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R13-18
7 March 2018

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

1. In accordance with paragraph 182 of the Accountability Mechanism Policy 2012, the Compliance Review Panel (a) has determined that the complaint relating to the above-referenced project is eligible for compliance review, (b) submits its eligibility report, attaching the complaint and Management's response, and (c) recommends that the Board authorize a compliance review.
2. After carefully considering the eligibility report of the Compliance Review Panel and Management's response, the Board Compliance Review Committee reported to the Board of Directors in a memorandum dated 23 February 2018 (Report of the Board Compliance Review Committee), which recommends that the Board (a) should not authorize compliance review at this time, (b) approve the approach described in paragraph 3 of the Report of the Board Compliance Review Committee, and (c) approve disclosure of the Report of the Board Compliance Review Committee to the public in accordance with ADB's Public Communications Policy 2011.
3. In the absence of any request for discussion and in the absence of a sufficient number of abstentions or oppositions (which should be communicated to the Secretary by the close of business on 21 March 2018), the recommendations of the Board Compliance Review Committee in paragraph 2 above will be deemed to have been approved, to be so recorded in the minutes of a subsequent Board meeting. Any notified abstentions or oppositions will also be recorded in the minutes.

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Asian Development Bank


Board of Directors

Board Compliance Review Committee

23 February 2018

To: Board of Directors

Through: WooChong Um 
The Secretary

From: Helmut H. Fischer 
Chair, BCRC

Subject: **REPORT ON ELIGIBILITY: Compliance Review Panel Request No. 2017/4 on the GEO: Nenskra Hydropower Project (Project Number 49223-001)**

1. At its meeting on 15 February 2018, the Compliance Review Panel (the CRP) presented to the Board Compliance Review Committee (the BCRC) the CRP's report (the Eligibility Report) (Annexure 1) on the eligibility for compliance review of certain complaints (the Complaint) received by the CRP regarding the Georgia Nenskra Hydropower Project (the Project). The BCRC discussed the Eligibility Report in the context of ADB's Accountability Mechanism Policy 2012 (the AM Policy). The BCRC consulted with the General Counsel (GC) and representatives from the Private Sector Operations Department (PSOD) and Sustainable Development and Climate Change Department (SDCC), who were also present for questioning and discussions.
2. Following such presentations, discussions, questions, answers and analyses, BCRC undertook as follows:
 - a. BCRC took note that CRP's Eligibility Report and its findings therein are preliminary and do not represent definitive conclusions of compliance or non-compliance. CRP's definitive conclusions of compliance or non-compliance would be determined only following a Board-authorized compliance review pursuant to section 182 of the AM Policy. The purpose of CRP's eligibility report is solely to determine whether, under the terms of the AM Policy, the complaint is eligible for a compliance review.
 - b. However, the BCRC also took note that the CRP's findings in the Eligibility Report appear based on credible evidence to support a preliminary finding of several important areas of non-compliance with ADB's operational policies and procedures that might – if not remedied or ameliorated – result in direct and material harm to project-affected people.
 - c. BCRC also noted that, if the Board authorizes a compliance review, such compliance review and the steps and procedures necessary to produce a remedial action plan would likely take one year or longer, during which period the Project would proceed amidst some uncertainty or would be delayed or proceed without ADB or could be cancelled.

3. As an alternative to a compliance review, BCRC recommends to the Board the following approach:
 - a. BCRC would request ADB Management to consider CRP's findings in the Eligibility Report and prepare a compliance report/action plan (a "Management Plan") that includes remedial or ameliorative measures to address all the questions of compliance identified in the Eligibility Report;
 - b. BCRC would refer such Management Plan to CRP and seek CRP's views thereon, recognizing that (i) CRP is an arm of the Board and not an advisor to ADB Management, PSOD or SDCC, and (ii) any views of CRP should not jeopardize CRP's independence from ADB Management or affect CRP's role in any subsequent compliance review;
 - c. BCRC would then request that Management conduct an Informal Board Seminar (IBS) on the Project, including a description of CRP's findings in the Eligibility Report and the Management Plan.
 - d. Following the IBS and ADB Management's receipt of views of Board members, ADB Management should submit a final Management Plan to the Board, through BCRC, and at or after such time, ADB Management could submit to the Board a Report and Recommendation of the President (the R-Paper) seeking Board approval of the Project.
4. BCRC determined that the alternative described above would, in the circumstances of the Project, likely be more responsive to the concerns of the project-affected people by more quickly facilitating the inclusion of remedial and ameliorative measures into project design and implementation. The alternative would therefore likely be more cost-effective and efficient, and therefore would accomplish the purposes and objectives of the AM Policy to facilitate development effectiveness, respond to project-affected people, and to comply with ADB operational policies and procedures effectively and efficiently.
5. Accordingly, the BCRC recommends that the Board:
 - a. not authorize a full compliance review for the Project at this time;
 - b. approve the approach described in paragraph 3 above; and
 - c. approve the disclosure of this memorandum in accordance with paragraph 86 of the Public Communications Policy.
6. An R-Paper to the foregoing effect will be provided to the Board, for Directors' consideration, shortly.

Attachment: a/s

cc: BCRC Members
 Chair, CRP
 General Counsel
 Assistant Secretary
 Advisor, OCRP
 Secretary, BCRC

REPORT ON ELIGIBILITY

**To the Board of Directors
on
Compliance Review Panel Request No. 2017/4
on the
Georgia: Nenskra Hydropower Project
(Project Number: 49223-001)**

8 February 2018

Distribution of the attached document is restricted until it has been approved by the Board of Directors. Following such approval, ADB will disclose the document to the public in accordance with ADB's Public Communications Policy 2011.

ABBREVIATIONS

ADB	– Asian Development Bank
AMP	– Accountability Mechanism Policy
CRP	– Compliance Review Panel
EBRD	– European Bank for Reconstruction and Development
EIA	– environmental impact assessment
EMP	– environmental management plan
EPC	– engineering-procurement-construction
ESIA	– environmental and social impact assessment
ESMP	– environmental and social management plan
GSE	– Georgian State Electrosystem
HPP	– hydropower project
IP	– indigenous peoples
IPOE	– international panel of experts
IR	– involuntary resettlement
JSCNH	– Joint Stock Company Nenskra Hydro
LALRP	– Land Acquisition and Livelihood Restoration Plan
SPS	– Safeguard Policy Statement
SLR	– SLR Consulting France SAS
TBM	– tunnel boring machine

WEIGHTS AND MEASURES

ha	– hectare
km	– kilometer
kV	– kilovolt
m	– meter
MW	– megawatt

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. BACKGROUND

1. A complaint requesting for compliance review was forwarded to the Compliance Review Panel (CRP) on 07 December 2017 for Asian Development Bank (ADB) proposed private sector loan on the Nenskra Hydropower Project (the Project, with Project Number 49223-001). In accordance with the Accountability Mechanism Policy (AMP) and its operational policies and procedures,¹ the CRP initially assessed the complaint and determined that it was within the mandate of the compliance review function and thus proceeded to an assessment of whether the Project should be declared eligible for compliance review.

2. This report summarizes the CRP's findings on its determination of the eligibility of the complaint for compliance review.

II. THE PROJECT

3. The Project is in a narrow, scenic mountain valley, the Nenskra river valley, located in the northwest of Georgia, close to the Russian border, the Samegrelo-Zemo Svaneti Region. The valley is inhabited by about 1,100 permanent inhabitants (268 households) living in 13 hamlets along the river. The dam, the reservoir, and the powerhouse will be in the Nenskra river valley, but the reservoir will also receive water from a river of an adjacent valley, the Nakra River valley, where a weir will be constructed, and water will be diverted through a tunnel to the reservoir. In the Nakra valley live 300 permanent inhabitants (85 households) in five hamlets. Almost all the

Figure 1: Map of Georgia Showing the Proposed Nenskra Hydropower Project



Source: <https://www.salini-impregilo.com/en/projects/in-progress/dams-hydroelectric-plants-hydraulic-works/nenskra-hydroelectric-project.html>

¹ Asian Development Bank (ADB). 2012. *Accountability Mechanism Policy*. Manila and ADB. 2012. *Operations Manual Section on Accountability Mechanism* (OM Section L1: Bank Policies and Operational Procedures), issued on 24 May 2012. Manila.

people in the two valleys were born there; are Georgian nationals; and belong to the Svan ethnic group.

4. The Project involves the construction, operation, and maintenance of a conventional high head, reservoir-type hydropower plant with installed capacity of 280 megawatts (MW). The reservoir consists of a 125-meter high asphalt face rock-filled dam constructed on the upper Nenskra River, capable of storing up to 182 million cubic meters of water. The dam will have a crest length of 870 meters above ground level. The water stored in the Nenskra Reservoir will flow downstream through a 15 km long concrete headrace tunnel to supply the power house. The powerhouse will consist of three 93 MW power units and is located about 17 km downstream from the dam. The Nakra River, which will also provide water to the Project, flows in a valley parallel to the Nenskra valley. The Nakra water intake will be built across the Nakra River which will divert most of the Nakra river flow into the Nenskra reservoir through a 12-kilometer long gated transfer tunnel. The transmission line which will evacuate the power to be produced from the Project is not part of this Project. Transmission lines will be built and operated by the Georgian State Electrosystem (GSE). The Project will sell electricity to the Electricity System Operator under a 36-year power purchase agreement. Thereafter, the Project will be transferred to the Government of Georgia.

5. The government began preparing the Project in 2009, completing the feasibility study in 2011. An Environmental and Social Impact Assessment (ESIA) was completed in 2015 (ESIA 2015), based on which the government awarded the environmental permit in October 2015. Supplemental ESIA studies were subsequently conducted, upon request of the lender group of international financial institutions (IFIs), and a draft revised ESIA (2017) English version was disclosed in mid-2017 during public consultation meetings in Georgia. The revised ESIA (2017) English version of November 2017 is uploaded on the ADB project website.² Project implementation is expected to commence by the second half of 2018 with a planned construction period of 5 years. The Project has some components which need to be finalized. These include: (i) the location, widening and upgrading of the access road in the Nakra valley; (ii) the spoil disposal areas at the powerhouse, (iii) the construction of the 35-kV electric service line between the powerhouse and the dam site; and (iv) and the 110-kV power supply line from the future new substation to the powerhouse which is needed during construction; and (iv) the routing of the Nenskra valley access road is also under reconsideration. As the design and location of these components still need to be completed, environmental and resettlement impacts of these are yet to be identified and assessed.

6. The project sponsor is Joint Stock Company Nenskra Hydro (JSCNH), a special purpose vehicle incorporated in Georgia and established for developing and operating the Project. JSCNH is wholly owned by Korea Water Resources Corporation (K-water). Established in 1967, K-water is a water management company, wholly owned by the Government of the Republic of Korea. Total costs of the Project, including development and financing costs, amount to US\$ 1,040 million. The Project will be funded by 30% equity and 70% debt. In addition to K-Water and the government, debt financing is expected to be provided by the Korean EXIM Bank, the European Investment Bank (EIB), and European Bank for Reconstruction and Development (EBRD), which is expected to also provide an equity loan. ADB's proposed assistance includes (i) an A loan of

² Unless otherwise indicated, succeeding references to ESIA in this document refer to the JSC Nenskra Hydro Supplementary Environmental and Social Studies comprising 10 volumes and their annexes which were submitted to ADB as Nenskra Hydropower Project Environmental and Social Impact Assessment in English dated November 2017 and which was posted on the ADB project website at <https://www.adb.org/projects/documents/geo-49223-001-esia-0>.

up to \$214 million; (ii) a B loan of up to \$100 million; and (iii) a political risk guarantee (PRG) to cover the ADB B loan of up to \$97.5 million of principal, plus interest and PRG fees. ADB became involved in the Project in early 2015. The loan has not, yet, been approved by the ADB Board of Directors (Board).

III. THE COMPLAINT

7. This complaint was submitted by ten affected persons who identify themselves as belonging to the Svan ethnic group, and as residents from Nakra and Chuberi villages in the Municipality of Mestia in Georgia. Complainants requested that their identities be kept confidential. The complainants have asked to be represented by David Chipashvili and Manana Kochladze from Green Alternative, a local nongovernment organization.

8. The complainants allege that they were denied participation as a distinct group in the decision-making process on a project that they believe would clearly and significantly impact their traditional social structures. They claim that there was inadequate public consultation in relation to scoping of environmental and social impacts and mitigation measures. They further claim that the Project will pose geological risks to their mountainous community with high risks of landslide and mudflows; risks of reduced environmental flow; health and agricultural issues relating to microclimate; and would result in negative social impacts to the Svan traditional society and way of living. (See Appendix 1 of this report for the complaint.)

9. Despite their efforts to raise their concerns, either through protests or in writing, their issues have not been heard nor addressed in any of the project documents. At least two letters (one in July and September 2017) signed by some of the complainants, were sent to the lenders' group, which included ADB. As such, the complainants sent their complaint to the ADB

Figure 2: Portion of the Nenskra River Valley



Source: Green Alternative, “Don’t Dam the rivers – The story of Nenskra Hydropower plant in Svaneti, Georgia”, at <http://greenalt.org/news/dont-dam-the-rivers-the-story-of-nenskra-hydropower-plant-in-svaneti-georgia/>

Accountability Mechanism and their complaint was forwarded by the Complaint Receiving Officer to the CRP on 7 December 2017.

IV. MANAGEMENT'S RESPONSE

10. In its response to the CRP, ADB Management responded to the concerns raised in the complaint and summarized the actions taken by the Project to comply with the Safeguard Policy Statement (SPS).³ (See Appendix 2 of this report for the full Management's Response.)

11. Specifically, ADB Management stated that it conducted due diligence to ascertain the operational application of the SPS Safeguard Requirements 3 on Indigenous Peoples (IP) to the Svans. The ADB Management concluded that this group of project-affected people exhibit not all the IP screening characteristics laid out under the SPS and thus, cannot be considered as a group that would trigger the application of the SPS Safeguard Requirements 3 for IP. Additionally, the Svan's vulnerabilities to the Project do not originate from the being indigenous to the region. The ADB Management's response further stated that risks related to Svans' existing social and economic vulnerabilities have been determined in the Social Impact Assessment and mitigation actions are in the Land Acquisition and Livelihood Restoration Plan (LALRP); the Community Investment Plan; and the Environmental and Social Management Plan (ESMP) of the Project.

12. ADB Management also stated in its response that it had conducted adequate due diligence and updated the 2015 LALRP based on consultations in 2016-2017 to suit the SPS Safeguard Requirements on Involuntary Resettlement. It further stated that additional study on pasture loss was done in 2016 as input to the livelihood restoration strategy of the Project; compliance audit of completed and ongoing land acquisition activities was undertaken; and a corrective action plan was prepared. For the outstanding components, the Project will further assess, prepare, and disclose LALRP addendum.

13. The ADB Management's response described how due diligence on environmental aspects was carried out to comply with the SPS Safeguard Requirements on the Environment primarily by doing supplementary studies, notably on hydrology, water quality, natural hazards, dam safety, biodiversity, and social impact assessment. It further stated that environmental audit of early works was done; corrective actions were developed; supplementary environmental studies were posted on the website; ESMP was revised based on inputs from lenders; alternatives and cumulative impacts were analyzed; ESIA mitigation measures were strengthened and incorporated in the ESMP and the EPC contract. Further, an International Panel of Experts (IPOE) has been established to advice on dam safety, natural hazards, and social dimensions of the Project. These steps were undertaken in accordance with the safeguard requirements of the lenders, including ADB; and taking account of concerns raised by affected communities. There are project components that still need to be finalized, such as the access roads to the dam site and Nakra weir, power supply lines to the dam site and Nakra weir, and tunnel boring machine (TBM) locations. For these still undefined project components, environmental and resettlement assessments will be done in due course. For the associated facilities (i.e., a new substation, transmission line and related infrastructure required to evacuate power), a full environment and social impact assessment will be prepared with proposed financial support from EBRD. ADB

³ ADB. 2009. *Safeguard Policy Statement*. Manila and its accompanying Operations Manual (OM) Section F1, issued on 01 October 2013 available at <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf> and <https://www.adb.org/sites/default/files/institutional-document/31483/om-f1-20131001.pdf>, respectively.

