested extensions for filing of responses; or other significant local political events that may delay the site visit. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance of the revised timeframe.

V. BUDGET FOR THE COMPLIANCE REVIEW

12. Below is the proposed budget for the compliance review.

Budget Items	Amount
Business Travel	\$ 44,000.00
Professional Fees of CRP part-time members	\$ 140,000.00
Consultants	\$ 86,500.00
Administrative Costs (Translation, Interpretation, Representation, & Courier services)	\$ 8,000.00
TOTAL	\$ 278,500.00

/S/Dingding Tang

Chair, Compliance Review Panel

/S/Lalanath de Silva

Part-time Member, Compliance Review Panel

/S/Arntraud Hartmann

Part-time Member, Compliance Review Panel

28 June 2016

LIST OF PERSONS MET DURING THE COMPLIANCE REVIEW

The Compliance Review Panel (CRP) contacted the following persons within and outside the Asian Development Bank (ADB) in carrying out its compliance review of Loan 3063: Sustainable Urban Transport Investment Program (Tranche 3). This list may not be exhaustive as it does not include persons who requested their identities to be kept confidential.

ADB Staff

(Meetings at headquarters and staff interviewed)

1. Risa Zhijia Teng, previous Advisor and Head of Safeguard Unit of CWRD
2. Nianshan Zhang, Advisor and Head of Safeguard Unit of Central and West Asia Department (CWRD)
3. Yong Ye, Director, Urban Development and Water Division of CWRD (CWUW)
4. Bertrand Goalou, previous project team leader and Senior Urban Development Specialist, CWUW
5. David Margonsztern, Senior Urban Development Specialist (Transport), CWUW
6. Mookiah Thiruchelvam, Urban Development Specialist (CWUW)
7. Zehra Abbas, Senior Environment Specialist, Portfolio, Results, Safeguards and Gender Unit, CWRD (CWOD-PSG)
8. Thi Thanh Phuong Tran, Senior Environment Specialist, CWOD-PSG
9. Shanny Campbell, Senior Social Development Specialist, Transport and Communications Division, CWRD (CWTC)
10. Nessim J. Ahmad, Deputy Director General of SDCC and Chief Compliance Officer, previous Division Director of Environment and Safeguards Division of SDCC
11. Mark Kunzer, previous Principal Environment Specialist, SDES
12. Irakli Chkonia, previous Senior Project Officer, Georgia Resident Mission

ADB consultants

1. Ketil Dgebuadze
2. Irakli Kaviladze
3. Medgar Chelidze

Municipal Development Fund of Georgia

1. Juansher Burchuladze, previous Executive Director, Municipal Development Fund (MDF), Georgia
2. David Tabidze, Deputy Executive Director, MDF
3. Rezo Gigilashvili, Project Manager, MDF
4. Giga Gvelesiani, Head of Environmental and Resettlement Unit
5. Paata Iakobashvili, Head of Project Appraisal Unit MDF
6. Nino Nadashvili, Local Consultant of MDF for ADB projects on environmental issues
7. Revaz Gigilashvili, Staff
8. Tengiz Lakirbara, Staff

Ministry of Regional Development and Infrastructure

1. Nodar Javakhishvili, previous Minister, Ministry of Regional Development and Infrastructure
2. Georga Tsinsadze, Head, Infrastructure Development Department, MRDI

3. Nino Mosiashvili, Assistant to Minister, MRDI

Ministry of Environment and Natural Resources Protection

1. Lasha Moistsrapishvili, Chairman, Agency of Protected Areas
2. Tamar Kvantaliani, Deputy Chairperson
3. Nita Tkvadze, Head of International Relations and Project Management Division

Tbilisi City Hall Personnel

1. Giorgi Tsereteli, Deputy Head, Home Improvement Services, Tbilisi Municipality City Hall
2. Aleksander Togonidze, Deputy Head, Economic Development Office, Tbilisi Municipality City Hall

Green Alternative

1. Manana Kochladze, Chairwoman
2. Irina Svanidze, Biodiversity Program Assistant

DOHWA Engineering Co., Ltd.

1. Sei Hoon Moon, Acting Team Leader/Pavement and Material Engineer, DOHWA
2. David Kakhishvili, Assistant to Team Leader, DOHWA

Complainants

1. Ledi Gelashvili
2. Silva Sinerova
3. Karol Victoria
4. Alvina Kochidu
5. Irakli Maisuradze
6. Nino Abuladze
7. Nugzar Zubalovi
8. Mariam Kapanadze
9. Otar Dekanoidze
10. Kristine Karapetiani
11. Nanuli Murvanidze
12. Kristine Kalashovi
13. Kristina Kurgiani
14. Nana Dingashvili
15. Tamar Gvianidze
16. Silva Vartaniani
17. Izabela Kazarian
18. Iveta Navtikova
19. Ema Vartaniani
20. Svetlana Chigladze
21. Natia Khitarova
22. Natia Bitskinashvili
23. Darejan Nikolishvili
24. Leila Khositashvili
25. Tina Areshidze

26. Lamzira Laliashvili
27. Tea Demetrashvili
28. Durmishkhan Kublashvili
29. Levan Gogia
30. Diana Botkoveli
31. Lela Iliaevi
32. Lamara Iordanidze
33. Medeia Sidamonidze
34. Nato Nikolaishvili
35. Izolda Gdzeli
36. Zaza Bigiashvili
37. Irma Dalakishvili
38. Ekaterine Phantskhava
39. Aniko Nijaradze
40. Asmati Naniashvili
41. Nikoloz Peikrishvili
42. Manana Panculaia

Others

1. Michele Massaccesi, Product Manager, DRC Sri
2. Enrico Musacchio
3. Lasha Samkharadze, Tbilisi Municipal Laboratory, Director of Laboratory, City Hall Improvements Service
4. Vaja Makalatia, Tbilisi Municipal Laboratory
5. Dtar Tsitsilashvili, Tbilisi Municipal Laboratory
6. Malkhaz Bediashvili, Laboratoria Ltd
7. Romeo Pharulava

RESPONSES FROM THE COMPLAINANTS ON THE DRAFT REPORT

Notes and comments of residents of the 12th-VG apartment building at Rustavi highway, Tbilisi, Georgia, regarding the final report of November 15, 2016

1. Paragraph 33 reads that the CRP used the Austrian code S9020 to measure at the building foundation the probability of damage caused to the building by vibration. The reliability study revealed that the results of the simulated vibration survey carried out within the IEE are reliable.

We would like to know by what means, or how did the Complaints Redress Commission (CRP) measure the vibration in order to assess the likelihood of the vibration-caused damage, and what is the Austrian Code (S9020) they mention? Please provide us detailed information and measurement results regarding the above issues.

2. Paragraph 35 states that *“the applicants demand from the CRP to perform a concrete test in order to assess its quality. Based on on-site visits and the initial survey of the building, the CRP does not consider this kind of test necessary.”*

Why is not it necessary to test the concrete strength (laboratorial tests of concrete samples taken from some of the slabs of the building)? In addition, it should be taken into account that the building was built in the 1970s, and cracks can be seen at the load-bearing walls of the building, and the reinforced concrete roof tiles are damaged as well.

3. Based on what does the 40th paragraph, the conclusion, read that the building destruction will not be caused by vibration, but collapse of shattered parts may be accelerated by vibration occurring during the construction? To prove this, please provide us detailed results of relevant tests, calculations and computations, which would clearly confirm that the building destruction will not be caused by vibration, but the vibration occurring during the construction may accelerate the collapse of the shattered parts.

4. Why is not it written in the 40th paragraph (the conclusion) that the vibration caused by the road construction (during its construction and consequent operation) could lead to the potential destruction of the building? Please, substantiate the issue in detail.

5. In the report, construction of a sound dampening concrete wall is considered one of the measures to mitigate the impact of noise. Paragraph 47 lists the impact of this very concrete wall on residents of the lower floors, and it is stated that *“it is necessary to assess the impact of lighting reduction caused by the road and the proposed sound dampening panel, and elaborate mitigation measures. It may become necessary to consider resettlement of visually impaired persons affected by reduced lighting, as one of the possible mitigation measures.”*

We want to know what you intend to do to not only the visually impaired persons, but generally, to all residents of the lower floors of the building? Although the sound dampening wall will significantly reduce the noise impact, but in the meantime, we will have to live in constant darkness. We want to know, how do you intend to improve this situation?

And, finally, we reiterate that we are fully aware of the necessity of the motor road expansion, and in general, the importance of the project. However, at the same time, we are firmly

convinced that our rights and interests should not be ignored due to the project; neither should the project infringe our right to live in an environment that is safe for our lives and health. Due to the project, should not prejudice our right to life, health and environment.

**Remarks and Comments of the Residents of Building 12vg, Rustavi Highway, Tbilisi,
Georgia in relation to the Final Report**

1. The report mentions that initial par. 40 should be replaced with the following paragraphs:

Vibration impact should be evaluated for all buildings.

Regarding the above-mentioned, we would like to know how vibration impact on the buildings should be evaluated. Please provide detailed information about the standards and methods to be applied to evaluate vibration impact on the buildings.