Management also stated that it has intensified consultations with project-affected people since ADB started to be engaged in the Project in 2015.

V. ELIGIBILITY

14. According to para. 179 of the AMP, the CRP determines the eligibility of a complaint as stated below.

Within 21 days of receiving the Management's response, the CRP will determine the eligibility of the complaint. The CRP will review the complaint, Management's response, and other relevant documents. To find a complaint eligible, the CRP must be satisfied that the complaint meets all the eligibility criteria, satisfies the scope, and does not fall within the exclusions (para. 142 and paras. 145-149). The CRP must be satisfied that (i) there is evidence of noncompliance; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people; and (iii) noncompliance is serious enough to warrant a compliance review.

15. This report is based on the CRP's review of the complaint, the ADB Management's response; telephone conference calls with ADB PSOD and EBRD staff, and the review of selected documents received from PSOD. The CRP received from PSOD the categorization documents for the IP (Indigenous Peoples), Involuntary Resettlement (IR), and Environment Safeguard Policies, the project overview and financing plan, copies of some communications sent by PSOD to the project sponsor, documents prepared by the Lenders' Technical Advisors and one back-to-office report dated 30 August 2017. The CRP requested all back-to-office reports of missions conducted, but ADB Management decided not to submit those. The CRP also requested additional reports of Lenders' Technical Advisors, which ADB Management decided not to provide to the CRP. Paragraph 137 (i) of the AMP states, that ADB Management and staff will ensure that the CRP have full access to project-related information in carrying out their functions. The CRP conducted an eligibility mission to Georgia from 14-19 January 2018. In its eligibility mission, the CRP visited the project site; met with the complainants and their designated representatives; elected and civil service representatives, some affected people, the project sponsor in Tbilisi and some engineering-procurement-construction (EPC) contractor and JSCNH staff working on the project site. The CRP was able to verify the identity of five of the ten complainants during its visit to their community. The CRP also interacted with some of the consultants who contributed to the ESIA. The mission also met with the Ministry of Economy and Sustainable Development of Georgia. The mission consisted of Arntraud Hartmann and Ajay Deshpande, both part-time members of the CRP, and Josefina Miranda, Compliance Review Officer of the Office of the Compliance Review Panel.

16. The assessment done for this eligibility report is limited in scope. Its objective is to determine whether there is sufficient *prima facie* evidence of noncompliance and related harm or likely harm for the CRP to recommend to the Board whether this Project should proceed to a full compliance review. The assessment undertaken in this eligibility report does not comprehensively assess noncompliance by ADB with its operational policies and procedures. There might be other noncompliance issues which are not addressed in this eligibility report. Determinations made by the CRP at the eligibility stage will not, in any way, prejudice its findings after a full compliance review, should that be recommended and authorized by the Board.

A. Evidence of Noncompliance

17. The CRP considers *prima facie* evidence of noncompliance with the SPS and its accompanying Operations Manual (OM Section F1) issued on 01 October 2013. The CRP refers to the Environment Safeguards: A Good Practice Sourcebook (Draft Working Document) (December 2012); Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook – Draft Working Document (November 2012); and Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook (Draft Working Document) (June 2013)⁴ as secondary sources to help with the interpretation of what constitutes good practice in the application of these policies. The Project has been categorized by the ADB as ‘A’ for environmental impacts; ‘B’ for involuntary resettlement impacts; and ‘C’ for indigenous peoples impact.

1. Safeguard Policy Statement, Appendix 3 - Indigenous Peoples

Safeguard Policy Statement (SPS), Appendix 3, para. 6

“For operational purposes, the term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

- (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;*
- (ii) collective attachment to geographical distinct habitats or ancestral territories the project area and to the natural resources in these habitats and territories;*
- (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and*
- (iv) a distinct language, often different from the official language of the country or region.”*

18. The complainants state that they are Svans and that the SPS Safeguard Requirements 3: Indigenous Peoples should be invoked: “Taking into account that we are the indigenous population, which in the last few thousand years of living in the region, we believe that Indigenous people’s policy should be applied and the government as well as the project sponsor were supposed to ask do we want implementation of this type of project.” ADB categorized the Project as “C” stating that criteria (iii) under SPS, Appendix 3, para. 6 is not complied with as “The Svans are fully incorporated into the legal, political, social, economic and administrative systems of Georgia.” While the Svans have their specific traditions and customs, spiritual culture, agricultural practices, and pre-litigation conflict resolution measures, these traditions and practices are also an integral part of Georgian culture. Moreover, the categorization explanations state, that there are no records that the Svans were a marginalized and vulnerable social and cultural group vis-à-vis other ethnic groups in Georgia.

⁴ These sourcebooks are available at <https://www.adb.org/sites/default/files/institutionaldocument/33739/files/environment-safeguards-good-practices-sourcebook-draft.pdf>; <https://www.adb.org/sites/default/files/institutional-document/32827/files/ir-good-practices-sourcebook-draft.pdf>; and <https://www.adb.org/sites/default/files/institutional-document/33748/files/ip-good-practices-sourcebook-draft.pdf>, respectively. For ease of reference, these documents will be subsequently referred to in this report as Good Practice Sourcebook on Environment Safeguards; Good Practice Sourcebook on IR Safeguards; and Good Practice Sourcebook on IP Safeguards, respectively.

19. The assessment is based on an opinion provided by an academic expert of Ethnology at the State University of Tbilisi. That assessment has been integrated into the ESIA.⁵ The CRP has been informed that all positions in respect of applicability of the Indigenous Peoples policy are based on this expert's views. The social expert involved in the IPOE also referred to this expert's opinion in the telephone discussion with the CRP. The ethnological expert takes the view, that traditional practices exercised by the Svans do not differ from those found in other mountain areas of Georgia and are not specific to Svaneti. The CRP notes that – based on academic research reviewed – there is body of opinion which presents Svan legal traditions and cultural practices as distinctly different from other Georgian groups, and as distinct from the mediation processes exercised through elders in other Georgian mountain valleys. In academic writings, Svan legal practices are a topic of research. The research presents a legal system with binding value for the Svan community which exists in parallel to Georgian national legal norms and processes. Based on the body of academic literature there are also continued traditions which prevail only in the Svan community and can be classified as cultural and social institutions.⁶ It is not the task of the CRP to question the opinion of an expert engaged for the ESIA, but in the view of the CRP and the good practice recommended by para. 33 of the Good Practice Sourcebook on IP Safeguards, due process in the scoping stage of categorization would have required ADB staff to consult not only with a local scholar but also with a qualified social science expert and an IP representative organization. Direct interactions of ADB staff with representatives of Svans to assess their cultural practices would have also been useful to gain additional information. The categorization for IP impacts was only signed in October 2017. Records show that ADB safeguard staff travelled several times to Georgia throughout 2015-2017 and showed generally a strong engagement in the safeguards process. The CRP is of the view, that in the case of the IP classification process, ADB staff should not have depended on only one expert, but should have relied on several sources of expertise.

20. However, while the CRP does have concerns about the process of IP categorization, the CRP based on research and interviews conducted, recognizes that the Svan community is neither economically nor socially marginalized because of their belonging to the Svan social and cultural group. While income levels in the Nenskra valley are below the national average and thus many people are vulnerable, the income levels are not lower than in other mountain areas of Georgia. Their vulnerability is related to the limited income earning opportunities in the Nenskra and Nakra river valleys. As SPS, Appendix 3, para. 6 states that the IP policy is applied to a distinct, vulnerable, social and cultural group, and the Svans in Georgia do not display vulnerability which is related to their status as a distinct social and cultural group, the CRP agrees with the view of the ESIA and ADB, that the IP policy is not invoked. While the CRP agrees that the IP policy should not be invoked, the CRP is of the view that the Svan culture will be seriously threatened by this Project. The population, with its culture, has already been seriously impacted by the Enguri Hydropower Plant-HPP (1947-1960) when several Svan villages have been flooded, and risks being impacted by the Khudoni HPP already approved for the lower part of the valley. This

⁵ Footnote 2, Vol. 1, p. 12 and Vol. 3, pp. 22-26.

⁶ Koehler, J., 1999. Parallele und integrierte Rechtssysteme in einer postsowjetischen Peripherie: Svanetien im Hohen Kaukasus, In: E. Alber and J.M. Eckert, eds., *Settling of Land Conflicts by Mediation*. Berlin and Frankfurt: TZ, pp. 246-66; State and Legal Practice in the Caucasus: Anthropological Perspectives on Law and Politics, edited by Stephane Voel and Iwona Kaliszewska, Farnham: Ashgate, 2015; Voell, S. 2012 a. Local Legal Conceptions in Svan Villages in the Lowlands. *Caucasus Analytical digest* 42, pp. 2-4; Voell, S. 2013. Traditional Law in Georgia. *Caucasus Analytical Digest*, 42. Voell, S., Jalabadze, N., Janiashvili, L. and Kamm, E. 2014. Identity and Traditional Law: Local Legal Conceptions in Svan Villages (Georgia). *Anthropological Journal of European Cultures* 23(2), pp.98-118; Zigon, J. 2011. Multiple Moralities: Discourses, Practices, and Breakdowns in Post Soviet Russia. In: J. Zigon, ed. *Multiple Moralities and Religions in Post-Soviet Russia*, New York and Oxford: Berghahn, pp 3-15; Dadunashvili, Elguja, 2011: Volksreligiöse Praktiken bei den Svanen. *GZW. Ökumenischens Forum für Glauben und Gesellschaft in Ost und West* 6 (2011). S. 24-26.

eligibility report argues that the local residents and Svan culture will be very seriously impacted by the massive inflow of workers into the narrow valley during at least 5 years of construction period (paras. 50-51 of this report) and to some extent by the economic resettlement from pasture land and the loss of eco-services from grazing in forests (paras. 58-64 of this report). A decision not to invoke the IP policy does not prejudice the need for an appropriate assessment and strong mitigation of social, health and safety impacts on the Svan population adequately reflecting the appropriate cultural dimensions of the Svan culture. It needs to be a central focus in social impact assessment and mitigation measures.

21. **Finding.** The CRP could not find *prima facie* evidence that SPS Safeguard Requirements 3: Indigenous Peoples should be invoked.

2. Safeguard Policy Statement, Appendix 1 - Environment

a. Consideration of Project Alternatives

SPS, 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. If potentially adverse environmental impacts and risks are identified, the borrower/client will undertake an environmental assessment as early as possible in the project cycle. For projects with potentially significant adverse impacts that are diverse, irreversible, or unprecedented, the borrower/client will examine alternatives to the project's location, design, technology, and components that would avoid, and, if avoidance is not possible, minimize adverse environmental impacts and risks. The rationale for selecting the particular project location, design, technology, and components will be properly documented, including, cost-benefit analysis, taking environmental costs and benefits of the various alternatives considered into account. The “no project” alternative will be also considered.”

22. The ESIA presents limited assessment of alternatives. It is stated that the assessment is restricted, as by the time the assessment was carried out under the ESIA supplemental studies, the location, type and height of the dam were already fixed. There was already a signed implementation agreement with JSCNH which determined the operational mode, a fixed location, and a completed project identification. (See ESIA, Vol. 2, p. 7.) The ESIA refers to some earlier assessments conducted by ESIA (2015) but notes that the studies which contain the assessment of alternatives are confidential.⁷ The CRP did not have access to these earlier studies. The ESIA posted on the ADB website does not correspond to the requirements laid out in SPS, Appendix 1, para. 4. The analysis contains a general assessment of alternatives to HPPs but largely focuses on assessing alternatives in the design of the Nenskra and Nakra project structures. The location of the HPP in the Nenskra river valley is taken as given. The assessment of alternatives does not take a position as to whether the proposed project is the least impact alternative to achieve the power production objectives required by the government. The ESIA notes that “The selection of alternatives at strategic level by the Government of Georgia was not based on (i) a Sectoral

⁷ Footnote 2, Vol. 2, p. 7.

Environmental Assessment to distinguish among alternative strategies and investment programs within the power sector, or (ii) a Regional Environmental Assessment to compare alternative development scenarios. The analysis of alternatives to the Nenskra HPP was therefore not build on a formal sectoral or a regional environmental assessment.”⁸ The ESIA states that the decision to proceed with the Nenskra HPP reflects a political preference which the ESIA does not intend to assess as “it is not the objective ...to justify, *a posteriori*, why the proposed Nenskra HPP is the least-impact alternative to achieve the power production objectives required by the Government.”⁹

23. The assessment of alternatives also does not consider social and environmental impacts of alternatives. It only refers to adjustments made within the defined project to mitigate environmental impacts.¹⁰ Guidance provided in the Good Practice Sourcebook on Environment Safeguards states: “*The SPS requires an analysis of project alternatives for all category A projects to determine the best method of achieving project objectives while minimizing environmental and social impacts. This analysis is an important element of the environmental assessment process as it brings environmental and social considerations into early decision making....*”¹¹ Such an assessment is not provided in the ESIA. A cost-benefit analysis has been prepared, which concludes that the Project is cost-benefit justified and that the power tariff agreed in the offtake agreement is lower than the World Bank long-run marginal costs estimated for Georgia.¹² The CRP, within this very limited eligibility assessment, cannot review the appropriateness of the underlying economic price assumptions of the cost benefit analysis and thus cannot take a position on whether the economic analysis adequately reflects the costs which the project poses on the economy and society at large.

24. **Finding:** The ESIA posted on the ADB website (November 2017), contains a restricted assessment of alternatives, which does not correspond to the requirements laid out in SPS, Appendix 1, para. 4. It particularly, does not include an assessment of social and environmental impacts of alternatives. It is possible that earlier studies conducted in the preparation of the ESIA (2015) included such assessments, but these studies are not in the public domain. The CRP thus finds *prima facie* evidence of noncompliance with SPS Safeguard Requirements 1 (Appendix 1, para. 4).

b. Associated Facilities

SPS, Appendix 1, para. 6, (ii)

“Impacts and risks will be analyzed in the context of the project’s area of influence. This area of influence encompasses (i) (ii) associated facilities that are not funded as part of the project (funding may be provided separately by the borrower/client or by third parties), and whose viability and existence depend exclusively on the project and whose goods or services are essential for successful operation of the project;...”

⁸ Footnote 2, Vol. 2, p. 8.

⁹ Footnote 2, Vol. 2, p. 7.

¹⁰ Footnote 2, Vol. 2, pp. 26-30.

¹¹ Good Practice Sourcebook on Environment Safeguards, p. 33.

¹² Castalia Limited, Economic Cost-Benefit Analysis of Nenskra Hydropower Project: Summary Report, July 2017 available at <http://www.energy.gov.ge/projects/pdf/pages/Nenskras%20Hidroelektrosadguris%20Proektis%20Ekonomikuri%20Sargeblanobis%20Analizi%201787%20geo.pdf>.

25. SPS, Appendix 1, para. 6 requires that an ESIA assess the impacts and risks of associated facilities. The CRP notes, that (i) the project has associated facilities, and (ii) the impacts and risks have not been assessed within the ESIA. Instead, the assessment will be conducted by the sponsor of the transmission lines, the Georgian State Electro System (GES). The project sponsor, JSCNH has agreed to include in the agreement with GES the requirement to conduct an environmental impact assessment in accordance with lenders' policy requirements. The ESIA Vol. 3, p. 5, para.1.1.4 states:

A 220 kV Transmission Line (TL) that connects the Project's powerhouse to a projected new substation located in the Nenskra valley will be built to evacuate the electricity produced by the Nenskra scheme and allow a tie-in to the national grid. The TL will be designed, built and operated by GSE (a third party) and is considered as an "associated facility" and is not included in the scope of this SIA. The TL route will be defined at a later stage and GSE has confirmed that an ESIA will be prepared and a land acquisition processes undertaken in alignment with Lender E&S policies. The ESIA and LALARP for the TL will be prepared when the basic design has been completed... JSCNH has included a requirement for the GSE to undertake the TL ESIA and LARLP in alignment with Lender E&S policies in the Implementation Agreement that will be established between JSCNH and GoG.

26. In addition to the main transmission lines which evacuate the power generated by the Nenskra project, ESIA Vol. 2, Table 10 lists the following components as associated facilities: (i) access road for construction and maintenance, and (ii) the temporary site installations, construction camp, soil disposal areas, quarry area and borrow areas, power supply required for construction, as associated facilities. The CRP considers access roads, disposal areas, construction camps, power supply lines between the dam and the powerhouse as an integral part of the Project which need to be assessed as part of the project's environmental impacts.

27. The CRP is of the view that associated facilities should have been assessed as part of the ESIA, as required under SPS, Appendix 1, para. 6. The CRP recognizes that the exact location of the transmission lines is not, yet, known. Guidance to this effect is provided in the Good Practice Sourcebook on Environmental Safeguards, para. 68 states:

... Even though the impacts and mitigation measures from the development of associated facilities do not have to be analyzed in detail in the EIA/IEE of the project financed by ADB, basic information about the main design features, their location, the significance of potential impacts, the required approval process, and institutional arrangements should be described in the EIA/IEE. ADB reviews these facilities as part of its due diligence to determine if the associated level of impacts and risks to the environment and people is acceptable, recognizing that the borrower/client should address these impacts and risks to the environment and people is acceptable, recognizing that the borrower/client should address these impacts and risks in a manner that is commensurate to the borrower/client's control and influence over the associated facilities.

28. Even if the exact locations of the associated facilities are not known, the guidebook calls for basic information about the main design features, the location of associated facilities, the significance of potential impacts, the required approval process. Some very aggregate, generic assessment of the transmission lines is provided in the ESIA, Volume 10, section 2.5. The CRP is of the view that this presentation of potential impacts which are described generically, does not respond to the requirement of SPS, Appendix 1, para. 6. The *ratio legis* why SPS calls for a broad assessment of associated facilities as part of the project EIA is that ADB staff/management, as

well as the Board, who will be asked to approve the project, should broadly know the overall environmental impact which the project will cause. Conducting the impact assessments in a staged approach, after Board approval, will deprive the Board the possibility to know the overall project impacts. The CRP is of the view, that in this case, an environmental assessment of the transmission lines is especially warranted, as the 220-kV transmission line will be passing through a very narrow valley, countering several turns and steep slopes, which may have significant environmental consequences. The impacts of the access road from Mestia highway to Chuberi onwards to the dam site and TBM locations also need to be conducted as part of the ESIA. The access road will be passing through a narrow valley and widening and strengthening of the road is likely to have significant environmental impacts.

29. **Finding:** The CRP finds *prima facie* evidence for noncompliance with SPS Safeguard Requirements 1 [Appendix 1, para. 6, (ii)], as associated facilities have not been properly assessed within the ESIA.

c. Cumulative Environmental Impacts

SPS, Appendix 1, para. 6, (iii)

"Impacts and risks will be analyzed in the context of the project's area of influence. This area of influence encompasses.... (iii) areas and communities potentially affected by cumulative impacts from further planned development of the project, other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that are realistically defined at the time of the assessment is undertaken."

30. ESIA presents a cumulative impact assessment for more than 24 HPPs which are planned to be invested in the entire Enguri river basin. It is uncertain, however, if and when these investments will take place. Moreover, the associated developments of roads, transmission lines, and tourism must be considered in a pragmatic manner.

31. **Finding.** Given the uncertainties when and where these future investments will take place, the CRP does not find *prima facie* evidence for noncompliance with SPS Safeguard Requirements 1 [Appendix 1, para. 6, (iii)] in respect to the cumulative impact assessment.

d. Particular Environmental and Safety Impacts

SPS, Appendix 1, para. 42

"...The borrower/client will avoid or minimize the exacerbation of impacts caused by natural hazards, such as landslides or floods, that could result from land use changes due to project activities."

32. **i. Geology.** Complainants have raised very serious concerns about geological impacts. They state that the Nakra and Chuberi valleys are landslide prone and located in a high seismic activity zone. The place where the reservoir will be located is characterized by a number of landslide areas. Complainants argue that cutting forest on the slopes, together with damming water and changes in the microclimate will increase the risk of landslides. During the site visit of the CRP in January 2018, complainants handed the CRP a report which raised numerous

concerns about the geological risks associated with the project.¹³ The report stresses the increased risks of landslides and stone avalanches, resulting from increases in water levels, including the groundwater table in the area adjacent to the reservoir shores. The report argues that ESIA does not properly assess predictions resulting from changes caused by the dam construction and water reservoir. The report also states that the dam will lead to additional seismicity which will lead to a change of hydrogeological interactions between groundwater and surface water and between shallower and deeper aquifers. It argues that high hydraulic gradient will be the cause of intense groundwater flow and can lead to suffusion and land subsidence under the dam.

33. The complaint expresses specific concerns about the risks of mudflows in the Nakra valley. It states that due to the water diversion of the Nakra river, the flow of the river will be so substantially reduced, that it cannot carry the sediments which could lead to mudflows. The complainants note that some years ago – even without the projects – mudflows buried several houses and the cemetery of a village in the Nakra valley. Complainants raise concerns that anticipated monitoring would not be sufficient for risk mitigation. The management response recognizes that the Nakra River is vulnerable to a risk of flooding as a result of mudflow events occurring on lateral tributaries, which lead to temporary flooding upstream of the blockage, and downstream flooding when the river breaches the blockage. The management further notes, that without mitigation measures, the Project could result in an increase in this risk because the capacity of the river to flush away sediment will be reduced and there will be a tendency for sediment to accumulate in the river. To address this risk, the Project will periodically open gates on the weir and close a gate on the Nakra transfer tunnel in order to reinstate the natural flow of the Nakra River. ADB Management states that a specialist study will be undertaken by JSCNH to establish the best solution for managing the existing sediment accumulation in the Nakra River and to ensure that the exposure to floods will be reduced and not increased.¹⁴

34. The CRP notes that landslides are very common in this area and was informed, that there is no adequate inventory of landslides, with their location, volume and possible causes of the landslides. The proposed reservoir, tunneling, road development and associated facilities (transmission lines, access roads) may have a significant impact on the overall geology and geomorphology of the area. The CRP notes that the ESIA did not assess the ecological flow required for the Nenskra and Nakra rivers. The ESIA report assumed the ecological flow stipulated in the Environmental Authorization of the Government of Georgia and management proposed to double the ecological flow, without assessment or justification. It is also not clear, whether this doubling of flow has led to appropriate adjustments of technical designs. The CRP also noted that a detailed assessment of the hydraulic flow is required for self-cleaning of the Nakra river to avoid formation of temporary dams due to mudflows and sedimentation. While the ADB Management states that such a study will be carried out, the study has – as yet – not been conducted.

35. The CRP further notes that there are geological risks identified with the construction of tunnels. The external advisor reports received by CRP stress that geological conditions of rocks where the Nakra transfer tunnel and Headrace Tunnel are constructed, do not seem to be fully assessed and rock burst and the poor ground condition for tunnel construction at significant depth, is considered a significant risk. As ADB Management staff did not provide the requested last external advisor reports to the CRP, the CRP does not know whether the concerns raised have by now been appropriately addressed. Lessons learned from the Adjaristqali Hydropower Project

¹³ Sylwester Kraśnicki, *Quality report review of the Hydrogeological and material hazards ESIA studies for Nenskra HPP*, Georgia, May 2017 http://greenalt.org/wp-content/uploads/2017/07/Quality_report_review_SK1.pdf.

¹⁴ See Appendix 2 of this report for the ADB Management's Response Matrix, p. 7.

in Georgia, which is financed by the ADB (Loan Numbers 3130 and 8281), and where major geological problems are encountered during tunnel construction, should also be incorporated.¹⁵

36. The CRP, on its limited eligibility mission, does not have the subject matter expertise to assess whether technical studies conducted are in accordance with international good practice. The CRP recognizes that very substantial review efforts have been made. The project sponsor, with support from the lender group, including ADB, established an IPOE which provided comments on geological risks and assessments. The IPOE finds that natural hazards and landslide risks have been appropriately assessed.¹⁶ The IPOE considers that sufficient ecological investigation work has been carried out to enable sound conclusions to be made for the development of the final Basic Design. However, further investigation will be necessary to enable the detailed design to be completed and the IPOE has provided comments to this respect.¹⁷ The IPOE is of the view that the natural hazard risk posed by a suspected major landslide zone on the right bank above the reservoir has received particular attention of the EPC team and is of the view that design measures are proposed to adequately deal with the risks posed by avalanches and rock debris flows.

37. **Finding.** Within the very limited review of an eligibility mission, the CRP did not find *prima facie* evidence for noncompliance with SPS Safeguard Requirements 1 (Appendix 1, para. 42) on geological issues cited in the complaint.

SPS, Appendix 1, para. 44

“When structural elements or components, such as dams, tailings dams, or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the safety of communities, the borrower/client will engage qualified and experienced experts, separate from those responsible for project design and construction, to conduct a review as early as possible in project development and throughout project design, construction, and commissioning.”

38. **ii. Dam Safety.** The IPOE reviewed the dam safety. The final report of the IPOE is posted on the JSCNH website. The IPOE consisted of a group of recognized experts who have also been involved in other expert panels concerned with major HPP projects funded by IFIs. The IPOE supports the choice of dam location and the principles of the design but stressed in its final report of February 2017 that some key safety issues remain to be addressed by the EPC team in the detailed design stage.¹⁸ Based on information available to the CRP, ADB played an active part in the review and follow-up on the comments provided by the IPOE. The CRP finds that the processes followed in respect to the establishment of an IPOE and regarding interactions between the IPOE and the lenders, are broadly in line with measures laid out in the Operational Policy 4.37 of the World Bank on Safety. The ADB does not have a comparable policy on dam safety. The World Bank Operational Policy 4.37 is not directly applicable to ADB projects, but the policy lays out recognized international good practice which should be followed when assessing dam safety.

¹⁵ Ajara TV Public Broadcaster, *Damaged Shuakhevi HPP tunnel and company response*, 20 September 2017 available at <http://ajaratv.ge/news/en/20341/damaged-shuakhevi-hpp-tunnel-a.html>.

¹⁶ International Panel of Experts, *Safety of Nenskra, Hydropower Project – Georgia, Stage II Report – Part 2 & Final*, 27 February 2017, p. 6.

¹⁷ Footnote 14.

¹⁸ Footnote 16, p. 1.

Figure 3: Picture of the Dam When Completed



Source: JSC Nenskra Hydro website available at <http://nenskra.ge/en/>

39. **Finding:** The CRP is of the view that ADB staff has followed established international good practice regarding the assessment of dam safety and thus does not find *prima facie* evidence for noncompliance with SPS.

SPS, Appendix 1

Para. 24. *"The borrower/client will assess the significance of project impacts and risks on biodiversity² and natural resources as an integral part on the environmental assessment process specified in paras. 4-10. 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."*

Para. 26. *"In areas of natural habitat,³ the project will not significantly convert or degrade⁴ such habitat, unless the following conditions are met:*

- (i) No alternatives are available.*
- (ii) A comprehensive analysis demonstrates that the overall benefits from the project will substantially outweigh the project costs, including environmental costs.*
- (iii) Any conversion or degradation is appropriately mitigated.*

(Continued from previous text box)

Para. 27. *“Mitigation measures will be designed to achieve at least no net loss of biodiversity...”*

² *The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species of ecosystems.*

³ *Land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area's primary ecological functions.*

⁴ *Significant conversion or degradation is (i) the elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat's ability to maintain viable populations of its native species. Significant conversion may include, for example, land clearing; replacement of natural vegetation (for example, by crops or tree plantations); permanent flooding (by a reservoir for instance); drainage, dredging, filling, or canalization of wetlands; or surface mining.*

40. **iii. Biodiversity.** Concerns on biodiversity impacts were raised during public consultation meetings and in several of the letters sent by the complainants to the lenders. Concerns were also raised by stakeholders.¹⁹ The CRP found the documentation on biodiversity presented in the ESIA comprehensive. The ESIA, Vol. 4, p. 172, Table 24 lays out impacts and proposed mitigation measures. The methods applied for the biodiversity assessments appear appropriate and the CRP notes that site investigations and field surveys have been conducted over an appropriate length of time. The CRP does not know to what extent local residents have been consulted during the assessment. The ESIA concludes that the very reduced river flow in the 17-kilometer long reach between the dam and the power house will significantly impact fish and fish habitat. The ESIA proposes the development of additional fish breeding grounds downstream of the dam.

41. The CRP, however, is concerned that the soil (tunneling waste), disposal sites and the soil transportation and disposal methodologies are not finalized. These sites could well have impacts on biodiversity, which have not, yet, been considered. Moreover, construction activities, such as noise (including blasting), transportations of soil and of other construction material could impact migration routes of animals and affect biodiversity in the respective areas. Similarly, details of trees required to be cut for various activities of the project and the management plan for forest land (including compensatory afforestation) which are diverted for non-forestry purpose, is also not available, so far. Due to the Project, approximately 588 ha of permanent forestry and pasture land will be lost. To compensate for this loss, the implementation of a Nenskra/Nakra watershed based Reforestation Management Plan is planned. The ESMP lists the preparation of such a Reforestation Plan as part of the responsibilities of JSCNH, the project sponsor.

42. The ESIA notes that the project is outside the proposed revised Emerald site area as borders of the proposed site have been adjusted. It is not clear to what extent the ESIA assessed influences on the proposed Emerald site. The ESIA states: “Although the Project area lies wholly outside of the candidate Emerald site, some species for which the candidate Emerald site has

¹⁹ See CEE Bankwatch Network, Comments on the Nenskra HPP project revised Supplementary E&S Studies available at <https://bankwatch.org/wp-content/uploads/2018/01/NenskraHPP-Jan2018.pdf> and Green Alternative/CEE Bankwatch Network, Comments on Nenskra Hydropower Project Supplementary Environmental & Social Studies, by JSC Nenskra Hydro, July 2017 available at http://greenalt.org/wp-content/uploads/2017/07/comments-Nenskra_hydro20171.pdf.

been designated, may range into the Project area, therefore an Appropriate Assessment screening exercise has been undertaken, in line with the European Habitats Directives guidance.”²⁰ The Bureau of the Standing Committee to the Bern Convention is presently considering a complaint regarding the impact of Svaneti 1 on the Candidate Emerald Site.²¹ The complaint has been moved to category of complaints on standby. The Bureau recognizes that the site comprises some of the most pristine nature areas in Georgia and expressed concern that the site has been drastically reduced. The Bureau decided that there is strong need to receive further clarification on the exact species and habitats present in the area, and on how the exclusion of some parts of the candidate site will impact the overall sufficiency of the Emerald Network. The Bureau may organize an on-the-spot assessment to the area in 2018.