Responses from the Borrower on the Draft Report (pages 53 to 61) have been removed in accordance with Appendix 9, para. 3(vi) of the Accountability Mechanism Policy 2012.

RESPONSES FROM ADB MANAGEMENT ON THE DRAFT REPORT

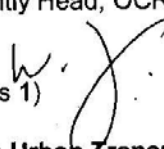


Asian Development Bank

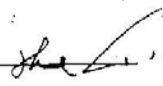
Memorandum
Office of the Vice President
(Operations 1)

24 January 2017

To: Dingding Tang
Chair, CRP and concurrently Head, OCRP

From: Wencai Zhang
Vice President (Operations 1) 

Subject: **L3063-GEO: Sustainable Urban Transport Investment Program – Tranche 3
– Management's Response**

With reference to your letter dated 15 November 2016, and the following revision dated 19 January 2017, submitted herewith is Management's response to the Compliance Review Panel Draft Report on the GEO: Sustainable Urban Transport Investment Program. 

Attachments: 1. Management Response
2. Detailed Comments to the Findings of CRP's Draft Report

cc: Director General, CWRD; Deputy Director General, CWRD; Deputy Director General, SDCC concurrently Chief Compliance Officer, SDCC; General Counsel, OGC; Country Director, GRM

MANAGEMENT RESPONSE

Draft Report of the Compliance Review Panel on LOAN-3063 GEO: Sustainable Urban Transport Investment Program Tranche 3: Tbilisi Rustavi Urban Road Link (Section 2)

I. INTRODUCTION

1. On 15 November 2016, the Office of the Compliance Review Panel (CRP) requested comments from Management on its draft report on the Sustainable Urban Transport Investment Program Tranche 3: Tbilisi Rustavi Urban Road Link (Section 2). Revisions to the draft report by the CRP were also issued on 19 January 2017 with additional findings.
2. Pursuant to para. 125 of the Accountability Mechanism Policy, Management provides:
 - (i) Comments and responses on the findings of the draft report set out in Section II below; and
 - (ii) Detailed comments to the findings of CRP's draft report attached as Appendix 1 to this note.

II. MANAGEMENT'S COMMENTS ON THE FINDINGS

3. Management would like to highlight that construction on the Ponichala section of the project where the complainants reside, has not yet started, and we are committed that the project proceeds in compliance with ADB's Safeguards Policy Statement 2009 (SPS). Set out below are Management's principal comments on CRP's findings in each of the areas covered by the draft report, namely: noise impacts; vibration impacts; air pollution impacts; impacts on vulnerable groups; impacts on water and the river ecology; meaningful consultations; environmental categorization of the project; and evidence of harm.

Noise Impacts

4. We agree that the appropriate noise standards for the project are the World Health Organization (WHO) standards contained in the World Bank Group's Environmental, Health and Safety Guidelines¹, hitherto referred to as the WB guidelines. The project initial environmental examination (IEE) has used the Georgian national standards for noise without providing an adequate justification. To ensure that the project meets ADB standards, the noise modelling parameters will be updated and appropriate mitigation measures will be incorporated through the site specific environmental management plan (SSEMP) or through other measures. As construction has not yet started in the relevant road section, no harm has occurred as yet.

Vibration Impacts

5. Management is of the view that the IEE meets all the requirements of ADB's SPS in relation to environmental assessment of vibration impacts, and provides appropriate mitigation measures. A detailed construction vibration assessment study was performed as part of the IEE² using German vibration standards (DN 4150-2), which are internationally recognized as a good practice standard. The study included a physical assessment of the structures and modelling of the natural frequency for all 10 buildings along the Ponichala road section. The assessment showed that construction vibration will not trigger any damage to the main structure

¹ See Table 1.7.1, page 53 of the World Bank Group's Environmental, Health and Safety Guidelines – General EHS Guidelines – Noise Management.

² The study was undertaken by Nord Est Progetti, S.r.l., Engineering Consultants.

of any of the apartment buildings. However, it concludes that voluntary additions to the buildings made by the residents could be damaged during construction and will require reinforcement. The EMP and the civil works contract provides for the strengthening of the voluntary additions prior to construction and continuous monitoring of vibration during construction. An SSEMP will be prepared based on further site assessment by the contractors and mitigation measures will be tailored to the site specific conditions and potential impacts.

6. In response to CRP's revision to the draft report issued on 19 January 2017, Management notes that there is a difference in the methodology and findings between the experts hired under the project and the CRP. To reconcile the experts' findings, Management can agree to appoint a third party expert to review and confirm the methodology and findings of the vibration study, and any additional measures as indicated by the review. However, we would note that Management has not received the expert's study and would request the CRP to provide the complete findings so that it can be further reviewed.

Air Pollution Impacts

7. CRP finds the project in compliance with the SPS on air pollution impacts. While we agree with this finding, it should be noted that the relevant standards for ambient air quality are national standards, where these exist. Accordingly, the Georgian National Standards are relevant for the project, and not the World Health Organization (WHO, 2005) Ambient Air Quality Guidelines used by the CRP.³

Impacts on Vulnerable Groups

8. The project meets the requirements of the SPS with respect to impacts on vulnerable groups. Firstly, the project team was fully aware of the presence of visually impaired people. Due diligence was completed for social impacts in the impacted buildings, and the land acquisition and resettlement plan (LARP) prepared for the Ponichala area acknowledges the presence of vulnerable groups, including internally displaced people (IDP) and the disabled, which includes visually impaired people. Secondly, visually impaired people do not constitute a larger proportion of the residents than could be expected. There are 8 visually impaired residents in the complainants' building, which comprises 2% of all residents in that building. Based on national statistics, this is comparable to the national average of visually impaired people in Georgia. Thirdly, consultations undertaken for the project were attended by visually impaired people, and the LARP prepared for the Ponichala area specifically includes several entitlements in recognition of residents' special needs and vulnerability status. Finally, noise barriers will ensure that the project meets the appropriate noise standards, and these barriers will be transparent to allow for maximum passage of light into the buildings. Therefore, no differential impacts on vulnerable groups in the area are anticipated.

Impacts on Water and the River Ecology

9. We would like to highlight that the IEE already provides information on the condition of the Mtkvari River. A full ecological assessment is not warranted and would add minimal value given that the scope of potential impacts is small. The river is a modified habitat. It is fringed with urban landscapes, agricultural land, and degraded pastures, with only sparse natural vegetation along the riverbanks. There are no commercial fisheries and the river stretch is not a protected area. Upstream, the flow of the river is altered by irrigation, hydropower and industrial

³ As per the World Bank Group Environment, Health and Safety Guidelines, project emissions should not result in pollutant concentrations that reach or exceed relevant ambient quality guidelines and standards "by applying national legislated standards, or in their absence, the current WHO Air Quality Guideline (See page 4, Air Emissions and Ambient Air Quality Guideline).

water-supply. The river is polluted with nutrients. Furthermore, the IEE shows that the direct impact of the project will be very limited, with about 1 hectare of in-stream habitat lost due to the proposed retaining wall, as well as short-term disturbance during construction, which can be minimized through standard management practices. There will be no long-term changes in hydrology. The fact that the Mtkvari is considered an international river is not relevant, as there will be no measurable transboundary effects. Given the above factors, the potential impacts on river ecology are expected to be insignificant.

10. Storm water drainage has already been included in the detailed design. Road safety measures and an accident response plan will be developed under the EMP. Additional measures will be reviewed as part of the SSEMP preparation.

Meaningful Consultations

11. ADB has made efforts to ensure that the borrower has engaged in meaningful consultations as per the definition in para. 32 of the SPS. The consultation process started early in the planning stage, and 12 consultations were held as part of the preparation of the draft IEE and the LARP between July 2013 and September 2015. Additionally, individual inspections of some apartments were undertaken to gather information. Consultations were attended by a range of stakeholders, with adequate representation from residents of the buildings, including women and visually impaired people. Information from the project was explained to the residents and disclosed on the websites of the executing agency and ADB. Residents' concerns regarding noise and vibration were taken into consideration, and additional noise and vibration studies were commissioned, with tailored mitigation measures such as transparent noise barriers. The results of the studies were subsequently shared and discussed through public consultations. Management will work with the executing agency for the project to ensure that consultations will continue into the next phase of the project through the preparation of the SSEMP.

Environmental Categorization of the Project

12. The project was appropriately classified and there was no need to reclassify the project after detailed design. Categorization was done in May 2013. This was prior to detailed design, but was informed by a study of 3 alignment alternatives. Environment category B was considered appropriate for several reasons: (i) the selected design bypasses densely populated residential areas; (ii) the main environmental impacts, (earthworks, land filling and embankment protection) will be largely limited to the construction phase; and (iii) no protected areas, critical habitats or sensitive physical cultural heritage sites will be affected. The initial categorization form also highlighted the need to mitigate vibration, noise and air pollution impacts (particularly for 3-4 apartment buildings), along with the need to carefully study potential hydrological impacts from a proposed revetment along the Mtkvari River. Following detailed design, the only substantive change in the project was the replacement of the proposed revetment with a retaining wall. Associated impacts were assessed, with a focus on hydrology, flooding, river bank erosion and scouring, which were considered to be the most sensitive issues. The assessment subsequently showed that the retaining wall will not have any significant long-term environmental impacts. Noise and vibration modelling was also undertaken during the preparation of the IEE. These studies show that the project's impact is limited to a small number of buildings, and that the impacts can be mitigated. Given that there were no significant changes, and the overall impacts of the project are unlikely to be irreversible, diverse, or unprecedented, a change in the project categorization was therefore not warranted after detailed design.