43. **Finding:** Based on *prima facie* evidence available, the CRP finds that there is broad compliance with SPS, but important outstanding issues remain as biodiversity and natural habitat impacts of soil dumping for disposal of large quantities of tunneling and construction waste need to be conducted once the location of the sites have been decided. Moreover, to bring the Project into full compliance with SPS, Appendix 1, paras. 24 and 27, reforestation needs to be carried out in an area corresponding to forest areas lost.

44. **iv. Climate Change.** The complaint expresses concern about the project’s impact on the microclimate. SPS, Appendix 1, para. 4 and the policy principle-2 for environment safeguards of SPS require that environmental impacts are assessed. This includes assessments of climate change impacts. The cumulative impact assessment (ESIA, Vol. 10) presents some environmental stressors associated with climate change and lists general predictions of climate changes which are not linked to the cumulative investments. The ESIA, Vol. 10 also includes an assessment of impacts on the micro-climate and states that discernible impacts on microclimate from the Nenskra reservoir could occur in the immediate area of the reservoir during summer, which could comprise a slight cooling of the air around the reservoir and slightly increased humidity. However, because of the small size of the reservoir, these changes are not expected to be detectable beyond Tita, which is a settlement about 4 km downstream of the dam. No detectable changes in micro-climate are expected during winter. Volume 5 of the ESIA identifies the risks associated with climate change and the importance of considering climate change in the design of the Project’s hydraulic structures. The report has dealt with climate change scenarios for initial predictions of hydraulic flows and changes in flood flows due to climate change. It has also dealt with greenhouse gas emissions from the reservoir. The ESMP commits the project sponsor, JSCNH, to evaluate long-term implications of climate change on natural hazards. Annual monitoring on hydrology and climate change is also to be conducted by JSCNH.²² Chapter 8 of Volume 5 of ESIA further states that, consequently, a Climate Change Risk Assessment in alignment with best international practice has been commissioned by the project proponent which is currently being undertaken. Volume 1 of ESIA further refers that the value of extreme floods adopted for the design will be established taking into account the climate change studies. It is also mentioned that if necessary, the detailed design of hydraulic structure will be revised in 2017.

45. The lenders’ advisors, which reviewed the studies, asked for improvements to bring studies in accordance with good international practices. Some further assessments on the impacts of reduced river flows on the microclimate are apparently needed. The CRP cannot judge whether appropriate adjustments in the studies and reports have been made, as the latest

²⁰ Footnote 2, Vol. 1, p 23.

²¹ Complaint No. 2016/9, Possible threat to Svaneti 1 Candidate Emerald Site (GE0000012) from Nenskra Hydro Power Plant development (Georgia) available at <https://rm.coe.int/other-complaints-possible-threat-to-svaneti-1-candidate-emerald-site-g/168073cb5f>.

²² Footnote 2, Vol. 8, p. 14.

documents from Technical Advisors, which CRP requested from ADB management, were not provided to CRP.

46. **Finding.** The CRP finds documentation on climate change impacts in the ESIA sufficiently comprehensive and thus does not find *prima facie* evidence for noncompliance with SPS. However, given the narrow focus of the CRP eligibility mission, which is conducted without subject matter experts, the CRP cannot take a position whether studies conducted or being conducted are in accordance with good international practice.

SPS, 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 international recognized standards such as the World Bank Group’s Environment, Health and Safety Guidelines...”*

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...”*

47. **v. Noise, Vibration, Pollution, Health and Safety.** The Power House will be a significant structure. It is located about 17 km downstream from the dam and will accommodate three vertical turbine units, transformers, control room and Gas Insulated Substation switchyard located in a structure adjacent to the power house. The building which will house the turbines, will be 21 meters wide, 71 m long and 17 meters high. The structure where the switchyard will be housed, will be 13 m wide, 30 m long, and 14 m high. The Power House will be located on an area of 29.1 ha. The construction facility area of the power house (consisting of construction camp and disposal areas) will be large, consisting of about 160 ha.²³ The Power House is located next to the Lakhami village, which consists of 47 households (233 residents).²⁴ The nearest residential buildings to the Power House is only 150 m away. The ESIA has mentioned the noise at the sources at the Power House but not of noise and vibration impacts on residential areas. There is no adequate measurement of ambient noise levels.²⁵ Noise impact assessments are instead delegated under the ESMP to the Engineering and Procurement Construction (EPC).²⁶ The EPC contractor would also define mitigation measures. Vibration impacts have neither been assessed in the ESIA nor are expected to be assessed under the ESMP. The CRP is of the view that noise and vibration impacts should have been assessed as part of the ESIA and mitigation measures should have also been defined under the ESMP. The CRP is especially concerned about the lack of impact assessment as the community located next to the power house (the Lakhami village) has since 2015 expressed in public consultation meetings their strong concerns about noise and vibration impacts of the powerhouse and has staged several protests against the project. Pollution (noise, dust, air) impacts during construction will be very substantial as not only the power house but also the access road and tail race channel (30 meters wide, 100 meters long, 5 meters deep) will be constructed in the vicinity of Lakhami village. Moreover, there will be noise and possible

²³ Footnote 2, Vol. 9, p. vi, Table 2.

²⁴ Footnote 2, Vol. 3, p. 19.

²⁵ Footnote 2, Vol. 3, p. 123.

²⁶ Footnote 2, Vol. 8, pp. 37-38.

dust pollution impacts as soil from the headrace tunnel, which ends near the powerhouse, needs to be transported away. Paragraphs 4, 5, 33, and 16 of SPS (Appendix 1) require that these impacts are assessed as part of the ESIA and that they be carried out by the borrower/client with the help of a qualified and experienced expert. This has not been done. Impact assessments and definition of mitigation measures have instead been delegated to the ESMP and from there, to EPC, a process which the CRP does not consider appropriate. (See paras. 53-57 of this report.) The absence of impact assessments and mitigation measures for noise and vibration is not in accordance with SPS.

Figure 4: Picture of the Power House When Completed



Source: JSCNH website available at <http://nenskra.ge/en/>

48. **Pollution and Safety Impacts of Traffic During Construction.** Project plans foresee a five-year construction period. During that period significant traffic will flow through the narrow valley to the dam site, to the area where tunnel excavation will take place and to the area where the power house will be constructed. Much of the traffic will travel through a narrow valley, which at present is quiet and has very limited traffic (about 40 vehicles a day).²⁷ The very regular and much increased traffic (including heavy vehicles), either immediately adjacent or directly through villages (such as Chuberi), will create very significant noise, dust, and vibration impacts on the residents. It also will pose very significant security risks. As the valley is narrow, there are limited possibilities to direct the traffic away from the villages. Some bye-pass options are presently being considered. A limited traffic estimate has been provided in the ESIA.²⁸ Traffic numbers appear preliminary and the assumptions for the estimates are not laid out. Estimates do not seem to consider transport of waste and spoils from tunnel excavations which will have significant transport impacts as it is estimated in the ESIA that more than 500,000 m³ of tunneling waste would be generated which needs to be transported for a substantial distance for its disposal. Similarly, some blasting is also proposed at the construction material quarries, which also involves transportation of material to construction sites. This increased traffic and associated noise, particularly upstream of dam site, will also have impacts on ecology of the area. Moreover,

²⁷ Footnote 2, Vol. 3, p. 70.

²⁸ Footnote 2, Vol. 3, pp. 111-112.

increased traffic from the large number of workers from the region who regularly travel in and out to their worksites, do not seem to be included in the traffic projections.

49. Noise impacts of this incremental traffic during the construction period have not been assessed. As the ambient noise level is low in the remote valley, the incremental impacts will have a significant impact on the population. The mitigation measures proposed, such as speed limits with speed bumps, no heavy vehicle traffic during opening and closing of schools and other than in exceptional circumstances no heavy vehicle traffic during 10 pm - 6 am, do not seem sufficient to mitigate the traffic impacts. The CRP is of the view that impacts of the construction related traffic requires a more comprehensive assessment and mitigation measures. And detailed consultations of impacts and proposed mitigation measures also need to be conducted with the residents of the villages impacted by the much-increased traffic. The EPC contractors have prepared a Traffic Management Plan, which does not provide for more comprehensive mitigation measures.

50. **Community Health and Safety Impacts through Inflow of Workers.** The Project will require about 1,100 workers (730 skilled and semi-skilled and 364 unskilled) during the planned 5-year construction period (612 for the dam site, 340 for the power house area, and 190 for the Nakra Intake).²⁹ Efforts will be made to recruit unskilled labor from the Nenskra and Nakra valley. The intention is to recruit about 300 workers from the Nenskra and the Nakra valleys. If insufficient numbers of workers are available locally, recruitment will be extended to other villages in the Mestia Municipality and the Svaneti region. This leaves still about 800 workers to travel in from areas outside the Nenskra/Nakra valleys. The expectation is that 75% of workers will come from throughout Georgia. About 800 workers will regularly travel and live in the Nenskra river valley, which presently is populated by only 268 households and who presently live in a very cohesive Svan culture. The massive inflow of workers during the construction period will create a security risk to the local population as is evidenced in numerous construction projects throughout the world.³⁰ IFIs have noted important sexual abuses in construction projects if there is a large inflow of foreign workers who live for longer periods of time in construction camps. This risk will likely exist in the Project even though only about 25% of the workers (or about 280 individuals) are expected to be foreign workers. Workers coming in from other parts of Georgia will have different values and traditions which will clash with the cohesive values and traditions of the Svan families who have long lived in these mountain valleys. The large inflow of workers will fundamentally challenge the social cohesion and values of the Svan communities in the Nenskra river valley. As construction activities will be carried out over many years and the workers remain at the same location until the construction is completed, the impacts on the local population are likely very significant. While there will be economic benefits to the population during the construction period, these benefits will cease once the project has been constructed, as the operation of the HPP will require a minute number of unskilled labor.

51. The influx of male workers who need to be separated from their families, poses risks for sexual abuse of local girls and women. There will also be a demand for entertainment facilities. The ESIA recognizes that the arrival of temporary workers may increase the level of communicable diseases³¹ and will offer to the workers awareness raising, health screening, and make condoms available. But these are measures to protect the workers, not the local population.

²⁹ Footnote 2, Vol. 3, p. 141.

³⁰ See for example, World Bank, Uganda Transport Sector Development Project, Additional Financing, Lessons Learned, November 11, 2016; World Bank Inspection Panel Case 98, Uganda: Transport Sector Development Project – Additional Financing, and, World Bank Inspection Panel Case, and, Democratic Republic of DRC High Priority Roads Reopening and Maintenance (2nd Additional Financing), case presently under investigation.

³¹ Footnote 2, Vol. 3, pp. 126-127.

Mitigation measures further state that workers will be housed on worker camp sites with security guards to minimize contact with the local population. The use of alcohol will be prohibited. Such mitigation measures seem insufficient, not enforceable and not credible for workers who live away for longer periods from their families. Moreover, mitigation measures all focus on the workers, no mitigation measures are considered to protect the population from sexual abuses and no measures to help safeguard their cultural values and traditions during the multi-year construction period. Required is a proactive program on how to protect the local population from sexual abuses; restrict and regulate excessive establishments of entertainment facilities; active support measures to the Svan community with active measures to preserve and showcase their culture; capacity building and support to the community on how to manage the transformation of the local community which, once the construction time ends and workers leave, could well remain permanently harmed and without lasting employment prospects. It is not the task of the CRP to design the mitigation program. But the CRP is of the view, that measures laid out in the ESIA are vastly insufficient to protect the local population. SPS, Appendix 1, para. 42 calls for preventive measures to address risks and potential impacts commensurate with the identified risks and impacts. The Good Practice Sourcebook on Environment Safeguards (specifically, para. 29) stresses that the level of detail and comprehensiveness should be commensurate with the potential impact and risk. Movement of about 800 workers into a cohesive community living in a mountain valley with own cultural values and practices poses very high health and social risks of this report.) As this has not been done, these risks need to be appropriately assessed and mitigated, in consultation with the population.

52. **Finding:** The CRP finds *prima facie* evidence for noncompliance with SPS as important noise, vibration, community health and safety impacts have not been adequately assessed and mitigated.

e. Environmental and Social Management Plan

SPS, Appendix 1

Para. 12. *"The borrower/client will prepare an environmental management plan (EMP) that addresses the potential impacts and risks identified by the environmental assessment. The EMP will include the proposed mitigation measures, environmental monitoring, and reporting requirements, emergency response procedures, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Where impacts and risks cannot be avoided or prevented, mitigation measures and actions will be identified so that the project is designed, constructed and operated in compliance with applicable laws and regulations and meets the requirements specified in this document. The level of detail and complexity of the environmental planning documents and the priority of the identified measures and actions will be commensurate with the project's impacts and risks. Key considerations include mitigation of potential adverse impacts to the level of "no significant harm to third parties", the polluter pays principle, the precautionary approach, and adaptive management."*

Para. 17. *"The borrower/client will submit to ADB the following documents for disclosure on ADB's website (i) a draft full EIA (including the draft EMP) at least 120 days prior to ADB Board consideration..."*

53. The ESIA Volume 8 contains an Environmental and Social Management Plan (ESMP). The CRP has three concerns on the uncompleted ESMP: (i) the ESMP is incomplete as important

substantive measures will be and are being designed after the ESIA has been publicly disclosed (which took place in mid-2017); (ii) important environmental impact assessments are assigned to the ESMP; and (iii) some significant unfinished ESMP/ESIA measures have been assigned to the EPC contractors instead to the borrower as specified under SPS. The ESMP should have been completed as part of the ESIA. SPS specifies that the ESMP is an integral part of the ESIA. Paras. 12-15 determine how the ESMP provides for mitigation measures. The outline for an ESIA in SPS, Appendix 1 presents the EMP as an integral part of the Environmental Impact Assessment Report and the Presentation of Environmental Safeguards in SPS, page 16 lays out that a draft environmental assessment (including the ESMP) needs to be disclosed in a timely manner, before project appraisal. By disclosing an ESIA with an ESMP for which important measures remain to be defined, the population does not have the possibility to be meaningfully consulted in respect to these measures, as is required under SPS, paras. 54 and para. 19 of its Appendix 1. Moreover, the ESMP is to address potential impacts and risks identified by the environmental assessment. (See SPS, Appendix 1, para. 12.) The ESMP is not to conduct the environmental impact assessment instead of the ESIA. The Good Practice Sourcebook on Environment Safeguards states: "The environmental management plan (EMP) is crucial in translating proposed mitigation measures into practice." The task of the ESMP is to lay out the management of mitigation measures. Its task is not to conduct the environmental impact assessment.

54. The ESMP presented as part of ESIA does not adequately provide for mitigation measures. For example:

- i. The ESIA identifies several environmental risks such as air pollution, noise, traffic, waste management, erosion without adequately assessing the impacts. The ESMP should have developed mitigation measures for these impacts;
- ii. Detailed predictions of noise impacts and mitigation measures to achieve desired norms for the power house have not been completed;
- iii. The ESIA expresses concerns on the sedimentation in the Nakra river and associated risks of mudflows but risks are not sufficiently assessed. The ESMP does not address this issue.
- iv. Soil dumping areas for disposal of large quantities of tunneling and other construction waste have not been identified and its impacts on overall environment have not been assessed.
- v. About 588 ha of forest and pasture land will be required for the Project. The exact forest land to be diverted for non-forest purpose and its ecosystem service value have not been identified and mapped with suitable management plans.

55. The CRP is of the view, that the ESMP does not sufficiently detail outstanding mitigation measures. And as these mitigation measures are not presented in the ESMP version disclosed to the public, affected households could also not participate in consultations on these measures.

56. Moreover, the ESMP assigns the assessment of impacts and the design of mitigation measures to the EPC contractors. (See ESIA, Vol. 8, p. 13.) In the view of the CRP, assigning the assessment of significant impacts and the design of mitigation measures to EPC contractor is not in accordance to SPS. SPS, para. 73 and para. 4 (Appendix1) state that the borrower/client will identify environmental impacts and para. 16 notes that the borrower/client will use qualified and experienced experts to prepare the environmental impact assessments and the ESMP. Discharging important tasks for impact assessment and definition of mitigation measures to the EPC contractor, constitutes, in the view of the CRP, a conflict of interest. In general, a contractor will have an interest in minimizing the requirement for mitigation measures as these are typically cost intensive. An EPC contractor is not an independent party. The CRP recognizes that in SPS,

Appendix 1, para. 15, a third-party may be engaged, which might be a contractor. Para. 15 provides that the borrower/client shall collaborate with the third party to achieve the outcome consistent with the requirements for the borrower/client. But this third party would be engaged in the implementation of mitigation measures, not in the assessment of impacts and the design of mitigation measures. ADB Management stated to the CRP that the Lenders' Technical Advisor would carefully examine the ESMP prepared by the EPC contractors and thus, monitor the appropriateness of assessment of impacts and mitigation measures. The CRP still is of the view that significant impacts, which pose important risks, should have been assessed under the ESIA and mitigation measures should have also been defined in the ESMP and not be delegated at post-ESIA completion stage to the EPC.

57. **Finding:** The CRP finds that there is *prima facie* evidence for noncompliance with SPS, para. 73 and paras.12-16 (Appendix 1) as the ESMP (as part of the ESIA) has been disclosed in an incomplete status, and as some important impact assessments and mitigation measures are yet to be evaluated and several of these measures have been delegated and to be conducted by EPC contractors instead of the borrower.

3. Safeguard Policy Statement, Appendix 2 - Involuntary Resettlement

SPS, Appendix 2, para. 12

"In the case of economically displaced persons, regardless of whether or not they are physically displaced, the borrower/client will promptly compensate for the loss of income or livelihood sources at full replacement cost. The borrower/client will also provide assistance such as credit facilities, training, and employment opportunities so that they can improve, or at least restore, their income earning capacity, production levels, and standards of living to pre-displacement levels."

58. The complaint states: "Nenskra reservoir will flood the pastures and forests, that represent for us and our ancestors the source of livelihood. The villagers still do not know the fate of their traditional lands. The agreement between government and company is confidential and not published for public. For ministries is not clear, who owns the lands, that once was owned by the State....Although the project developer promised that the issue of land acquisition would be discussed with the villagers and during the public consultation ... however, detailed answers never have been given including meetings."

59. The Project will only cause economic displacement, no physical displacement will take place. The LALRP identified 89 affected households (392 people) due to loss of lands, non-residential structures, trees and crops. There are three pasture areas impacted: the Machlitchala area located in the future reservoir, the Kvemo Memuli, located within the area where the construction camp will be established, and Lagiri, a pasture area in the footprint of the Nakra water intake. The number of households impacted by resettlement will increase, as additional households will be identified when resettlement impacts for project components not, yet, completed have been conducted. Moreover, the review of households impacted by temporary or permanent loss of pastures is still ongoing and numbers of households affected by loss of access to pastures could well be higher.³² A Compliance Audit on the LALRP has been conducted for the Lenders and has been posted on the ADB website.³³ The Compliance Audit identified partial compliances and laid out a corrective action plan to achieve full compliance with lenders' policy.

³² Footnote 2, Vol. 9, p. 38.

³³ Mott MacDonald, Nenskra Hydropower Project, LALRP Compliance Audit, 9 November 2017 available at <https://www.adb.org/sites/default/files/project-documents/49223/49223-001-scar-en.pdf>.

As the CRP assesses the concerns raised in the complaint, it does not assess all the areas listed for further adjustment in the Compliance Audit.

60. The CRP is concerned whether the loss of pasture areas (permanent and temporary during the construction period) will be appropriately compensated. Complainants articulate that they have traditional user rights to the pastures and the complaint expresses concerns about loss of these user rights. The ESIA categorizes the pasture land as land where groups of families have customary user rights but cannot acquire ownership rights as the land has already been registered in the name of the State. Families losing access to these pastures thus only receive compensation for loss of income but not for loss of land. The project affected persons are considered displaced persons without recognizable claims to such land. [See SPS, Appendix 2, para. 7 (iii)].

61. The ESIA provides that all households affected by loss of pastures will receive fodder in compensation (either in cash or kind) during a period of seven years as construction activities are planned for 5 years and two additional years are planned for reconstruction of pasture areas. Specialized livestock experts have been engaged to establish the appropriate quantity of fodder and distribution process. These measures seem appropriate if pasture areas will, indeed, be restored and can be used after seven years. The long-term solution of compensation for pastures which are permanently lost, are much less clear. The LARP entitlement matrix lists as entitlement: “support with access to unaffected pastures.” The ESIA furthermore states: “The Project will study the feasibility of a cattle track by-passing the reservoir in order to restore access to the northern part of the Nenskra Valley. ...Although the primary purpose of this measure is to maintain access to the northern part of the Nenskra valley once the dam will be built, it could also allow the households affected by the loss of the Machlitchala pasture area to regain access to the Marzatchchala pasture located upstream of the future reservoir.”³⁴ The ESMP provides that a routing study and feasibility study be conducted but does not provide that the by-pass will be constructed. The study is to be carried out by the EPC contractors. It is not clear why the EPC contractor would have the expertise and interest to conduct such a study. And there are no assurances given that the access track will actually be built. In addition, the livelihood restoration program states that access tracks leading to other pastures will be improved to render them drivable to allow affected households to improve the volume of hay they can collect from Schkvandiri and Zeda Memuli pasture areas.³⁵ This will be done at the start of the main construction at the dam site, to attenuate partially the loss of the Kvermo Memuli pasture area during construction. It is not clear whether the ESMP provides for the necessary upgrading of such tracks.

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

63. The loss of access to pastures is not a trivial matter for the local population. The total amount of pasture area affected amounts to 75 ha in the Nenskra area (including forest land used for grazing). The corresponding figures for the Nakra pasture land are not provided, but the pasture areas appear to be smaller. In terms of long term compensation issues, the Machlitchala

³⁴ Footnote 2, Vol. 9, p. 83.

³⁵ Footnote 2, Vol. 9, p. 57.

pasture is the most critical issue, as 40 ha will be permanently lost due to the reservoir site. The number of households impacted are significant. According to present estimates, among the total 89 households impacted by resettlement, 25 households are impacted for pastures at the Nenskra dam and reservoir site and 27 households at the Nakra weir site. These numbers are preliminary and need to be adjusted after further consultations. The user rights of pasture areas are also an emotionally charged issue in the Svan community. The majority of households hold livestock and livestock herding is considered a traditional activity of the Svan society with long established rights on pastures and forest for grazing of animals.

64. The CRP notes that resettlement impacts of components, whose design or location have not yet been completed, remain to be assessed. (See para. 5 of this report.) These components include the road upgrading in the Nakra valley, possibly construction of by-passes for the Nenskra road, soil disposal areas, and power lines within the project areas still need to be defined and resettlement impacts assessed. The ESIA states that it is not expected that the numbers of affected households will increase significantly, as the unappraised infrastructure components are linear infrastructure and thus will not cause significant resettlement impacts. The ESIA however points to 94.5 ha which will need to be used for these components, not including the Nakra road upgrading.³⁶

65. **Finding:** The CRP finds *prima facie* evidence of noncompliance with SPS Safeguard Requirements 2 as (i) compensation measures for long-term impacts of permanent loss of pastures have not been provided for, and (ii) updates for the LALRP are needed for resettlement impacts of project components which remain to be fully designed. The CRP notes that the provision of fodder for 7 years is an adequate measure for pastures with temporary access restrictions.

4. SPS Consultation and Participation

SPS

Para. 53. Information Disclosure. “...ADB is committed to working with the borrower/client to ensure that relevant information ...is made available in a timely manner, in an accessible place, and in a form and language(s) understandable to affected people and to other stakeholders, including the general public, ...”

Para. 54. Consultation and Participation. “ADB is committed to working with borrowers/clients to put meaningful consultation processes into practice. For policy application, 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; (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, the sharing of development benefits and opportunities, and implementation issues.

³⁶ Footnote 2, Vol. 9, p. 33.

(Continued from previous text box)

ADB will require borrowers/clients to engage with communities, groups, or people affected by proposed projects, and with civil society through information disclosure, consultation, and informed participation in a manner commensurate with the risks to and impacts on affected communities. For projects with significant adverse environmental, involuntary resettlement, or Indigenous Peoples impacts, ADB project teams will participate in consultation activities to understand the concerns of affected people and ensure that such concerns are addressed in project design and safeguard plans.”

Appendix 1, para. 19.

“The borrower/client will carry out meaningful consultation with affected people and other concerned stakeholders, including civil society, and facilitate their informed participation. 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, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results are to be documented and reflected in the environmental assessment report.”

Appendix 2, para. 28.

“The borrower/client will conduct meaningful consultation with affected persons, their host communities, and civil society for every project and subproject identified as having involuntary resettlement impacts. 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; (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, the sharing of development benefits and opportunities, and implementation issues. Consultation will be carried out in a manner commensurate with the impacts on affected communities. The borrower/client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the poverty line, the landless, the elderly, female headed households, women and children, Indigenous Peoples, and those without legal title to land.”

66. The complainants state that they have not been meaningfully consulted, as they have expressed their concerns since the public hearing on ESIA (2015) in June 2015 and that their views have not been incorporated in the revised ESIA. They further state that meetings were not consultative processes and that they were conducted in an intimidating fashion. The Management response noted the consistent efforts made by ADB to engage in proactive and sustained consultation, and stated that during meetings in which ADB was present, there was no evidence of intimidation.

67. It should be recalled that ADB only became involved in the Project in early 2015. By then ESIA (2015) had been completed and the public disclosure meetings were conducted in accordance with Georgian requirements. The lender group found consultation processes conducted until then insufficient and asked the JSCNH to undertake more intensive and meaningful consultations while additional ESIA studies were being carried out. As part of the ESIA, a Stakeholder Engagement Plan (Volume 7) was prepared which lays out the processes and presents records of meetings. The records show multiple meetings, but most meetings were individual or very small group meetings on topics often not related to ADB safeguard issues. Larger meetings were conducted by end 2015 in the Chuberi and Nakra villages and in 2016, when public protests against the Project took place in the Nenskra valley. Records do not provide evidence how inputs were sought from local residents on the preparation of the ESIA complementary studies.

68. Records provided by PSOD, show that ADB was, until mid-2017, not satisfied with the consultation processes underway and felt that the processes did not reflect meaningful consultations as required under the SPS policy. ADB provided guidance to the sponsor to increase its capacity to be able to improve the consultation process. By August 2017, when public disclosure of the revised ESIA report was conducted, ADB was of the view that significant improvements had taken place and that the consultations conducted at the time of public disclosure corresponded fully to the consultation requirements of SPS. ADB staff also participated in several consultation meetings in Georgia. The CRP recognizes that consultation efforts throughout the project cycle have not always met the requirements laid out in SPS, but recognizes that ADB staff has shown a very active involvement to assure that the consultation processes improved. As such, ADB staff has acted in accordance with SPS, para. 54, para. 19 (Appendix 1). The CRP notes, however, that very important consultations remain to be conducted, as substantive impact assessments and mitigation measures have not yet been defined and have been delegated to be carried out as part of an ESMP, yet to be completed. Important mitigation measures, for example on noise impacts from the power house and construction activities related to blasting activities, impacts from increased traffic during construction and related mitigation measures, mitigation measures for the local population from the large inflow of workers, require in-depth and meaningful consultation. Further, appropriate consultations also need to be conducted with affected households impacted by economic resettlement of pasture areas and on environmental impacts and related mitigation measures for project components that are not yet completed.

69. **Finding:** Considering the significant efforts made by ADB staff to improve the consultation processes, the CRP finds that there is broad compliance with SPS. However, important further consultation efforts need to be conducted for the multiple impact assessments and mitigation measures not yet completed and laid out in the ESMP.

B. Is there *prima facie* evidence for likely harm related to noncompliance with ADB's operational policies and procedures?

70. The CRP is of the view that multiple impacts related to noise and vibration during operation and construction, as well as community health and safety issues have not been adequately assessed and mitigated. The CRP recognizes, that the ESMP provides that some of these assessments are expected to be conducted by EPC contractors, but does not consider this admissible. For other identified impacts, no assessment or mitigation measures are planned to be carried out. The CRP is of the view that there is *prima facie* evidence that incomplete impact assessments and mitigation measures will result in likely harm to the welfare of local residents.

Incomplete assessments of traditional landownership rights might also lead to inadequate compensation for economic resettlement. The CRP is of the view that a continued noncompliance status with ADB's operational policies and procedures would directly cause this harm which would materialize during construction and subsequent operation. (See paras. 24, 29, 52, 57, and 65 of this report.)

C. Exclusions

71. The CRP has examined the exclusions under paras. 142 and 148 of the Accountability Mechanism Policy and has concluded that the complaint does not belong to any of the matters that are excluded from the compliance review function. (See Appendix 3 of this report.) Management states in its Memorandum addressed to the CRP on 12 January 2018 that: *"PSOD notes that the complainants have requested anonymity, so it is not possible for the project team to check if they have made any attempt to contact ADB. To date, PSOD has responded to all direct inquiries from project affected persons and resolved the issues raised. Paragraph 142 of the Policy is clear that complaints will not be deemed eligible where the complainants have not made good faith efforts to address the matters raised by them in the complaint with the operations department concerned. Our records suggest that no such efforts have been made by the complainants. We note also that no such effort is alleged to have been made by the complainant."* The CRP has received, as part of the complaint, copies of several letters addressed to the lenders (i.e., EIB, EBRD, AIIB, and ADB) articulating the concerns which were presented in the complaint. Letters dated July and September 2017 were signed by groups of people which included names of complainants. The letters were also addressed to ADB. Within ADB, such concerns would normally be routed/sent to the department which processes the proposed loan, which is PSOD. The complainants have written not just once but several times to the IFI lender group. The CRP is of the view, that based on evidence provided, the complainants have made adequate prior good faith efforts in addressing their complaint/issues with the operations department. It is not the responsibility of complainants to send their letters directly to a specific ADB unit, as it cannot be expected that complainants are familiar with the internal operational structure of ADB. It is the task of ADB that letters received are appropriately directed to the responsible operational department. As the complainants have requested to keep their names confidential, the CRP cannot reveal the evidence to PSOD.

VI. COMPLIANCE REVIEW PANEL DETERMINATION

72. Based on the above, the CRP reiterates its position that the complaint is not among the exclusions stated in paras. 142 and 148 of the Accountability Mechanism Policy. The CRP finds *prima facie* evidence of noncompliance with ADB's operational policies and procedures, notably, the SPS, and related likely harm as a result of:

- i. insufficient assessment of project alternatives (para. 24 of this report);
- ii. lack of assessment of environmental impacts of associated facilities (para. 29 of this report.);
- iii. insufficient assessment of noise and vibration impacts during construction and operations and insufficient assessment of health and security risks for local population (para. 52 of this report.);
- iv. incomplete status of ESMP and delegation of impact assessments and design of mitigation measures to EPC contractors (See para. 57 of this report.); and
- v. incomplete mitigation measures for involuntary resettlement of pasture areas. (See para. 65 of this report.)