Evidence of Harm

13. CRP's findings on "Evidence of Harm" in the draft report falls short of the requirements under the Accountability Mechanism policy because the report should address whether harm exists and whether such harm is direct and material. Importantly, this section should clarify that project construction has not commenced in the complainants' area and therefore no harm exists at this moment. With the exception of noise impacts, this section does not adequately address the extent to which future harm is likely and material, and whether the harm is a direct consequence of the alleged noncompliance. Management therefore requests the CRP to revise the section to take into account Management's response to other sections of the draft report. The specific suggestions are shown in the attached matrix.

14. With the above, Management believes it has responded to all the findings and conclusions set out in the draft CRP report, including those that were not raised by the complainants. We note, as per Para. 186 of the Accountability Mechanism policy, that the "CRP compliance review report will focus on the specific complaint."

15. Management presents its responses to CRP for inclusion to, and revision of the draft report prior to finalization and prior to submission to the board.

Appendix 1

Detailed Response to the Findings of CRP's Draft Report

Compliance Review Panel Request No. 2016/1

L-3063 GEO: Sustainable Urban Transport Investment Program T3- Tbilisi Rustavi Urban Link Road (Section 2)

	CRP Observation and Findings	Response/Comments
A	Noise	
Finding (Para 33)	<p>"The CRP finds that ADB has not assured compliance with its SPS, as projected noise levels are expected to be significantly above the maximum noise levels permitted under ADB policies and requirements".</p> <p>"As high noise impacts cause harm to people, noncompliance with maximum permitted ADB noise standards is likely to cause harm to the affected people."</p>	<p>We agree that the appropriate ambient noise standards for the project are the WHO standards contained in the World Bank Group's Environmental, Health and Safety Guidelines. The initial environmental examination for the project (IEE) used the Georgian national standards for noise without providing an adequate justification. To ensure that the project meets the WHO standards, the noise modelling parameters will be updated and appropriate mitigation measures will be incorporated through the site specific environmental management plan (SSEMP) or through other measures. As construction has not yet started in the relevant road section, no harm has occurred as yet.</p>
27, 28	<p>"The complainants live in an apartment building immediately adjacent to a river bank where ambient noise levels are low. The CRP visited the complainants' building and entered several apartments. Many of the residents including the complainants have their bedrooms facing the river, thus enjoying a rustic quietude needed for sound and restful sleep. On the opposite side of the building, and at a distance of about 70 meters is the current</p>	<p>The draft report creates the impression of pristine conditions with respect to ambient noise, which is not the case as indicated by the IEE data. Close to the 9 story building, according to the IEE⁴⁰ noise levels are between 60dB(A) and 52dB(A) . The draft OCRP report also recognizes that the Ponichala district is adjacent to a railway track and an existing road, therefore, severe health impacts are not be likely on a population already exposed to noise levels above 52 dB(A). We therefore consider that the statement "...enjoying a rustic</p>

⁴⁰ IEE Report: section 4.1.3; Paras 193 to 196; Table 4.22.

	CRP Observation and Findings	Response/Comments
	Tbilisi-Rustavi road. Beyond the road is a railway”.	quietude..” is an exaggeration, and should be removed from the report.
29, 30	“The IEE proposes the construction of a 9 meter high noise barrier. This noise barrier would be located very close to the house of the complainants, at a distance of 19.8 meters at one end of the building and 26.3 meters at the other end of the building. But even with the construction of this noise barrier, noise levels at the upper floors of the buildings where the complainants live would be higher than the 65 dBA and 55 dBA defined in the IEE. Noise modeling exercises conducted by the expert engaged by the CRP showed that even with the noise protection wall proposed in the IEE noise levels below 55 dBA at night could not be achieved for the upper two floors of the buildings where the complainants live”.	<p>The exact position of the noise barriers in relation to their distance from the buildings has not been stated in the IEE report, this will be determined at the site specific EMP preparation stage.</p> <p>The noise projections presented in the noise and vibration study⁴¹ show that the noise levels in all of the buildings will comply with the Georgian National standards specified of 65dB(A) and 55dB(A). However, further modeling and assessment of options will be undertaken to ensure that the project meets the appropriate WHO standards included in the WB guidelines.</p>
31	A further concern is the absence of an assessment in the IEE of noise impacts during the construction phase. The IEE only describes the noise impacts during the construction period in qualitative terms. Noise impacts will be considerable. The building closest to the road will only be 7 meters away from the construction site. It is estimated that the densely populated area where the complainants live, will be significantly impacted by noise during construction for about a year. A particular severe impact is to be expected on the vision impaired people who live in	After contract award, and before the construction can commence, the contractor will prepare a site specific EMP based. This will be based on the EMP provided in the IEE. It will be prepared under the the guidance of the supervision consultant’s environment specialist, the environment specialist at MDF and ADB’s environment specialist at the Georgia resident mission. The site specific EMP will present customized measures to address the construction stage noise impacts. Furthermore, it may be noted that although the construction stage covers a period of approximately one year, each building along the alignment will not be uniformly exposed to the same

⁴¹ Results of Additional Round of Modeling Noise Impact with Recommended Mitigation Measures for the Project, Table 1 – **PART 5- FINAL CONSOLIDATED PROJECT COMPLETION REPORT AND RECOMMENDATIONS**, Dynamic Modeling for Noise Impact During Road Operation - Consulting Services for Investigation of Structural Integrity of, and Impact of Vibration and Noise on Buildings at a Segment of Tbilisi- Rustavi Road Project (Section 2, km 5,2-6,9).

	CRP Observation and Findings	Response/Comments
	<p>the area where the complainants reside. The CRP was informed that 129 of vision impaired people live in the group of buildings in Ponichala adjacent to the road, of which 8 vision impaired persons live in the complainants' building. The building closest to the construction site has a particular high number of vision impaired people. As vision impaired people depend significantly on hearing for orientation, a very significant noise impact during the construction period would surely disorient them in their daily life, probably to an extent that they would not be able to manage their daily lives. Without adequate mitigation measures, these vision impaired people will experience significant harm. Para. 8, Appendix 1 of the SPS requires that mitigation measures be designed for disadvantaged and vulnerable groups to ensure that adverse environmental impacts do not fall disproportionately on them. The IEE has neither assessed the impacts on vision impaired people nor designed mitigation measures.</p>	<p>amount of noise for the entire duration. The 9 story building which is closest to the road is at a distance of 19 to 22m from the design road⁴².</p> <p>The building closest to the site is the 9 story building (the complainants' building), approximately 2% of the residents of this building are visually impaired, which consistent with the national average of 2%.</p>
B	Vibration	
Finding Para 44, 45	<p>"The CRP finds that there is noncompliance with SPS (Appendix 1, para. 42) as mitigation measures as presently designed may not be sufficed to protect people from pieces falling down during construction. Moreover, the CRP finds significant variation between observed variables about the stiffness of building 12 v/g and assumed variables in the vibration study</p>	<p>The IEE meets all the requirements of ADB's SPS in relation to environmental assessment of vibration impacts, and provides appropriate mitigation measures. A detailed construction vibration assessment study was performed as part of the IEE43 using German vibration standards (DN 4150-2), which are internationally recognized as a good practice standard. The study included a physical assessment of the structures and</p>

⁴² Investigation of structural integrity of, and impact of vibration and noise on buildings at a segment of tiblisi-rustavi road project (section 2, km 5,2-6,9)-
PART 4, FINAL CONSOLIDATED PROJECT COMPLETION REPORT AND RECOMMENDATIONS-dynamic modeling of vibration impact during construction works and during road exploitation.

⁴³ The study was undertaken by Nord Est Progetti, S.r.l., Engineering Consultants.

	CRP Observation and Findings	Response/Comments
	<p>which was conducted as part of the IEE. Results of the IEE vibration impact study might thus not be correct. The vibration impacts need to be reassessed using measured rather than assumed data. These recalculations of impacts need to be conducted for all project affected buildings for which assumptions rather than actual measured data have been used. If revised calculations show that some buildings cannot withstand impacts of vibration by the project without damages, additional mitigation measures need to be taken”</p> <p>Moreover, vibration impacts need to be reassessed for all project affected buildings which have significant annexes (in terms of building size) and where vibration impacts have only been measured on the core structure of the building but have not included the annexes. The CRP found at least one building with significant annexes where impacts have only been assessed on the core structure of the building. The correct parameters, which consist of core structure and of annexes, need to be entered into the model and impacts need to be recalculated. If revised calculations show that the building with annexes cannot withstand vibration impacts by the project during road construction and operation, mitigation measures need to be taken.</p>	<p>modelling of the natural frequency for all 10 buildings along the Ponichala road section. The assessment showed that construction vibration will not trigger any damage to the main structure of any of the apartment buildings. However, it concludes that voluntary additions to the buildings made by the residents could be damaged during construction and require reinforcement. The EMP and the civil works contract provides for the strengthening of the voluntary additions prior to construction and continuous monitoring of vibration during construction. An SSEMP will be prepared based on further site assessment by the contractors and mitigation measures will be tailored to the site specific conditions and potential impacts.</p> <p>In response to CRP’s revision to the draft report issued on 19 January 2017, we note that there is a difference in the methodology and findings between the experts hired under the project and the CRP. To reconcile the experts’ findings, we can agree to appoint a third party expert to review and confirm the methodology and findings of the vibration study and finalize mitigation measures. However, we have not received the expert’s study and would request the CRP to provide the complete findings so that it can be further reviewed.</p>

	CRP Observation and Findings	Response/Comments
34	<p>The complainants allege that road construction activities and subsequent operation of the road will cause vibrations which will damage their building and could potentially lead to its collapse. The complainants argue that their building is in very poor structural condition, with numerous cracks and signs of instabilities. The building was constructed in the 1970s and the deterioration is caused by inadequate construction, leading to corrosion, and lack of maintenance work. As part of the IEE, a modelling study was conducted to assess the likely impacts of the vibrations caused by the proposed road on the building. The study concluded that while the quality of the building is poor, the vibrations caused by the road during construction and subsequent operations would not cause damages to the building.</p>	<p>As part of the IEE, after the first series of public consultations where the resident voiced their concerns⁴⁴ regarding vibration and structural damage, a vibration study was performed to check the condition of the buildings in the area as part of the final IEE.</p> <p>The CRP should also note that ADB does not refer to any vibration standards in the SPS 2009. Furthermore, the World Bank Environment Health and Safety Guidelines do not refer to specific standards for vibration. However, to ensure that the project design is consistent with internationally recognized standards, the vibration study in the IEE has used German vibration standard - DN 4150-2, which is recognized as a good practice benchmark. 12 buildings in the Ponichala neighborhood were studied. The vibration study concludes that although the quality of the complainants 9 story building is poor, the vibrations caused by the road during construction and subsequent operations will not cause any structural damage.</p>
39	<p>The visual inspection showed some critical substructures in the building. Among these are prefabricated concrete slabs under the roof which are decomposed; decomposition of the porches at the entrance; balconies that are in poor condition with loose parts of concretes in danger of falling off; sinking down of floors; and decomposition of ceilings. All of these decompositions are not caused by vibrations and will not be further deteriorated by the vibrations caused by the road project. However, there are very serious concerns that the loose concrete parts, bricks, steel rods and other insufficiently fixed elements at the building will fall during construction work. Falling of these elements pose danger for persons staying near. While the decay of the building</p>	<p>While the main buildings were assessed to be structurally sound, the IEE and the detailed vibration study both proposed mitigation measures to address vibrations risks to “voluntary additions” to the main building (constructed by residents). This would involve either strengthening or removing the voluntary additions. The plan was already discussed with MDF and the strengthening will be started soon. Furthermore, continuous vibration monitoring is proposed during the construction stage. For reference, please see - IEE section 7.2.3; Paras 522, 523; Paras 524 to 529 and Tables 9.1 and 9.3. These details will also be further addressed in the site specific EMP.</p>

⁴⁴ Public Consultations conducted between 7 to 18 July 2013 as part of the draft IEE preparation activity.

	CRP Observation and Findings	Response/Comments
	will not be further accelerated by the vibrations, the vibrations might cause the already loose parts to fall down during the construction period. The CRP notes, that parts which could fall off during construction are not only the additions attached illegally by the residents as is noted in the IEE. Parts falling off could include a variety of components in the general building structure which are already loose as a result of corrosion. The IEE has not proposed mitigation measures on how people could be protected from parts falling down. The danger of people being hurt can be averted by: (i) removing all loose parts outside of the building; (ii) fixing loose parts; (iii) repairing or changing problematic substructures; (iv) propping up problematic substructures; (iv) barricading dangerous areas; (v) removing problematic stores on the top of the building or the entire building; and (vi) communicating to the inhabitants of the building the dangers.	
C	Air Quality	
Para 42	SPS, Appendix 1, para. 33 refers to the World Bank Group's Environment, Health and Safety Guidelines from 2007 which in turn refers to the World Health Organization (WHO) Ambient Air Quality Guidelines (2005).	It should be noted that, as per the World Bank Group Environment, Health and Safety Guidelines, the appropriate ambient air quality standards are national standards, where these exist. In the absence of national standards, then the current WHO Air Quality Guideline would be applied (World Bank Group Environment, Health and Safety Guidelines - Air Emissions and Ambient Air Quality Guideline, page 4).
Para 45	The CRP finds that the environmental policies regarding air quality standards and requirements have been complied with as the residents in the respective locations will not be impacted by a deterioration of air pollutants which exceeds the level of irrelevance.	While we agree with this finding, it should be noted (as per the above) that the relevant standards for ambient air quality are national standards, where these exist. Accordingly, the Georgian National Standards are relevant for the project, and not the World Health Organization (WHO, 2005) Ambient Air Quality Guidelines used by the CRP for the assessment described in Para 49 of the draft CRP report.

	CRP Observation and Findings	Response/Comments
D	Impacts on Vulnerable Groups	
Findings Para 53	<p>"The CRP finds that there is a noncompliance with SPS, Appendix 1, para 8 and OM Section C3/OP, para 5. Vision impaired people are vulnerable people who will be differentially and differently impacted than other people. The IEE has not identified this group of people; has not assessed the impacts of noise and vibration and of reduced light resulting from the road alignment along the second floor of the building; and of the construction of the noise shield barrier. The IEE has not recommended targeted and identified measures so that the impacts do not fall disproportionately on the vision impaired people. ADB staff did not seem to be aware of the presence of a significant group of visually impaired residents in the impacted buildings and thus has not guided the borrower to assess the special impacts and to design mitigation measures."</p>	<p>ADB is in compliance with SPS, Appendix 1, para 8 and is well aware of the presence of visually impaired people. Due diligence was completed for social impacts in the impacted buildings, and the LARP prepared for Ponichala area acknowledges the presence of vulnerable groups, including Internally Displaced People (IDP) and disabled – which includes visually impaired. The LARP prepared for Ponichala area specifically envisioned the following entitlements in recognition of residents' special circumstances and especially their vulnerability status⁴⁵, including:</p> <ul style="list-style-type: none"> • for the impacted 2 storey building, compensation worth of 35 m2 of replacement dwelling for any apartment unit under 35 m2 • assistance to residents of 2 storey building through real estate firms in searching and identifying the adequate replacement accommodation (all brokerage fees are to be paid by the project) • allowance to cover livelihoods expenses during the transition period • additional vulnerability allowance for poor, IDPs, and people with disabilities. <p>Although vulnerable people were identified, included in consultations, and provided with special allowances and compensation - as is pointed out in the response to para 20, there is not a "significant group of visually impaired residents in the impacted buildings".</p> <p>The typical cross section of the road along the Ponichala area per the detailed design shows the road alignment to about</p>

⁴⁵ Refer LARP, entitlement matrix, and other sections referenced in footnote to comment on Para 51.

	CRP Observation and Findings	Response/Comments
		500mm below the existing ground level and not at the height of the second floor of the building as indicated in the CRP report. We request that this be reflected in the final report.
Para 51	<p>“The group of buildings on Rustavi Road in Ponichala where the complainants live were originally designed as housing of vision impaired people”</p> <p>“In the building of the complainants, 8 persons are vision impaired.”</p> <p>“The IEE does not mention the presence of vision impaired residents and does not make an assessment of the impacts of the road construction and operation on these people”</p>	<p>While technically correct, we are concerned that this could be misleading to the uninformed reader. The area was originally a settlement for the blind, constructed in the 1960's as an enclosed colony; however, contrary to what is implied, the buildings were not specifically designed to cater for the needs of the visually impaired. These are standard apartment buildings, commonly known as "Khrushchyovka", seen throughout the former Soviet Union</p> <p>Available statistics also indicate that the building in question, and the area, is not unusually representative of visually impaired people. There are 8 persons with visual impairment in the building of the complainant. This represent approximately 2% of the total residents of the building. According to WHO statistics there are 285 million people estimated to be visually impaired worldwide⁴⁶ (approx. 4% of 7 billion). For Georgia, the figure is 2% of total population⁴⁷ The total population of Ponichala is 7,000 people, with 180 people registered as visually impaired⁴⁸ which is 2.6%.</p> <p>The IEE Section 5.4 para 420 and para 423 make reference to the Land Acquisition and Resettlement Framework and the obligations towards vulnerable groups defined therein. The existence of vulnerable people in the area is clearly documented in the land acquisition and resettlement plan (LARP), which is</p>

⁴⁶ <http://www.who.int/mediacentre/factsheets/fs282/en/>

⁴⁷ <http://www.iapb.org/all-ages-map>. The Ministry of Health, Labor and Social Welfare also estimates population of the visually impaired at 2.0 % of the total population of GEO for the year of 2010.