73. Pursuant to paragraph 179 of the Accountability Mechanism Policy, the CRP deems the complaint eligible. In accordance with para. 182, the CRP recommends that the Board authorize a compliance review of this Project.

/S/Dingding Tang

Chair, Compliance Review Panel

/S/Arntraud Hartmann

Part-time Member, Compliance Review Panel

/S/Ajay Deshpande

Part-time Member, Compliance Review Panel

8 February 2018

Manila, Philippines

REQUEST FOR COMPLIANCE REVIEW

[Possible Forged Sender]RE: RE: Complaint on Nenskra HPP in Georgia

Dato Chipashvili to: amcro

Cc: manana, wawa.wang

From: "Dato Chipashvili" <dchipashvili@greenalt.org>
To: <amcro@adb.org>
Cc: <manana@bankwatch.org>, <wawa.wang@bankwatch.org>

Dear Ms Rubinos,

Thank you for your email. As the complaint was made full involvement of locals the choice of compliance review function is final.

Sincerely yours,

David

Green Alternative

Compliant Review Officer**ADB Compliant review Panel****Manila, Philippines****Email:** amcro@adb.org**Dear Officer**

The Asian Development Bank plans to fund Nenskra 280 megawatt hydroelectric power plant (HPP). Nenskra HPP represents one of the 35 power plants, planned to be constructed in Zemo Svaneti (Georgia). The project is being implemented by the State Partnership Fund and the Korean State company K-water. The project documentation has been published by the Asian Development Bank's web site. Chuberi and Nakra population have a negative attitude towards construction of Nenskra HPP, and we consider that the construction of the plant will result decreasing of the quality of life while increasing the healthcare and safety risks.

Our concerns and worries connect with a number of the issues, including

1. Participation in decision making processes

We are Svan, an ethnic subgroup of Georgian, we have our cultural and religious traditions, unique language and law, which runs in our communities and the region, we recognize ancestors rules and customs on land ownership, we carry on the traditional activity (agricultural, livestock, wood processing, crafting and etc.). We represent the indigenous population. Therefore, we believe that we have our say and Government should agree with us the projects its planned in the region. However, the government does not consider our demands and protests, to ensure sustainable development, protect nature and population of Svaneti.

We would like to underline that public participation process since 2012 actually does not exist. Despite the fact that the project was announced by former President Saakashvili, who arrived at the site and had the grand opening ceremony of Hydro construction together with Chinese company Sinohydro, there was no project related discussions in our communities. It was just said that the power plant should be built in 2015.

Taking into account that we are the indigenous population, which in the last few thousand years of living in the region, we believe that Indigenous people's policy should be applied and the government as well as the project sponsor were supposed to ask do we want implementation of this type of the project.

The last 40 years, we, Svan people are fighting against Khudoni HPP project, construction of which is planned 20 km away from us in Khaishi community. In addition the government plans to build another 33 HPPs in the region, including five large reservoirs and dam project. The 50-megawatt power plant construction has already begun in Mestiachala Mestia. It should be noted that on September 1, 2017 river flood takes the HPP territory and its pipes.

Public Participation

There were number of meetings in front of issuance of the environmental impact assessment, including meetings held by our request in the Ministry of Environment. Despite a number of issues raised by us the Ministry of Environment in October 2015 permitted the project.

Our protests and blocking off the road in May 2016 ended with the police raid, including women and children, and 8 people were arrested. In 2016 year we have been under pressure to accept the project.

Despite that, after the protests, more public hearings being held by the project implementor K-waters, as well as with its Italian subcontractor Salini Impregilo, during these meetings answers on the issues we worried has not been given. (see. Below). In addition, there was and is a lot of pressure on the individual level, when they tell us that should we accept the project, or they will plant drugs, or frighten us not to take videos of the meetings, etc.

In 2017 was published, a new environmental impact assessment document, however, that again could not respond to the number of questions, including the project associated risks, the need of the project, the traditional land ownership and its compensation.

In August 2017, during the discussions, has still not been given detailed answers to the interested issues by company representatives. After each awkward question, organizers immediately asked for the next question.

Geological risks

- Nakra and Chuberi valleys are landslide prone and located in a high seismic activity zone. Place the reservoir characterized by a number of landslide areas, correspondingly, cutting forest down on the slopes, together with damming water and respectively changing microclimate change will increase the risk of landslides.
- The main problem in the village Nakra mudflow Rivers, who brought a large amount of sediment that accumulated over the village and the river Nakra washes it. In case of leaving river Nakra as small streams, may prevent river to wash sediment and village is under the great calamity. It should be noted that a few years ago, debris flow, sediment transported by river took away few households in the village and some part of the cemetery.

It should be mentioned that these rivers were not mentioned in the EIA in 2015, on which the Ministry of Environmental Protection granted permission. In the ESIA documents of 2017, it is mentioned that there will be monitoring and if during the spring large amount of debris would be accumulated in the pumping of water would be stopped. However, we don't know do it will be really safe for the community. For example, what happens if this system of monitoring will get out of order and / or will not work as planned?

The Risks of Reduced Environmental Flow

- There will be only 5% of the Nenskra river whole volume left, while in case of Nakra 10%. Will it be enough for sediment transportation? In Addition, have the impact over the fish, that according to EIA does not exist, but we are fishing. It will also have the impact on our mineral waters, which are located along the river and from where people with different types of spa waters takes.

- At the same time, river Nenskra and Nakra represents important rivers in our villages. The rivers in the summer help us against high temperatures. While the EIA claims that reduced river flows will not affect agriculture and accessibility of water for us, we believe that the project will have a negative impact, as on mineral, as well as on groundwaters, and it would adversely affect our activities and livelihood, and the problem of access to water would increase.

Issues related to Microclimate change

- We concerned that what would be the impact of the reservoir on the microclimate. In 2017 EIA it said that project would not have any impact on Microclimate and there should be no worries. However, it does not say that the clauses from 2015 ESIA is not correct, “its [reservoir’s] effects on the climate will be substantial in spring, when the ice starts melting and breaking, and in late autumn, before ice phenomena begin. Sharp difference between water and air temperatures and strong wind will intensify evaporation. Evaporated moisture will cover buildings and fruit trees in a form of hoar frost and damage them. The damage caused by early frosts is graver as it will damage buds and sprouts, and ultimately result in premature aging, fruitlessness and dying of plants. For the people, that experience from rheumatism and/or need treatment respiratory or cardiovascular diseases the health condition will further aggravate.”
- As a result of the construction of the Enguri Hydro power plant, In our gorges humidity have been significantly increased, and caused not only health-related diseases growth, but also increased probability of avalanches, landslides and floods. In 1976 and 1987 Chuberi snowstorm and avalanches destroyed part of the village. The survivor, a homeless population in Dmanisi (Kvemo Kartli) were deported. We fear that due to the increased moisture, geological and health-related risks at the end, we will be forced to be resettled.

Traditional ownership

Nenskra reservoir will flood the pastures and forests, that represents the for us and our ancestors the source of livelihood. The villagers still do not know the fate of their traditional lands. The agreement between government and company is confidential and not published for public. For ministries is not clear, who owns the lands, that once was owned by State, but President Saakashvili takes out of Forestry fund. Although the project developer promised that the issue of land acquisition would be discussed with the villagers and during the public consultation, however, detailed answers never has been given including meetings in August 2017.

The company meanwhile, on its Facebook page (15 August 2017) claims that that it has almost completed the land acquisition procedure.

However, in one of the responses of the company, *states that the majority of people may not know about* (published 11 October 2017, business and Human Rights) about the land acquisition because the negotiations in some cases, for example in Nakra case, has not yet started.

It contradicts the company’s own the Land Acquisition and Livelihood Restoration Plan and the implementation of the schedule, released in March 2017. Meanwhile, we learned that 700 hectares of land, has been already handed over by government to the company for 1 GEL.

It should be stressed, that the project EIA does not include the impact of the associated infrastructure, as well as not fully clear the amount of land will be needed. The environmental impact assessment also does not include the route of 220 KV transmission line, that would at the end creates lots of the problems for the village Lakhami. Neither on these issues we have not received a response from the company. We consider, that company might think that the impact will be minimal, which raises many questions for Lakhami village residents.

Social Impact

We consider that project Social Impact is not studied properly, and its limited only with consideration of social impacts of directly affected. The project does not consider the significant impacts, such as the impact on agriculture, increased traffic and safety, impact on women, etc.

The Project contract

Despite numerous requests for publishing the contract, including public hearings at the 27 April and 22 August, where representatives of the Non Governmental organizations as well as local communities directly request contract transparency for the public. The company and the government representatives refused without any justification. Given the fact that the project cost is very high, more than 1 billion US dollars, and that it represents public-private project, we believe that it is necessary to ensure publicity of the contract.

At the same time, is impossible without transparency of the contract to assess the project economic benefits for the country, that can be the major argument for us to agree or not agree on the project.

Based on the above mentioned, we would like to ask you to study the project impact on the environment and its compliance with the safety standards of the ADB, what impact the project will have on our livelihood and quality of life.

Please, protect confidentiality of the signatories, in order to avoid pressure from the governmental structures.

Meantime, we would like to give the representation authority regarding the complaint to the Chairman of the Association Green Alternative, Manana Kochladze and Green Alternative IFI Coordinator, Mr. David Chipashvili.

MANAGEMENT'S RESPONSE



Asian Development Bank

Memorandum

Office of the Vice-President
Private Sector and Cofinancing Operat

12 January 2018

To: Dingding Tang
Chair, Compliance Review Panel

From: Diwakar Gupta *Diwakar Gupta*
Vice-President

Subject: **GEO: Nenskra Hydropower Project, Project No. 49223-001.
Management Response to Complaint**

1. We refer to your memorandum dated 12 December 2017 regarding a complaint received with respect to the above project (Project). We also refer to the Review of the Accountability Mechanism Policy 2012 (Policy).
2. The Project is, in the terminology used in the Policy a "proposed project". It is being processed by ADB's Private Sector Operations Department (PSOD). Due diligence is continuing, and the proposed project has not yet been considered by the Investment Committee.
3. PSOD notes that the complainants have requested anonymity, so it is not possible for the project team to check if they have made any attempt to contact ADB. To date PSOD has responded to all direct inquiries from project affected persons and resolved the issues raised. Paragraph 142 of the Policy is clear that complaints will not be deemed eligible where the complainants have not made good faith efforts to address the matters raised by them in the complaint with the operations department concerned. Our records suggest that no such efforts have been made by the complainants. We note also that no such effort is alleged to have been made by the complainant.
4. Accordingly, consistent with the Policy, we believe that the complaint must be excluded, and should remain excluded, from consideration by the CRP, until both a dialogue between the complainant and PSOD has been established and it can be demonstrated that such dialogue has failed to resolve the substance of the complaint.
5. PSOD would like to highlight that appropriate impact screening and project categorization have been conducted. Extensive technical studies have been undertaken and have included assessments of dam safety, geological risk, environmental flows, groundwater, microclimate, biodiversity and fisheries, Indigenous Peoples and land ownership. The community concerns raised during consultations related to mud flows, ground water, microclimate changes, and social impacts have been carefully considered and assessed. There has been extensive and meaningful consultation undertaken with all stakeholders. The ESIA, has been disclosed in compliance with SPS requirements; and plans are in place for comprehensive third-party monitoring.

6. A more detailed response matrix which addresses the claims in the letter is attached and identifies where relevant information can be found in publicly available documents.

Attachment: As stated

CC: Mathew Fox, Executive Director Representing Georgia
Helmut Fisher, Chair, Board Compliance Review Committee
Michael Barrow, Director General, Private Sector Operations Department
Shantanu Chakraborty, Director, Infrastructure Finance Division, PSOD
Yessim Elhan-Kayalar, Country Director, Georgia Resident Mission

Status of Due Diligence and Compliance with ADB's 2009 Safeguard Policy Statement

Indigenous Peoples:

Social due diligence was conducted to assess the operational application of the ADB's IP policy, concluding that SR3 does not apply to this project (attached LD shows the application of the IP screening criteria in more detail). Although the project-affected communities (the Svans) do exhibit some of the IP screening characteristics, they do not meet the criteria in full. In addition, the Svans' potential vulnerabilities to project activities do not originate from them being indigenous to the region. Risks related to Svans' existing social and economic vulnerabilities, as determined through Social Impact Assessment (SIA), will be mitigated through the LALRP, Community Investment Plan (CIP), and Environmental and Social Management Plan (ESMP).

Involuntary Resettlement:

Based on assessed components, the Project will economically displace a total of 89 households (392 affected persons), out of which 29 households (147 affected persons) will be significantly affected due to the loss of pasture areas. A land acquisition and livelihood restoration plan (LALRP) was first prepared in 2015, with further updates at the request of lenders in 2016-17 to capture resettlement impacts and mitigation measures more fully. An additional study on the impacts of pasture loss was carried out in 2016 to inform the project's livelihood restoration strategy. A compliance audit of completed and on-going land acquisition activities was undertaken, and a corrective action plan prepared. The project will further assess, prepare and disclose an LALRP addendum following the Project's existing LALRP requirements for the outstanding components.

Environment:

An ESIA was submitted to the Government of Georgia (GoG) in August 2015, with an Environmental Permit issued in October 2015. To meet lenders requirements and community concerns, the lenders recommended supplementary studies on key issues including: hydrology, water quality, natural hazards, dam safety, biodiversity, and social impact assessment. An audit of early works was carried out and a corrective action plan have been developed. The supplementary studies were disclosed on ADB's website on 17 March 2017, with an updated version disclosed on 14 December 2017 to reflect additional comments by ADB and other lenders. Specific measures were included in a revised ESMP and integrated in the EPC contract. An analysis of alternatives for the Project was undertaken and led to changes in the project design. Key mitigation measures in the ESIA include: (i) doubling minimum ecological flows; (ii) inclusion of release gates to maintain sediment transport functions; (iii) integrating a fish pass at the Nakra weir; (iv) inclusion of a reservoir by-pass track to maintain community access and (v) habitat enhancement and restoration. Natural hazards (seismicity, extreme flood events, avalanches, debris flow, slope stability) and dam safety were assessed and are being addressed in design, operation and emergency response planning. Cumulative impacts were assessed considering: other projects, habitats, river fish, microclimate, seismicity, and social aspects. An Independent Panel of Experts has been established to provide advice on dam safety, natural hazards and social dimensions. The Project is located near the boundary of a candidate Emerald Site under the Bern Convention. Assessments indicate no significant adverse impacts on biodiversity in the project area or on an adjacent proposed Emerald Site. Power supply lines to the dam site and Nakra weir are still to be finalized and assessed. This will be done during implementation. A new substation, transmission line and related infrastructure is required to evacuate power. This is considered an associated facility, as it will be constructed by Georgian State Electrosystem (GSE). A full ESIA will be prepared, with proposed financial support from EBRD. Consultations with affected people have been undertaken since 2015 and have intensified over the past year.