⁴⁸ Source: Krtsanisi Local Municipality

	CRP Observation and Findings	Response/Comments
	<p>“It is highly probable that vision impaired people living so near the construction site will become very disoriented and will not be able to conduct their life without ongoing assistance. As such, special targeted measures will need to be designed and implemented”.</p>	<p>cross referenced in the IEE and makes clear provisions for these people⁴⁹. Vulnerable groups include Internally Displaced People (IDP) and disabled - including visually impaired.</p> <p>While we have acknowledged above that the appropriate WHO noise standards need to be applied, it is not clear what additional special measures are being recommended by the CRP. Additional modeling of noise will be undertaken as part of the SSEMP to ensure that the project complies with the appropriate WHO noise standard reflected in the WB EHS Guidelines. Furthermore, mitigation measures for vibration will be implemented during the construction stage, including temporary barriers. Also integrated into the project will be a new landscaped boulevard to improve community and pedestrian access.</p>
Para 52	<p>“Another issue of concern is the reduced light...which apartments receive as a result of the fact that the road alignment will be at the height of the second floor of the complainant’s building and not on the ground floor”</p>	<p>The CRP is alerted to the fact that the typical cross section of the road along the Ponichala area (as per the detailed design) shows the road alignment will be constructed at about 500mm below the existing ground level and not at the height of the second floor of the building as stated in the draft report. Therefore, the passage of light into the buildings will not be hindered due to the road. Furthermore, the minimum distance of the proposed 9m high noise barriers will be 14m from the building; and the barrier will be made of transparent material to allow for maximum light passage.⁵⁰ In addition, it should be noted that the barrier will be constructed on the north west side of the building. Given this orientation, and its distance from the road, the noise barrier will cast only a very limited shadow and this will not further reduce any sunlight currently available to the building.</p>

⁴⁹ See LARP Sections 2.2.7 and 7.7; also sections: 2.4.3 Para 43; 3.1 Para 45; 4.1 Para 96; 4.2 Para 107; 4.3 para 109; 4.4 Para 111; 4.5 Para 115;122; 5.3 Para 133; 8.1 Para 161, 163, 165, 172; 10.3 Para 191; 11.3 Para 201; Tables E.1, E2, 5, 6, 17, 27, 28; Annexes A and B.

⁵⁰ IEE Report, Paragraph 511, Table 7.9.

	CRP Observation and Findings	Response/Comments
E.	Impacts on Water and River Ecology	
Para 59 Findings	<p>The CRP finds that ADB has not been compliant with its environmental safeguard policies as no assessment of impacts has been conducted on the ecological impact on the Mtkvari river which is an international waterway.</p> <p>Moreover, measures for storm water treatment and measures on how to protect the river water in case of traffic accidents need to be introduced under the Project.</p>	<p>The OCRP should note that the IEE already provides information on the condition of the Mtkvari River; and although a full ecological assessment has not been undertaken, the value added of such an assessment would be limited given that the scope of potential impacts is small. Available information presented in the IEE indicates the following: (i) the stretch of river is considered to be a modified habitat. It is fringed with urban landscapes, agricultural plots, degraded pastures, and with irrigated cornfields and vegetable gardens; (ii) upstream, the river is used for irrigation, hydropower and industrial water-supply; (iii) there are no commercial fisheries and the river stretch is not a protected area; (iv) data presented in the IEE indicates that the river is polluted with nutrients; and (v) riparian vegetation along the river banks in the project area are sparse or degraded, with a mix of cultivated trees and common reeds. Furthermore, and most importantly, the main impact of the project will be very limited, with about 1 hectare of lost in-stream habitat over the length of the retaining wall, as well as short-term construction impacts including increased turbidity during the construction period, which can be minimized through good construction practices. Overall, impacts on river ecology are expected to be insignificant.</p> <p>Storm water drainage is included in the detailed design for the road. Additional design features such as oil separation devices can be considered as part of the site specific environmental management planning process with the contractor. In addition, the CRP should note that the EMP already includes the proposed design and implementation of safety measures and an emergency plan to contain damages from accidental spills; as well as the designation of special routes for hazardous materials transport. (see IEE, Dec 2015, Section 8.1.2). The report should be revised to reflect this.</p>

	CRP Observation and Findings	Response/Comments
Para 56, Para 58, 59 Para 74 (vi)	<p>“The IEE did not assess the ecological impact on the river”</p> <p>“The CRP finds that ADB has not been compliant with its environmental safeguards policies as no assessment for impacts has been conducted on the ecological impact on the Mtkvari river which is an international waterway.”</p> <p>“Conclusion. ecological impacts of the project on the Mtkvari river have not been assessed”</p>	<p>The SPS requires that the borrower/client should “assess the significance of project impacts and risks on biodiversity and natural resources as an integral part of the environmental assessment process. The assessment will focus on the major threats to biodiversity, which include destruction of habitat and introduction of invasive alien species, and on the use of natural resources in an unsustainable manner”.</p> <p>With respect to the project, the 1.6km section of retaining wall on the edge of the Mtkarvi River is not considered to present a significant threat or risk to the ecological values of the river; and although a detailed in-stream ecological study was not undertaken, it is highly unlikely that the Project would have any long-term detrimental impacts on river ecology (see details above).</p> <p>With respect to the status of the Mtkvari River as an international river, we fail to see the significance of this with respect to the environmental assessment. The Mtkvari is the biggest river in the South Caucasus. It runs from natural springs at an altitude of 2720 m above sea level on the northern slope of Kizil-Gyadik in Turkey and flows Georgia and Azerbaijan into the Caspian Sea within Azerbaijan. The length of the river across the territory of Georgia is 350 km. The Project area is more than 45km from the nearest national border (along the length of the river). Given that the river system is already modified and regulated by hydropower, and project area of influence is very small (1 hectare over a 1.6 km stretch) with no detrimental hydrological impacts on the river or impacts to the banks upstream and downstream of the project area. Furthermore, there are no instream habitats of international significance that will be affected.</p>

	CRP Observation and Findings	Response/Comments
Para 55	<p>"The CRP is concerned that no measures for storm water treatment from the road was considered in the IEE and no provisions were made on how the water in the river can be protected in case of traffic accidents. Untreated water could be discharged directly into the Mtkarvi River. This could endanger the aquatic life, but also could contaminate crops in agricultural areas that are flooded. "</p>	<p>The OCRP should note that the EMP requires pollution prevention measures during the construction phase. These include measures for the safe handling, storage and disposal of fuels and oils and the safe operation of vehicles.</p> <p>During the operation of the road measures are also proposed for the prevention and mitigation of accident risks associated with vehicular traffic and transport, that may result in spills of toxic materials (see IEE, Para 691). The report should be updated to reflect this.</p> <p>The detail design also includes storm water and surface runoff drainage along the road. The need to include additional oil separation devices can be further assessed as part of the site specific environmental management planning.</p>
Para 58	<p>"The retaining wall will encroach into the riverbed and construction activities are more than likely to result in oil, concrete, and other materials escaping into the river.</p>	<p>The OCRP report should be updated to reflect that the EMP already includes mitigation measures to minimize these types of impacts.</p> <p>The retaining wall will cover a section of 1.6km along the Mtkvari River. A temporary cofferdam will be used during construction. The cofferdams will be layered by sacks filled in crushed stones to prevent water from flowing into a limited working section, which would be wrapped with water-proof sheet made from rubber or polyvinyl. This is a standard construction approach and is designed to isolate the construction area from the river flow, thereby facilitating the construction and limiting any detrimental impacts on the river. Apart from the direct loss of a very small area of in-stream habitat (1 hectare over 1.6 km), environmental impacts during construction will be limited to temporary increases in turbidity downstream. The introduction of oils and fuels will also be excluded through the EMP, which requires, among others,</p> <ul style="list-style-type: none"> - Prevention of vehicle operation in the river and if there is

	CRP Observation and Findings	Response/Comments
		<p>no alternative, inspection of vehicles will be required to ensure that there is no leakage of fuel and lubricating materials (Para 595).</p> <ul style="list-style-type: none"> - Contractors will ensure the proper handling of lubricants, fuel and solvents. Fuel and lubricant storage tanks will not be located within 50m of any watercourse, well or dry gorges. All tanks will be placed in a bund of at least 110% of the tank's maximum capacity. (Para 596) - No fuel storage or refueling of vehicles or equipment will be allowed within 50m of any watercourse (Para 598) - Erosion control measures will be applied during construction activities to prevent increased runoff into the watercourses (Para 599) - Contractor will plan all excavations, topsoil and subsoil storage so as to reduce to a minimum any runoff (para 600)
Para 59 Findings	<p>The CRP finds that ADB has not been compliant with its environmental safeguard policies as no assessment of impacts has been conducted on the ecological impact on the Mtkvari river which is an international waterway.</p> <p>Moreover, measures for storm water treatment and measures on how to protect the river water in case of traffic accidents need to be introduced under the Project.</p>	<p>The OCRP should note that the IEE already provides information on the condition of the Mtkvari River; and although a full ecological assessment has not been undertaken, the value added of such an assessment would be limited given that the scope of potential impacts is small. Available information presented in the IEE indicates the following: (i) the stretch of river is considered to be a modified habitat. It is fringed with urban landscapes, agricultural plots, degraded pastures, and with irrigated cornfields and vegetable gardens; (ii) upstream, the river is used for irrigation, hydropower and industrial water-supply; (iii) there are no commercial fisheries and the river stretch is not a protected area; (iv) data presented in the IEE indicates that the river is polluted with nutrients; and (v) riparian vegetation along the river banks in the project area are sparse or degraded, with a mix of cultivated trees and common reeds. Furthermore, and most importantly, the main impact of the project will be very limited, with about 1 hectare of lost in-stream</p>

	CRP Observation and Findings	Response/Comments
		<p>habitat over the length of the retaining wall, as well as short-term construction impacts including increased turbidity during the construction period, which can be minimized through good construction practices. Overall, impacts on river ecology are expected to be insignificant.</p> <p>Storm water drainage is included in the detailed design for the road. Additional design features such as oil separation devices can be considered as part of the site specific environmental management planning process with the contractor. In addition, the CRP should note that the EMP already includes the proposed design and implementation of safety measures and an emergency plan to contain damages from accidental spills; as well as the designation of special routes for hazardous materials transport. (see IEE, Dec 2015, Section 8.1.2). The report should be revised to reflect this.</p>
F	Meaningful Consultations	
Findings Para 66	<p>"The CRP finds that the consultations conducted fall short of the requirements of the SPS as consultations with vulnerable groups have not been conducted and there is evidence that consultations conducted were not consistent with the concept of "meaningful consultation". The CRP thus finds noncompliance with SPS."</p>	<p>ADB has conducted meaningful consultations as prescribed under SPS 2009 para 32, and that vulnerable groups have been adequately represented in the consultations.</p> <p>Consultations conducted meet all the criteria for meaningful consultations as defined by SPS para 32:</p> <ul style="list-style-type: none"> (i) commenced early in the project cycle (July 7 2013, prior to completion of the IEE) and was carried out on an ongoing basis throughout the project cycle⁵¹; (ii) provided full and timely disclosure of relevant information, including associated technical studies and proposed mitigation measures⁵²;

⁵¹ 12 separate consultations sessions were conducted from July 2013 to September 2015, and additional consultations were held in 2016. (refer attachment on consultations)

	CRP Observation and Findings	Response/Comments
		<p>(iii) were free of intimidation and coercion⁵³;</p> <p>(iv) were gender inclusive and responsive with respect to disadvantaged and vulnerable groups⁵⁴; and</p> <p>(v) enabled the incorporation of all relevant views of affected people and other stakeholders into decision making⁵⁵.</p> <p>The Project team has sought to ensure meaningful consultations since the planning stage. ADB Memo 23 Jan 2011 Para 5 states that “The implementation of the Tbilisi-Rustavi project will be sequenced as: Sections 1 and 3 will be implemented in Tranche 2, while Section 2 will be implemented in Tranche 3 to optimize the alignment, minimize resettlement impact, and conduct proper consultations with affected families”</p> <p>Importance of consultations has also been continually communicated to the Client.⁵⁶</p> <p>Consultations have continued with residents of the Ponichala buildings until the present time and have included poor and</p>

⁵² As evidenced by the timeline of the consultations and the information presented. IEE disclosed 4 Sept 2013 and LARP initially disclosed on 25 Aug 2013. Detailed explanations and all required information were provided to APs regarding the conducted studies and their outcomes, and full versions of conducted studies with conclusions and recommendations were delivered to them in both - English and Georgian Languages. (Public Consultations Report for IEE, Para 36)

⁵³ No claims of intimidation or coercion have been received.

⁵⁴ See response to Para 64 where it is noted that vision impaired people were present at consultations and that their representation there was in proportion to their representation in the building and the area as a whole.

⁵⁵ Residents did express their concerns during consultations held in 2013 and these concerns were documented in LARP for GEO: Sustainable Urban Transport Investment Program – Tranche 3 (Tbilisi – Rustavi Urban Link – [Section 2 Part B], Annex - C. Complainants had multiple opportunities to express their concerns: (a) through letters written to MDF and ADB, (b) during consultation meetings, (c) other channels, e.g. engaging NGOs. Vibration concern was addressed by the commissioning of an expert study, and care for other concerns are reflected in the mitigation measures that include the urban landscaped boulevard and noise barriers.

⁵⁶ For example: Tranche 3 Consultation Mission 10-15 Jun 2013 Para 66 states: “A key to minimizing overall project risk will be engaging in meaningful consultation. ...to ensure the correct mitigation measures are identified. Consultation can also provide the opportunity for MDF to detail to affected people how design modifications have been made to ensure the project has the minimal possible impact while having the maximum contribution to local amenity and the business activities. Failure to undertake meaningful consultation at this stage will in all probability result in a number of critical issue....”

	CRP Observation and Findings	Response/Comments
		other vulnerable groups. Multiple consultations have been held on site, including inspections (on invitation) of individual apartments. As mentioned previously, there has been limited scope to further develop mitigation measures with the complainants of the building in question, as these individuals have been specific and rigid in their demands. However, every effort continues to be made to communicate meaningfully with the residents in the area – and to this end, a communications specialist ⁵⁷ will be engaged by the project with the specific task of intensifying consultations and communications with all APs, including those in the Ponichala buildings – with a view to finding a mutually acceptable solution.
Para 60	“Complainants provided the CRP a list of meetings which they attended and described the meetings as information meetings rather than consultation meetings. They stated that they were not given a chance to present their main concerns, especially their concern that their building would not be able to withstand vibrations and they wished to be resettled.....”	<p>This is an unsubstantiated statement made by the complainants themselves and not representative of the entire group. Such a statement should not constitute a basis for the CRP to conclude that consultations were not meaningful. The complainants were given every opportunity to present their concerns. Noise, structural integrity, compensation, etc. including solutions and options were discussed.</p> <p>12 consultation meetings were conducted between July 2013 and February 2016, minutes were prepared and attendance sheets signed.⁵⁸</p> <p>Concerns of the residents were taken on board and comprehensively addressed by the commissioning of an expert study; and other concerns are reflected in the mitigation measures that include the urban landscaped boulevard and noise barriers.</p>

⁵⁷ Note: the engagement of a communications specialist was a recommendation that came out of the OSPF report. This has been agreed in principle by MDF and the TOR are now agreed between MDF and OSPF. The engagement of the communications specialist is expected by January 2017.

⁵⁸ 07 July 2013, 08 July 2013, 09 July 2013, 10 July 2013, 12 July 2013 (2), 18 July 2013, 17 Aug 2013, 26 Dec 2014, 15 September 2015, 10 Jan 2016, 10 Feb 2016.

	CRP Observation and Findings	Response/Comments
		<p>The records of the September 2015 consultation⁵⁹ also include the following note: “Mitigation of the noise impacts requires construction of specially designed acoustic barrier. The most residents of the apartment buildings accepted the plan of constructing high noise barriers, in case if the aesthetic aspects will be considered and the design of the barrier will be in compliance with the overall landscaping plan for the area. The residents have mentioned that during the last 20 years the landscape and visual value of the area has diminished and this is perceived as a significant loss. They express their positive attitude that boulevard will be arranged in an ecologically acceptable manner. They liked presented design concept of boulevard and agree that it will be environmentally friendly and safe for population. Only few representatives of the meeting from the one 9 story building did not agree with presented conclusions and mitigation measures. They expressed their negative attitude toward presented information. However, several additional meetings were conducted with these people by the resettlement and other relevant specialists and consultants, including MDF Top Management.”</p>
Para 61	<p>“In September 2015 residents of the building of the complainants were invited to a meeting to receive information about the results of the vibration and noise impact modelling study, and the proposed mitigation measure, namely the construction of a 9 meter high noise barrier.”</p>	<p>The CRP should note that other mitigation measures are proposed in the IEE and EMP. The measures include: (i) limiting types of machinery and equipment during civil works; (ii) recommended speed limits on road sections near the buildings in question, (iii) monitoring parameters and methods, (iv) stabilization of the buildings through an ongoing government program, and (v) development of an urban boulevard, improving access and safety. For transparency, we would urge the CRP to update the draft report to include reference to the full range of measures proposed.</p>

⁵⁹ Refer to Public Consultations Report for IEE, Paras 35 and 36.

	CRP Observation and Findings	Response/Comments
Para 61	“...the complainants informed the CRP that – upon their request – they had meetings with the MDF in November 2015, <i>albeit</i> no records on these meetings were available from the MDF.”	The November meeting took place at ADB Georgia resident mission, and records are included in the aide memoire. Refer Aide Memoire of Loan review Mission 5-17 November 2015 (particularly Attachment 3, which contains background information, main points of discussion and agreed actions.). We would request the OCRP to review the relevant documentation and amend this section of the draft report.
Para 62	“....the CRP is concerned that the meetings were only scheduled once the draft IEE was completed in August 2013. ADB safeguard policies require that consultation meetings be conducted early in the project cycle. Once a draft IEE has been completed, project preparation is well advanced and road alignments typically have been chosen. The CRP is of the view that consultations with stakeholders should have started before the draft IEE has been completed.”	Four consultations were held before the IEE was finalized. Consultations were held on 7, 8, and 18 July; and 17 th August 2013. ⁶⁰ The draft IEE was completed in September 2013. We would like to request that this factual error be corrected in the final report.
Para 63	“It is, however, noteworthy that records do not provide evidence of a discussion of the main concern of the complainants, namely their request for resettlement. “	Discussions specific to the request for resettlement took place in November 2015 and February 2016 and were documented in the Aide Memoires ⁶¹ of the missions. The records also indicate that the complainants, during those meetings, were not interested in discussing mitigation measures, only in expressing their demands for one of two acceptable outcomes. It was also explained that involuntary resettlement will be triggered when specific and verifiable impacts are demonstrated. In this case, the Project team was bound to accept the expert conclusions that the impacts on the affected

⁶⁰ Refer to Public Consultations Report for IEE, Table 1.