Complaint	ADB Management Response
<p>The Asian Development Bank plans to fund Nenskra 280megawatt hydroelectric power plant (HPP). Nenskra HPP represents one of the 35 power plants, planned to be constructed in Zemo Svaneti (Georgia). The project is being implemented by the State Partnership Fund and the Korean State company K-water. The project documentation has been published by the Asian Development Bank's web site. Chuberi and Nakra population have a negative attitude towards construction of Nenskra HPP, and we consider that the construction of the plant will result decreasing of the quality of life while increasing the healthcare and safety risks.</p> <p>Our concerns and worries connect with a number of the issues, including</p>	<p>The project involves the construction, operation, and maintenance of a conventional high head, reservoir-type HPP with installed capacity of 280 megawatts (MW), located in the Nenskra and Nakra valleys of northwestern Georgia.</p> <p>Successful implementation of the project will (i) contribute to achieve Georgia's Intended Nationally Determined Contribution Submission I to the United Nations Framework Convention on Climate Change (i.e., targeting reduction of greenhouse gas emission to a level 15% below the baseline target under the business-as-usual scenario), (ii) facilitate the use of indigenous hydro resources, and (iii) contribute to establishing an efficient and competitive electricity market through domestic and foreign investments.²</p> <p>Electricity generated by the project will be transmitted to the national grid, and via power distribution lines to households and commercial and industrial facilities. By increasing power reliability, business and industrial confidence will increase and economic activities will be enhanced. Locally, construction of the Nenskra dam, powerhouse, tunnels, and the Nakra water intake will generate temporary employment opportunities. Joint Stock Company Nenskra Hydropower Company (JSCNH) will pay the local government of Mestia an annual property tax corresponding to 1% of the value of the project's assets, and an annual land tax proportional to the area of land occupied by the project. In addition to employment during construction, and to a lesser extent operation, upgrading of local roads and the community investment program will bring positive impacts and socioeconomic benefits.</p>
<p>1. Participation in decision making processes</p> <p>We are Svan, an ethnic subgroup of Georgian, we have our cultural and religious traditions, unique language and law, which runs in our communities and the region, we recognize ancestors rules and customs on land ownership, we carry on the traditional activity (agricultural, livestock, wood processing, crafting and etc.). We represent the indigenous population. Therefore, we believe that we have our say and</p>	<p>Participation in decision making processes</p> <p>The Government of Georgia (GoG) selected the Project following its Renewable Energy 2008 State Program which aims to reduce the country's dependence on imported fuel and leverage its natural but untapped hydro resources. ADB supports this objective as reflected in the ADB's Country Partnership Strategy for Georgia (2014-</p>

¹ Government of Georgia. 2015. *Georgia's Intended Nationally Determined Contribution Submission to the UNFCCC*. Tbilisi.

² Georgian National Energy and Water Supply Regulatory Commission. *Georgian Law on Electricity and Natural Gas*.

Complaint	ADB Management Response
<p>Government should agree with us the projects its planned in the region. However, the government does not consider our demands and protests, to ensure sustainable development, protect nature and population of Svaneti.</p> <p>We would like to underline that public participation process since 2012 actually does not exist. Despite the fact that the project was announced by former President Saakashvili, who arrived at the site and had the grand opening ceremony of Hydro construction together with Chinese company Sinohydro, there was no project related discussions in our communities. It was just said that the power plant should be built in 2015.</p>	<p>2018).³ The project is also in line with ADB's Energy Policy (2009).⁴ However, ADB has not been involved in the GoG decision on Project procurement/selection, which in any event, we understand is beyond the CRP's mandate under the Accountability Mechanism (refer paras 124(iii) and 157(iii) of the Accountability Mechanism Policy (2012) ("AMP").</p> <p>As part of project level due diligence, ADB and other potential Lenders reviewed the EIA documentation available in 2015. The 2015 EIA was found to be lacking in several key areas that were needed to meet potential Lenders' policy requirement. ADB and other potential Lenders requested the Project Sponsors to undertake supplementary studies and conduct meaningful consultations with stakeholders.</p> <p>Following advice from ADB and other potential Lenders (including the European Bank for Reconstruction and Development ("EBRD") and European Investment Bank ("EIB"), additional stakeholder engagement and extensive consultations with project-affected people were undertaken in 2015-2016, and further intensified in 2017. Consultations were also extended to local civil society groups. Supplementary social and environmental studies were undertaken to inform the mitigation of the proposed project's impacts, with a particular focus on those affected by impacts on their livelihoods. The JSCNH developed a Stakeholder Engagement Plan that included public hearings in the valleys and Mestia municipality, focus groups, key informant interviews, open house sessions, and individual meetings. Concerns and suggestions by the affected communities were considered in (i) project design and location of key project components; (ii) developing environmental and social mitigation measures; (iv) managing impacts of land acquisition, payment of compensation and identification of technically and socially feasible livelihood restoration measures, and (v) developing a community investment program as a form of benefit sharing mechanism with the Nenskra and Nakra communities. As advised by ADB and potential Lenders, a functional GRM was established and is already operational.</p>

³ ADB. 2014. *Country Partnership Strategy: Georgia, 2014–2018*. Manila.

⁴ ADB. 2009. *Energy Policy*. Manila.

Complaint	ADB Management Response
	<p>References:</p> <p>Stakeholder Engagement Plan https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_7.pdf</p> <p>Public Consultation Report http://nenskra.ge/inc/uploads/2017/04/ES-Nenskra_PCR_-27-October-2017.pdf http://nenskra.ge/inc/uploads/2017/04/ES-Nenskra_PCR_-_Annexes_27-October-2017.pdf</p>
<p>Taking into account that we are the indigenous population, which in the last few thousand years of living in the region, we believe that Indigenous people's policy should be applied and the government as well as the project sponsor were supposed to ask do we want implementation of this type of the project.</p> <p>The last 40 years, we, Svan people are fighting against Khudoni HPP project, construction of which is planned 20 km away from us in Khaishi community. In addition the government plans to build another 33 HPPs in the region, including five large reservoirs and dam project. The SO-megawatt power plant construction has already begun in Mestiachala Mestia. It should be noted that on September 1, 2017 river flood takes the HPP territory and its pipes.</p>	<p>Application of ADB's SPS SR3 on Indigenous Peoples</p> <p>Extensive social due diligence was conducted to assess the operational application of the ADB's IP policy, concluding that SR3 does not apply to this project. The Project team sought expert advice from various social experts, including an anthropologist from the Institute of History and Ethnology of Iv. Javakishvili State University of Tbilisi who contributed to the assessment of the Svan's ethnic identity, language, history, customs, traditions, way of living, and livelihoods. Although the project-affected communities (the Svans) do exhibit some of the IP characteristics, they do not meet the criteria in full. In addition, the Svans' potential vulnerabilities to project activities do not originate from them being indigenous to the region. Risks related to Svans' existing social and economic vulnerabilities, as determined through Social Impact Assessment (SIA), will be mitigated through the LALRP, Community Investment Plan (CIP), and ESMP. Based on such due diligence, it is concluded that ADB's and other potential Lenders Indigenous Peoples policies do not apply. An additional review of the findings was performed by an independent international social expert appointed as part of Independent Panel of Experts ("IPE"), who similarly concurred that ADB's and other Lenders Indigenous Peoples policies were not triggered. Findings of the analysis done by these experts on the applicability of ADB and other potential Lenders' Indigenous Peoples policy are documented in the SIA.</p> <p>ADB reviewed this documentation carefully as part of the screening of Indigenous Peoples impact and looked into the categorization of the project's impact on these peoples, concluding that the</p>

Complaint	ADB Management Response
	<p>Indigenous Peoples Policy was not applicable. Such conclusion was reviewed and eventually endorsed by the Chief Compliance Officer..</p> <p>In addition, USAID fielded a team of environmental and social experts who reviewed the applicability of the IP policy, among other issues. The USAID report concurs with the findings of the SIA.</p> <p>References: Social Impact Assessment https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_2.pdf USAID Report: https://ecd.usaid.gov/repository/titexiii/2017/Trip_Report_32.pdf</p>
<p>Public Participation</p> <p>Despite a number of issues raised by us the Ministry of Environment in October 2015 permitted the project. the police raid, including women and children, and people were arrested. In 2016 year we have been under pressure to accept the project.</p> <p>Despite that, after the protests, more public hearings being held by the project implementor K-waters, as well as with its Italian subcontractor Salini Impregilo, during these meetings answers on the issues we worried has not been given. (see: Below). In addition, there wasand is a lot of pressure on the individual level, when they tell us that should we accept the project, or they will plant drugs, or frighten us not to take videos of the meetings, etc.</p> <p>In 2017 was published, a new environmental impact assessment document, however, that again could not respond to the number of questions, including the project associated risks, the need of the project, the traditional land ownership and its compensation. during the discussions, has still not been given detailed answers to the interested issues by company representatives. After each awkward question, organizers immediately asked for the next question.</p>	<p>ADB has consistently advised JSC Nenskra to undertake regular, proactive and sustained meaningful consultations and disclosure activities with affected communities using appropriately designed and developed communication methods, as described in the Stakeholder Engagement Plan and LALRP. All consultations held since December 2015 were direct results of ADB and other potential Lenders' involvement in the Project. ADB has not received a complaint from the community about people being pressured, threatened or frightened to accept the project. During community meetings where ADB staff were present, people were not being prevented from taking photos or recording videos of the proceedings. Details of consultation activities and how issues were responded to by JSC Nenskra are available from the Public Consultation Report.</p> <p>References: Stakeholder Engagement Plan https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_7.pdf</p> <p>Public Consultation Report: http://nenskra.ge/inc/uploads/2017/04/ES-Nenskra_PCR_-27-October-2017.pdf http://nenskra.ge/inc/uploads/2017/04/ES-Nenskra_PCR_-_Annexes_27-October-2017.pdf</p>
<p>Geological risks</p> <p>Nakra and Chuberi valleys are landslide prone and located in a high</p>	<p>Geological risks</p> <p>The Project has undertaken numerous studies on: natural hazards</p>

Complaint	ADB Management Response
<p>seismic activity zone. Place the reservoir characterized by a number of landslide areas, correspondingly, cutting forest down on the slopes, together with damming water and respectively changing microclimate change will increase the risk of landslides.</p> <p>The main problem in the village Nakra mudflow Rivers, who brought a large amount of sediment that accumulated over the village and the river Nakra washes it. In case of leaving river Nakra as small streams, may prevent river to wash sediment and village is under the great calamity. It should be noted that a few years ago, debris flow, sediment transported by river took away few households in the village and some part of the cemetery. It should be mentioned that these rivers were not mentioned in the EIA in 2015, on which the Ministry of Environmental Protection granted permission. In the ESIA documents of 2017, it is mentioned that there will be monitoring and if during the spring large amount of debris would be accumulated in the pumping of water would be stopped. However, we don't know do it will be really safe for the community. For example, what happens if this system of monitoring will get out of order and / or will not work as planned?</p>	<p>and dam safety, including hydrological studies, earthquake hazard assessment, natural hazards risk assessment, and slope stability studies.</p> <p>To ensure that dam safety is properly reviewed to meet ADB and other lender due diligence requirements, an IPOE was established, resulting in several changes to the dam design and operation.</p> <p>The Project natural hazard risk assessment has been carried out following the approach recommended by the International Commission on Large Dams (ICOLD). In addition, the hazard studies have gone through a thorough review process. Studies performed by the EPC Contractor have been reviewed by the Owner's Engineer (OE), the Lender's Technical Advisor (LTA) (in accordance with OMF1 paragraph 21) and the IPOE..</p> <p>ADB, along with the other lenders, participated in several workshops with the lenders consultant, the OE, the LTA, the IPOE and the EPC contractor for the Project to consult with them and ensure due diligence requirements are met. ADB has relied on the advice of experts that geological risks have been properly assessed and appropriate mitigation measures have been proposed. An earthquake hazard assessment has been carried out and the Maximum Credible Earthquake (MCE) has been determined - which is 7.5 on the Moment Magnitude Scale (equivalent to approximately 7.2 on the Richter scale). Physical and numerical modelling of the dam stability and capability has been undertaken, and has confirmed that the dam will resist an MCE event without failing.</p> <p>The dam has been designed to ensure that credible landslides will not result in overtopping of the dam wall. The presence of the dam reservoir has a positive impact in terms of reducing natural flood events.</p> <p>The Nakra River is vulnerable to a risk of flooding as a result of mudflow events occurring on lateral tributaries. The mudflow events lead to temporary blocking of the Nakra River, creating temporary flooding upstream of the blockage, and downstream flooding when</p>

Complaint	ADB Management Response
	<p>the river breaches the blockage.</p> <p>During due diligence, lenders required improved safety measures on the Nakra weir including a gate to close off the transfer tunnel.</p> <p>Without mitigation measures, the Project could result in an increase in this risk because the capacity of the river to flush away sediment will be reduced and there will be a tendency for sediment to accumulate in the river. To address this risk the Project will periodically open gates on the weir and close a gate on the Nakra transfer tunnel in order to reinstate the natural flow of the Nakra River. A specialist study will be undertaken by JSNCH to establish the best solution for managing the existing sediment accumulation in the Nakra and to ensure that the exposure to floods is finally reduced and not increased.</p> <p>Detailed monitoring and management arrangements are provided in the fully costed ESMP. Should ADB decide to invest in the project ADB and a Lenders Environmental and Social Advisor will closely supervise Sponsor commitments.</p> <p>Through meaningful stakeholder engagement the Sponsor has recognized that the local community was particularly concerned about geological hazards and took considerable steps to ensure that community concerns were responded to. As part of due diligence ADB visited the project sites on multiple occasions and observed numerous community meetings in which geological risks were discussed. Community members were given the opportunity to meet one-on-one with the OE and the EPC contractor for extended periods to discuss their concerns. Further consultations with local communities can continue to discuss these concerns and provide additional explanations on the proposed mitigation measures.</p> <p>References:</p> <p>Nenskra Hydropower Project, Supplementary Environmental & Social Studies Volume 6 Natural Hazards & Dam Safety, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001-esia-en_6.pdf</p> <p>Nenskra Hydropower Project, Supplementary Environmental &</p>

Complaint	<p>ADB Management Response</p> <p>Social Studies Volume 8 Environmental & Social Management Plan, November 2017</p> <p>https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_8.pdf</p> <p>Independent Panel of Experts Dam Safety Study</p> <p>http://nenskra.ge/en/reports</p>
<p>The Risks of Reduced Environmental Flow</p> <p>There will be only 5% of the Nenskra river whole volume left, while in case of Nakra 10%. Will it be enough for sediment transportation? In Addition, have the impact over the fish, that according to EIA does not exist, but we are fishing. It will also have the impact on our mineral waters, which are located along the river and from where people with different types of spa waters takes.</p> <p>At the same time, river Nenskra and Nakra represents important rivers in our villages. The rivers in the summer help us against high temperatures. While the EIA claims that reduced river flows will not affect agriculture and accessibility of water for us, we believe that the project will have a negative impact, as on mineral, as well as on groundwaters, and it would adversely affect our activities and livelihood, and the problem of access to water would increase.</p>	<p>The impacts and mitigation measures of reduced environmental flow is detailed in Supplementary Environmental & Social Studies Volume 5 Hydrology & Water Quality Impact Assessment. Impacts of altered flows on fish species and aquatic habitats are addressed in Volume 4 on Biodiversity Impact Assessment</p> <p>The impact assessment does not state that fish don't exist. The impact assessment notes one dominant fish species is considered to be present in the Nenskra and Nakra rivers, the brown trout <i>Salmo trutta morfa fario</i>.</p> <p>The flow details for the future scenario of the Nenskra, which were assessed at several key locations, indicate that with tributary inputs of water to the main channels then the flow conditions (i.e. velocity and water levels), although reduced from the present day, will continue to provide suitable habitat for fish. Detailed monitoring and management arrangements are provided in the fully costed Environmental and Social Management Plan ("ESMP"). Modelling also indicates that the reduction of flow rate post construction within the Nenskra and Nakra rivers, is likely to have a positive effect on the brown trout as existing flow environments will become less hostile for juvenile fish and will increase suitable habitats with a lower flow velocity. Overall, impacts on local communities related to fisheries are not expected to be significant. According to the household survey documented in the Social Impact Assessment, fishing is mainly a recreational activity. Fishing is also for domestic consumption only, none of the fish caught are sold, and fishing is not a significant source of protein for the community.</p> <p>In relation to groundwater, groundwater studies suggest that the ground water is fed by underground aquifers and not by the rivers. Tunneling is not expected to impact the springs. Notwithstanding this, as a precautionary measure the Sponsor has committed to</p>