⁶¹ Refer Aide Memoire of Loan review Mission 5-17 Nov 2015 (particularly Attachment 3), and the Aide Memoire of Mission 26 Jan – 9 Feb 2016.

	CRP Observation and Findings	Response/Comments
		people could be mitigated without the need for resettlement.
Para 63	<p>“Absent from the records is also a discussion of the impact of the noise shield wall on the quality of life of the residents.” Questions of residents about the proximity of the road to their buildings has been responded by emphasizing that an urban boulevard with trees and green areas will greatly improve the physical environment; improve the quality of life of residents; and value of buildings. The CRP agrees that a well-kept urban boulevard would improve the living area. But for buildings located very close to the planned noise shield, there will simply not be enough space to build such an urban boulevard, especially as emergency exit roads will also have to be constructed on that very narrow space”</p>	<p>The design of a special transparent noise barrier and landscaped urban boulevard to enhance pedestrian accessibility throughout the area (which is currently mostly blocked and not accessible, particularly for people with disabilities), indicates a high degree of attention paid to quality of life of residents. Appreciation of the proposed mitigation measures by the majority of attendees was recorded in the records of the September 2015 consultations.⁶²</p> <p>There is ample space for an urban boulevard. The minimum distance from the building is 14m, with the distance being significantly greater than this for most of the 2 km section. The typical cross-section along the 2 km urban boulevard will include: (i) landscaped and planted median separator, (ii) one multi-functional discontinued service lane per direction (3 m) alternating on-street parking, bus lay-bys, and bulb-outs in between providing space for street furniture, pedestrian crossing; and (iii) two sizeable footpaths on both sides, one (5 m) directly overlooking the river and offering a pleasant public space for promenade, recreational and fishing activities, the other one (5 m) offering a landscaped transition between the road and residential areas, both with trees and equipped street furniture such as bus stops, street lights, benches, garbage bins, etc. The buffer zone between the urban boulevard and the residential buildings will be landscaped, offering pleasant recreational areas to the inhabitants. No emergency exits are designed in this section.</p>
Para 64	<p>“The CRP notes that meeting records do not address the special issues of vision impaired people. The MDF informed that in both the public hearing in</p>	<p>The representation of vision impaired people in the building is not high. Considering the proportions of vision impaired people in the buildings and in the area, it can be concluded that their</p>

⁶² Public Consultations Report for IEE, Paras 35 and 36.

	CRP Observation and Findings	Response/Comments
	<p>August 2013 and in the meeting of September 2015, one vision impaired person was present". In the public hearing of June 2016 two vision impaired people from the complainant's building and one representative of blind/disabled people attended. However this representation level is very low.</p>	<p>percent representation in meetings and consultations (2.2%) has been proportional to their representation in the complainant's building and in the area as a whole. The presence at consultations indicates that the opportunity for them to raise any special issues was provided – though the consultation records do not indicate that any particular issues specific to vision impaired people were raised.</p> <p>Advertisements were placed in the local newspaper to inform communities in advance of consultation meetings, and public notices were posted⁶³ Information was disseminated through NGO network (CENN), and announcements were posted in densely populated areas, including bus stops, building entrances, local municipality offices . The Tbilisi-Rustavi Urban Road Link project was also covered by TV media starting from 2012 when it was officially announced by the president of Georgia.</p>
Para 64	<p>"..the CRP is concerned that no special efforts have been made to reach out to this disadvantaged group of people and that no special consultations have been scheduled in a location close to their buildings."</p> <p>"The CRP is of the view that early and targeted efforts should have been made to consult with the vision impaired people for them to fully understand likely impacts of the Project on their lives and to discuss with them how these impacts could be mitigated. "</p>	<p>This statement is not factually correct. Visually impaired people were represented at meetings and there were several consultations held on site. These on-site consultations have continued until the present time.</p> <p>The CRP should note that consultations started early (July 2013), have continued throughout 2014, 2015 and 2016 and will continue as part of the preparation of the SSEMP. These consultations have focused specifically on providing the opportunity for all residents to fully understand likely impacts of the Project on their lives and to discuss with them how these impacts can be mitigated.</p>
Footnote	"The MDF has given the CRP a copy of a letter from	It is our view that the letter does lend considerable weight to

⁶³ Newspaper announcement were made in the newspaper: "24 Hour" on 10 August, 2013. Information was also disseminated through NGO network CENN in December.2014.

	CRP Observation and Findings	Response/Comments
26	the Union of the Blind, dated 4 May 2016, in which the Union expresses gratitude to the MDF for the handling of the acquisition. As this letter refers to land acquisition of building, the CRP does not consider this information relevant to the consultation requirement of people who live in buildings which are not in the right of way.”	refuting the assertion made by the CRP, throughout the report, that the Project did not consider the needs of vulnerable people, and the suggestion (in Para 60) that it did not seem to be aware of their presence. The statement of the CRP is dismissive and demeaning of the efforts made by MDF. We therefore respectfully request that the CRP delete the last sentence of Footnote 26.
Para 65	“Para 19 Of OM Section F1/OP requires that ADB project teams advise the borrower/client that meaningful consultation with affected people will be carried out”.	This has been done on multiple levels and the borrower/client is aware of this and other requirements of SPS 2009. Since 2009, ADB, through TA 7433-REG: “Mainstreaming Land Acquisition and resettlement in the Central and West Asia Region”, has been actively instructing clients in the processes of meaningful consultation (and other principles of SPS). ⁶⁴ Specific instructions on meaningful consultations have also been included in Aide Memoires for the Project. ⁶⁵
Para 65	“The Project team did not seem to be aware that there is a significant group of vulnerable and disadvantaged people living in the area for which special impacts needed to be assessed and mitigation measures needed to be designed. As ADB staff did not know about the existence of a significant group of vision impaired people, no guidance was provided to the borrower on how to consult them..”	Please refer to Management’s response to the finding regarding impacts on vulnerable groups.
Para 65	“....it is not clear when first interactions with the residents took place. Records given to the CRP, only list meetings between the complainants and ADB staff starting in the fall 2015 after the complainants	Interactions with the residents of the area, in terms of formal consultations, clearly commenced on 7 July 2013. The minutes of the consultations held on 17 August 2013 also clearly show 4 representatives from the building in question as attendees,

⁶⁴ See <https://www.adb.org/projects/documents/mlars-central-west-asia-georgia-country-assessment-tacr>

⁶⁵ See, for example, Tranche 3 Consultation Mission 10-15 Jun 2013 Para 40.

	CRP Observation and Findings	Response/Comments
	requested a meeting with ADB.”	including one representative who is on the list of CRP complainants. ⁶⁶ ADB and MDF project consultants participated in the consultations.
Para 65	“Safeguards policies of the ADB require direct participation of ADB project teams in consultation meetings for category A projects. However, this Project has been categorized as category B <i>albeit</i> the CRP argues that it should have been categorized as category A...”	<p>Para 54 of SPS states that for projects with significant adverse environmental, involuntary resettlement, or Indigenous People’s impacts, ADB project teams will participate in consultation activities. Consultation activities include planning, scheduling, resourcing, analyzing and following-up. The project team has been directly involved in the process of implementing consultation activities. In this project, though staff members were not present at the meetings, a staff consultant participated on behalf of the project team.</p> <p>With regard to project categorization, please see Management response to CRP finding on Environmental Categorization of the Project.</p>
Para 77	Lessons Learned (i) states that 'ADB staff needs to guide and support the borrower in complying with ADB safeguard policies'. '... ADB staff need to acquire an understanding of what borrower's own safeguard policies and procedures are and where ADB policies require different or additional measures then what is required under the national policies.'	ADB has been consistently sensitizing EAs to requirements of SPS 2009 since 2010 (when SPS was approved) and systematically analyzing policy differences of social safeguard policies of Georgia and SPS 2009 since 2011 (when regional TA 7433 started in Georgia). In 2010 ADB approved TA (REG) 7433: Mainstreaming Land Acquisition and Resettlement Safeguards in Central and West Asia Region. Under this regional TA, ADB completed in April 2013 a gap analysis of social safeguard requirements between Georgia and SPS 2009 at policy, procedural and application levels. The main policy differences and recommended reconciliation measures were discussed with all EAs, including MDF, and then documented in Country Assessment (CA) Report on Land Acquisition and Resettlement for Georgia (link to the report:

⁶⁶ Public Consultations Report for IEE, p12

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		<p>www.adb.org/sites/default/files/project-document/149533/43288-012-tacr-03.pdf). The recommendations of the CA Report were used as the basis for developing and delivering workshops for EAs, project implementation partners and consultants throughout 2014 and 2015. The findings of the CA report were instrumental not only in understanding capacity requirements of EAs when devising projects, but also in usefully applying ADB social safeguard policies in projects in Georgia (examples are ample in urban and road sectors).</p>
G.	Environmental Classification of the Project	
Para 70	<p>'the project has not been appropriately classified for environmental impacts'</p>	<p>We do not agree that that project was not appropriately classified. The project was submitted for categorization on 9 May 2013. This was done prior to detailed design, but was informed by a study of 3 alignment alternatives, which considered engineering options and potential environmental and social impacts and costs. The selected alternative bypasses densely populated residential areas. The project was considered to be suitable for B for several reasons: (i) the selected alternative bypasses densely populated residential areas; (ii) the main environmental impacts, (earthworks, land filling and embankment protection) would be largely limited to the construction phases; and (iii) there are no protected areas, ecologically sensitive areas, critical habitats or sensitive physical cultural heritage sites affected. The initial categorization form also highlighted the need to mitigate vibration, noise and air pollution impacts (particularly for 3-4 apartment buildings), along with the need to carefully study of potential hydrological impacts from a proposed revetment along the Mtkvari River. Overall, these impacts are typical of similar road construction projects and are not considered to be irreversible, diverse, or unprecedented (as per the SPS, para 50, definition of category A projects), provided that mitigation measures are applied.</p> <p>Subsequent to the initial environmental categorization, a draft</p>

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		<p>IEE was prepared in September 2013 and updated in December 2015 based on the project detailed design. The assessment included modeling of noise and vibration and assessment of hydrological impacts associated with the proposed revetment. At the time of the detailed design, the only major change was a change in the project design from a revetment along the Mtkvari River to a retaining wall along a 1.66km section. Impacts of the retaining wall will be largely limited to the construction phases and although the impact will be over a wider area, the impacts will not be significantly different from the construction of the earlier proposed revetment. Notably, an assessment of hydrological impacts indicated that the retaining wall would not have any detrimental impacts on downstream flows or bank erosion. Furthermore, for noise and vibration, the impacts were modelled and can be mitigated. Thus the project impacts on the environment had not significantly changed from the time of the initial environmental categorization, meaning that a recategorization was not needed.</p>
Para 68	<p>'The categorization sheet does not indicate that 1.66km of the highway will be built into the Mtkvari river which is an international waterway which flows through three countries.....The CRP is of the view that the fact that 1.66km of new road will be constructed into the riverbed on a retaining wall should have been made explicit in the categorization information.'</p>	<p>At the time of the environmental categorization (see memo dated 9 May 2013 and signed by the CCO on 16 May) the preliminary project design included a revetment along the riverbank of the Mtkvari River. The project was subsequently changed to a retaining wall after detailed design. Specifically, the form mentions that the hydrological effects of the planned riverbank revetment should be carefully analyzed.</p> <p>A revetment is a sloping structure placed on banks or cliffs to protect the bank by absorbing the energy of incoming water. Revetments are typically constructed using concrete, rocks, or gravel filled bags. Similar materials will be used for the construction of the retaining wall. From an environmental perspective the only major difference is the size of the construction works (a retaining wall being wider by 5-6 meters).</p>

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		In addition a wider area could have potentially larger hydrological impacts; however subsequent assessment indicated that there would be no detrimental impacts on hydrology, erosion and bank scouring. Furthermore, the section of river is considered a modified habitat and the change from a revetment to a retaining wall is not expected to lead to a significant increase in impacts.
Para 68	Moreover, the fact that the road will impact hundreds of households through noise and vibration impacts also needed to be stated to assess the sensitivity of impacts.	This is already stated. The potential for noise and vibration impacts due to blasting or other civil works is indicted in the categorization form. The forms notes that no blasting is expected but vibration may be caused by construction; and temporary noise disturbance could be caused by the work of heavy machinery. Increased noise and air pollution resulting from traffic volumes is also noted. Specifically the form indicates that this could be significant for 3 to 4 apartment building and the planning of mitigation measures will be required.
Para 69	As the project was classified as category B for environmental impacts, an IEE rather than an environmental impact assessment (EIA). However, the IEE for this Project was very comprehensive. It covers most – albeit not all – of the impacts which should have been assessed under an IEE.	This statement is misleading and should be revised. The SPS does not provide a specific or prescriptive list of impacts that should be covered by either an EIA or IEE. The impacts assessed depend on scope of issues that are relevant to the project and their likely environmental significance. As per the SPS, para 9, 'Depending on the significance of project impacts and risks, the assessment may comprise a full-scale environmental impact assessment (EIA) for category A projects, an initial environmental examination (IEE) or equivalent process for category B projects.' Para 9 also defines the contents of an EIA report (but not the impacts to be considered).
Para 69	Such a comprehensive EIA has also been required under the environmental legislation of Georgia.	This statement is misleading and should be revised. The country level determination of the project category and requirements for an EIA, IEE or other type of document does not affect the categorization of the project by ADB. Under the SPS, Para 9, an

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		EIA is required for category A projects and an IEE for category B projects. Category A projects are defined in Para 50 as projects that are 'likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented. These impacts may affect an area larger than the sites or facilities subject to physical works.' This is assessed based on the findings of initial project screening and scoping and documented / reviewed through the submission of a categorization form and rapid environmental assessment checklist. Categorization by ADB is not affected by the categorization of the project at the country level, as different countries may have different systems which may or may not be equivalent to ADB's. For Georgia, activities related to the construction or reconstruction of international and national motor roads and highways needs an Environmental Impact Permit to be issued and an Environmental Impact Assessment to be drafted. This is based on the nature of the project, not the significance of the impacts (as per ADB requirements). As the approach to categorization is different, it is not necessary that the project category will be the same, although in practice the documents are normally prepared to ensure that all requirements are met (both ADB and the borrower/client)
H.	Evidence of Harm	
Para 71. 72	<p>"In its compliance review, the CRP has to confirm that there is direct and material harm and that noncompliance of ADB policies and procedures causes this harm. The CRP finds that there is likely harm as a result of:</p> <p>(i) expected noise impacts which are significantly above the permissible ADB noise standards; (See paras. 25-27.)</p> <p>(ii) loose building components possibly falling down during construction if no appropriate mitigation measures are taken; (See para. 37.) and</p>	CRP's finding on "Evidence of Harm" in the draft report currently falls short of the requirements under the Accountability Mechanism policy because the report should address whether harm exists and whether such harm is direct and material. Importantly, this Section should clarify that project construction has not commenced in the complainants' area and therefore no harm exists at this moment. This section also does not adequately address to what extent any future harm is likely, material and whether such harm will have arisen directly from the alleged noncompliance, with the exception of harm from noise.

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	<p>(iii) vibrations during construction, reduced light resulting from the road alignment and construction of the noise shield barrier close to the apartment on vision impaired people (See paras. 29, 46 and 47.)”</p> <p>“This likely harm is caused by noncompliance with ADB policies and procedures”</p>	<p>Paragraph 186 of the Policy stipulates in relevant part: “The CRP compliance review report will focus on the specific complaint. It will document the CRP’s findings concerning any noncompliance, and alleged direct and material harm.....It will focus on whether ADB failed to comply with its operational policies and procedures in formulating, processing, or implementing the project in relation to the alleged direct and material harm. It will also ascertain whether the alleged direct and material harm exists. If noncompliance is found and the alleged direct and material harm is confirmed, the report will focus on establishing the noncompliance as a cause for the alleged harm.”</p> <p>In other words, the policy requires that only material harm determined with some level of reasonable certainty to be caused by ADB’s noncompliance with its operational policies and procedures is appropriately included within the findings and conclusions in the Final Report. Furthermore, the term “direct harm” is a legal concept that connects action to harm without any intervening causes between the act and the resulting harm. If noncompliance is found and direct and material harm is confirmed, but intervening factors were also required to cause such harm, such harm has not arisen <u>directly</u> from such noncompliance.</p> <p>Based on the above, we suggest the following changes be made:</p> <ul style="list-style-type: none"> - paragraph 71 (i), (ii) and (iii) of the draft report, which states that CRP finds that there is likely harm as a result of expected noise impacts, loose building components falling down during construction and vibration and reduced light impacts on vision impaired people should be revised. Paragraph 71 (i) may be maintained and

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		<p>Management will propose remedial measures. Paragraph 71 (ii) and (iii) should be deleted as our responses to CRP findings on vibration and impacts on vulnerable people (above) have clearly showed that ADB is in compliance with SPS; and</p> <p>Paragraph 73 of the report should also be deleted, as the above response on vibration and impacts on water and river ecology have clearly showed that no further assessments are necessary since (i) a robust vibration study has already assessed the natural frequency of each building, and shows that there is no likelihood of superpositioning of the natural frequencies with the construction generated vibration frequency, (ii) the IEE already provides information on the condition of the Mtkvari River, and (iii) storm water drainage is included in the detailed design for the road.</p>