Complaint	<p>ADB Management Response</p> <p>monitoring spring waters and provide an alternative supply of water to affected communities to replace existing water supplies that are affected by the Project.</p> <p>References:</p> <p>Nenskra Hydropower Project, Environmental & Social Studies Volume 5 Hydrology & Water Quality Impact Assessment November 2017. https://www.adb.org/sites/default/files/project-documents/49223/49223-001-esia-en_5.pdf</p> <p>Nenskra Hydropower Project, Environmental & Social Studies Volume 4 Biodiversity Impact Assessment November 2017. https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_4.pdfhttps://www.adb.org/sites/default/files/project-documents/49223/49223-001-esia-en_3.pdf</p> <p>Nenskra Hydropower Project, Volume 8 Environmental & Social Management Plan, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_8.pdf</p> <p>Nenskra Hydropower Project, Georgia, Fish, Invertebrates and Otter Monitoring, Surveys N1, Final report, November 2017 http://nenskra.ge/inc/uploads/2017/04/Blue-Rivers-Report_Nov2017_ENG.pdf</p>
<p>Issues related to Microclimate change</p> <p>We concerned that what would be the impact of the reservoir on the microclimate. In 2017 EIA its said that project would not have any impact on Microclimate and there should be no worries. However, it does not say that the clauses from 2015 ESIA is not correct, "its [reservoir's] effects on the climate will be substantial in spring, when the ice starts melting and breaking, and in late autumn, before ice phenomena begin. Sharp difference between water and air temperatures and strong wind will intensify evaporation. Evaporated moisture will cover buildings and fruit trees in a form of hoar frost and damage them. The damage caused by early frosts is graver as it will damage buds and sprouts, and ultimately result in premature aging, fruitlessness and dying of plants. For the people, that experience from rheumatism and/or need treatment respiratory or cardiovascular diseases the health condition will further aggravate."</p>	<p>Issues related to Microclimate change</p> <p>JSCNH's environmental consultant found that, taking into account a number of factors, particularly the small size of the reservoir, and the prevailing climatic conditions, it can be expected that the impacts on micro-climate from the impounding of the Nenskra reservoir will affect only the immediate areas around the reservoir. Micro-climate changes could possibly be detected at Tita but probably no further down the valley. There may also be a very small change on river cooling effects from reduced river flows but they would be within natural variations.</p> <p>In addition, it is possible that any changes to the micro-climate will be negligible compared to the effects of climate change on a regional scale. To demonstrate and monitor this prediction, the Project will install two weather stations at the dam site and the</p>

<p>Complaint</p> <p>As a result of the construction of the Enguri Hydro power plant, in our gorges humidity have been significantly increased, and caused not only health-related diseases growth, but also increased probability of avalanches, landslides and floods. In 1976 and 1987 Chuberi snowstorm and avalanches destroyed part of the village. The survivor, a homeless population in Dmanisi (Kvemo Kartli) were deported. We fear that due to the increased moisture, geological and health-related risks at the end, we will be forced to be resettled.</p>	<p>ADB Management Response</p> <p>powerhouse. Detailed monitoring and management arrangements are provided in the fully costed ESMP.</p> <p>It should be noted that the proposed Nenskra reservoir stores up to 182 million cubic meter of water. It is much smaller than the Enguri reservoir which stores up to 1.1 billion cubic meter. Also, the Nenskra reservoir is more remote from villages.</p> <p>References:</p> <p>Nenskra Hydropower Project, Supplementary Environmental & Social Studies Volume 5 Hydrology & Water Quality Impact Assessment, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_5.pdf</p> <p>Nenskra Hydropower Project, Volume 8 Environmental & Social Management Plan, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_8.pdf</p>
<p>Traditional ownership</p> <p>Nenskra reservoir will flood the pastures and forests, that represents the for us and our ancestors the source of livelihood. The villagers still do not know the fate of their traditional lands. The agreement between government and company is confidential and not published for public. For ministries is not clear, who owns the lands, that once was owned by State, but President Saakashvili takes out of Forestry fund. Although the project developer promised that the issue of land acquisition would be discussed with the villagers and during the public consultation, however, detailed answers never has been given including meetings</p> <p>The company meanwhile, on its Facebook page (15 August 2017) claims that it has almost completed the land acquisition procedure. However, in one of the responses of the company, states that the majority of people may not know about (published 11 October 2017, business and Human Rights) about the land acquisition because the negotiations in some cases, for example in Nakra case, has not yet started.</p> <p>It contradicts the company's own the Land Acquisition and Livelihood</p>	<p>Issues related to Land Acquisition</p> <p>The amount, type and status of land required by the project is presented in the Land Acquisition and Livelihood Resettlement Plan (LALRP). The project will require 882.5 hectares (427.8 ha permanent and 454.7 ha temporary) of land for the dam and reservoir area, powerhouse site, Nakra diversion weir area, operator's village, the Nenskra access road upgrading works, and the power supply service lines.</p> <p>JSCNH is a special purpose vehicle incorporated in Georgia and established for developing and operating the project. GoG is set to be an equity investor of JSCNH and is represented in the joint venture company by Joint Stock Company Partnership Fund, a state-owned enterprise. Based on the agreement signed with GoG, the National Agency for State Property has provided the right to build on non-agricultural state-owned land to JSCNH for the sum of US\$1. JSCNH will operate the Project and generate electricity to be sold to the grid operator for 35 years. Following the termination or expiry of the Agreement, all the land including essential buildings will be</p>

Complaint	ADB Management Response
<p>Restoration Plan and the implementation of the schedule, released in March 2017. Meanwhile, we learned that 700 hectares of land, has been already handed over by government to the company for 1 GEL.</p>	<p>revert back to GoG.</p> <p>As a result of consultations with directly affected people, the Project avoided physical displacement of households. Despite efforts to minimize impacts, pastures, forest areas, residential lands, crops and trees will be affected by the Nenskra dam and reservoir, access roads and other project components.</p> <p>For the past two years, JSCNH through SLR Consulting and its own Land Acquisition Team have engaged with people affected by land acquisition to prepare a Land Acquisition and Livelihood Resettlement Plan (LALRP) which addresses the economic displacement arising from the Project land requirements. JSCNH have informed affected households about the scope of the land acquisition and resettlement impacts, conducted a census and inventory of affected assets, established and publicized a cut-off date, consulted on eligibility and entitlements policy and explained the calculation of compensation rates.</p> <p>Land acquisition and compensation activities for the project have not been completed. All privately owned and non-legalizable residential, arable and hay field land will be compensated at replacement cost and registered under the name of JSCNH. As presented in the LALRP, people affected by the loss of non-legalizable customary lands (i.e. collectively used pasture lands) will be given temporary fodder supply (or cash to buy fodder) during the transition period. In addition, access to existing nonaffected pasture areas will be established and livelihood restoration support will be provided in accordance with LALRP. The final LALRP has been significantly improved under the Lender's guidance, through supplemental studies and additional consultations.</p> <p>Reference: Land Acquisition and Livelihood Resettlement Plan https://www.adb.org/sites/default/files/project-documents/49223/49223-001-rp-01.pdf</p> <p>Land Acquisition and Livelihood Restoration Plan Compliance Audit Report https://www.adb.org/projects/documents/geo-49223-001-scar</p>

Complaint	ADB Management Response
<p>It should be stressed, that the project EIA does not include the impact of the associated infrastructure, as well as not fully clear the amount of land will be needed. The environmental impact assessment also does not include the route of 220 KV transmission line, that would at the end creates lots of the problems fro to the village Lakhani. Neither on these issues we have not received a response from the company. We consider, that company might think that the impact will be minimal, which raises many questions for Lakhani village residents.</p>	<p>Associated Facilities</p> <p>From the Nenskra HPP, the power generated by the Project will feed into the national grid network, conveyed to a tie-in point at a new 500/220/11kV substation in the Nenskra Valley by a 220kV Transmission Line. The 220kV Transmission Line and the required new 500/220/110kV substation, as well as any access roads or borrow areas required for construction or operation, are considered associated facilities following the definition in ADB's Safeguard Policy Statement (SPS, 2009). Georgian State Electrosystem (GSE) will design, construct, install, commission, own, operate and maintain this Transmission Line and connection facilities. The grid connection point or boundary for the delivery of power will be the connection to the first tower at Nenskra HPP 220kV GIS yard.</p> <p>The location of the new substation as well as the alignment of the proposed 220kV transmission line are yet to be defined by GSE. Detailed design and a dedicated Environmental and Social Impact Assessment will be completed during 2018 to 2020. The location of the transmission line will be determined taking into account impacts on the environment, meaningful consultation with local communities, geographical constraints and stakeholder inputs. The preparation of the ESIA and LALRP for the 220kV transmission line will be the responsibility of GSE, as part of the environmental impact assessment processes for the Open Program Extension Transmission Network Georgia II financed by the European Bank for Reconstruction and Development (EBRD). GSE has confirmed that the ESIA and the land acquisition processes of the proposed transmission line will be undertaken by GSE taking due consideration of the Lenders' E&S policies. Public disclosure of this ESIA is planned to start in September 2018. Commitments have been established in the project ESMS to ensure coordination of the environmental and social management actions for the Nenskra HPP and the 220kV transmission line. ADB will work closely with EBRD and the sponsor, and will review the transmission line ESIA and LALRP, to ensure that the requirements for associated facilities detailed in ADB's SPS are met.</p> <p>References:</p> <p>Nenskra Hydropower Project, Supplementary Environmental &</p>

Complaint	ADB Management Response
	<p>Social Studies Volume 2 Project Definition, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_0.pdf</p> <p>Nenskra Hydropower Project, Volume 8 Environmental & Social Management Plan, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001-esia-en_8.pdf</p>
<p>We consider that project Social Impact is not studied properly, and its limited only with consideration of social impacts of directly affected. The project does not consider the significant impacts, such as the impact on agriculture, increased traffic and safety, impact on women, etc.</p>	<p>Social Impact Assessment</p> <p>During the initial stages of due diligence, the social assessment section of the 2015 ESIA was reviewed and found to be inadequate to meet ADB's requirements. As part of the supplementary studies required by ADB and other potential Lenders, a comprehensive social impact assessment was prepared. The SIA is based on a census of the population in the Nenskra and Nakra valleys, consultations and focus group discussions with communities in the two valleys, and it was reviewed by a wide range of local and international experts. The SIA identified a range of direct and indirect impacts, such as impacts on local economy, impacts of increased traffic and influx of people during construction on community health, safety and security particularly on women and children, and impacts during operations phase. Management plans have been designed to address these impacts, and are presented in the LALRP and Environmental and Social Management Plan available on ADB website. A Community Investment Strategy was also adopted by JSCNH as a benefit sharing mechanism and is included in the SIA.</p> <p>References: Social Impacts Assessment: https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_2.pdf</p> <p>Environmental and Social Management Plan https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_8.pdf</p>
<p>The Project contract</p> <p>Despite numerous requests for publishing the contract, including public hearings at the 27 April and 22 August, where representatives of the Non Governmental organizations as well as local communities directly</p>	<p>The Project contract</p> <p>As reported in the November 2017 impact assessment the economic cost-benefit analysis of the Nenskra HPP was publicly disclosed by the Government of Georgia in 2017 and shows that the</p>

Complaint	ADB Management Response
<p>request contract transparency for the public. The company and the government representatives refused without any justification. Given the fact that the project cost is very high, more than 1 billion US dollars, and that it represents public-private project, we believe that it is necessary to ensure publicity of the contract. At the same time, is impossible without transparency of the contract to assess the project economic benefits for the country, that can be the major argument for us to agree or not agree on the project.</p> <p>Based on the above mentioned, we would like to ask you to study the project impact on the environment and its compliance with the safety standards of the ADB, what impact the project will have our livelihood and quality of life.</p> <p>Please, protect confidentiality of the signatories, in order to avoid pressure from the governmental structures.</p> <p>Meantime, we would like to give the representation authority regarding the complaint to the Chairman of the Association Green Alternative, Manana Kochladze and Green Alternative IFI Coordinator, Mr. David Chipashvili.</p>	<p>Project is cost benefit justified. The main conclusions of this study are as follows: the negotiated tariff in the power purchase agreement in real terms in 2019 is US\$5.48/MWh, which are less than estimates of the long run marginal cost of power in Georgia in 2019 prices. The tariff is also lower than the price Georgia pays to import power in winter months from neighboring countries, including Russia. Georgia will also benefit because tax payments to the Government will be higher because the Project will pay corporate income tax, withholding tax, and land taxes to the Government. The Government does not currently receive income tax revenues from power generated by companies in neighbouring countries that export power into Georgia. The net effect of this is quantifiable net benefits of US\$136 million in Present Value terms.</p> <p>Reference</p> <p>Nenskra Hydropower Project, Supplementary Environmental & Social Studies Volume 2 Project Definition, November 2017 https://www.adb.org/sites/default/files/project-documents/49223/49223-001%20-esia-en_0.pdf</p> <p>Castalia Limited. Economic Cost-Benefit Analysis of Nenskra Hydropower Project: Summary Report. Report to IFC July 2017. Available on the Ministry of Energy website: http://www.energy.gov.ge/projects/pdf/pages/Nenskras-Hidroelektrosadguris-Proektis-Ekonomikuri-Sa-rgebianobis-Analizi-1787_geo.pdf</p>

ASSESSMENT ON EXCLUSION OF COMPLAINT
(per paragraphs 142 and 148 of the ADB Accountability Mechanism Policy)

Exclusions	Complaint excluded?
Exclusions per para. 142: Complaints are excluded if they are	
(i) about actions that are not related to ADB's action or omission in the course of formulating, processing, or implementing ADB-assisted projects;	No
(ii) about matters that complainants have not made good faith efforts to address with the operations department concerned;	No
(iii) about matters already considered by the SPF, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint;	Not applicable
(iv) about an ADB-assisted project for which 2 or more years have passed since the loan or grant closing date;	No
(v) frivolous, malicious, trivial, or generated to gain competitive advantage;	No
(vi) about decisions made by ADB, the borrower or executing agency, or the private sector client on the procurement of goods and services, including consulting services;	No
(vii) about allegations of fraud or corruption in ADB-assisted projects or by ADB staff;	No
(viii) about the adequacy or suitability of ADB's existing policies and procedures;	No
(ix) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or	No
(x) about ADB's non-operational housekeeping matters, such as finance and administration.	No
Additional exclusions for compliance review per para. 148:	
(i) complaints relating to actions that are the responsibility of other parties, such as a borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;	No
(ii) complaints that do not involve ADB's noncompliance with its operational policies and procedures;	No
(iii) complaints being dealt with by the SPF up to the completion of step 3 under the problem solving function (paras. 164–173);	No
(iv) complaints relating to the laws, policies, and regulations of the DMC government concerned unless they directly relate to ADB's compliance with its operational policies and procedures; and/or	No
(v) complaints about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint.	No