

**Asian Development Bank Accountability Mechanism
Compliance Review Panel**

REPORT ON ELIGIBILITY

**To the Board of Directors
on
Compliance Review Panel Request No. 2018/2
on the
Sustainable Urban Transport Investment Program Tranche 3 in Georgia
(Asian Development Bank Loan 3063)**

13 December 2018

ABBREVIATIONS

ADB	– Asian Development Bank
AMP	– 2012 Accountability Mechanism Policy
CRO	– Complaint Receiving Officer
CRP	– Compliance Review Panel
CWRD	– Central and West Asia Department, ADB
GRM	– ADB Georgia Resident Mission
LARP	– land acquisition and resettlement plan
MDF	– Municipal Development Fund of Georgia
MFF	– multitranche financing facility

NOTE

In this report, “\$” refers to United States 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. On 11 October 2018, a request for compliance review (the complaint) was forwarded by the Complaint Receiving Officer (CRO) of the Asian Development Bank (ADB) Accountability Mechanism to the Compliance Review Panel (CRP) in respect of ADB Loan No. 3063: Sustainable Urban Transport Investment Program Tranche 3 (the Project) in Georgia.¹

2. This is the fourth request for compliance review in respect of the same section of the Project though it raises different issues. In accordance with paragraph 178 of the 2012 Accountability Mechanism Policy (AMP) and associated operational procedures on the Accountability Mechanism,² the CRP carried out an initial assessment and concluded that the complaint fell within the mandate of the compliance review function.³

3. A finding that a complaint falls within the mandate of the compliance review function is not a finding of the eligibility for compliance review. Following its initial assessment, the CRP therefore proceeded to assess the eligibility of the complaint. Accordingly, this report summarizes the analysis and findings of the CRP on the eligibility of the complaint for compliance review in accordance with the AMP.

4. As elaborated in this eligibility determination report, the CRP concludes that the complaint is not eligible for compliance review. At the time of this eligibility determination, prior good faith efforts by the complainants to resolve issues with ADB's operations department (i.e., the Central and West Asia Department-CWRD) are under way, but have not yet concluded so as to permit the CRP to reach a conclusion that the complainants "*made prior good faith efforts to resolve issues with the operations department concerned*" in accordance with paragraph 180 of the AMP.

II. THE PROJECT

5. The Project is part of an overall investment program valued at \$1.1 billion to be implemented from 2010-2020 and which aims to improve the reach, quality, and continuity of urban transport in Georgia. To partially fund this overall program, a multitranche financing facility (MFF) with a maximum financing amount of \$300 million was approved by ADB in July 2010. It addresses: (i) extension, rehabilitation, and improvement of urban transport infrastructure in Anaklia, Batumi, Kutaisi, Poti, Rustavi, and Tbilisi; (ii) increased institutional effectiveness, including the reorganization and reforms at the Tbilisi municipality, other municipalities and urban transport service providers; and (iii) establishment of a program management team with a capability and financial resources to handle project preparation, technical design, contract bidding, evaluation and award, contract supervision, progress monitoring and reporting.⁴ Projects funded under the MFF will improve the transport system and infrastructure in urban areas.

6. The project that is the subject of the present complaint is funded under Tranche 3 of the MFF, which was approved on 25 November 2013. The total cost of projects implemented under

¹ Information about the Project is available at <https://www.adb.org/projects/42414-043/main>.

² 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.

³ The eligibility determination was led by CRP Part time Member Halina Ward, with support from CRP Chair Dingding Tang and CRP Part time Member Ajay Deshpande.

⁴ Important data on the multitranche financing facility covering the Project are available at <http://www.adb.org/projects/42414-013/main#project-pds>.

Tranche 3 is \$118.2 million, \$73 million of it from ADB. The borrower is the Government of Georgia, and the Municipal Development Fund (MDF) of Georgia is the executing and implementing agency. Tranche 3 consists of two subprojects. Subproject 1 is relevant for purposes of the present complaint. This consists of modernization of an existing road and construction of a new section of the Tbilisi-Rustavi Urban Road Link from Ponichala to Rustavi (section 2 of the Tbilisi-Rustavi Urban Road Link). When finished, the total subproject road length will be 6.8km. A Land Acquisition and Resettlement Plan (LARP) prepared by MDF in respect of the Ponichala section of the road was disclosed in September 2015.⁵ Based on this LARP, the construction of Section 2 Part B will involve permanent acquisition of 84 land plots with 3.5 hectares of land areas, resulting to 133 households and 14 legal entities losing ownership or access to residential or commercial lands and closure of 12 businesses. The total number of affected persons is estimated at 549, including those who will lose their jobs (i.e., those who will be economically displaced by the sub-project). ADB Management notes in its response to the CRP in the present complaint that a socio-economic survey identified two of the complainant households as vulnerable for purposes of the LARP.

7. The new road is expected to be an international standard, Category I highway, with four to six lanes and accommodating vehicles with speeds of 80km/h to 120km/h. Construction work financed under subproject 1 of Tranche 3 is reportedly ongoing except for the Ponichala section of the road. This is the section from which the four complaints received by the CRP have originated.

III. THE COMPLAINT

8. This fourth complaint differs from the first three complaints in respect of the Project as the focus of the complainant is compensation for resettlement whereas earlier complaints principally addressed issues such as noise, vibration, air quality, lack of ecological impact study on the river and project environmental categorization. The complainants are 18 residents of affected households at four numbered buildings at Marneuli street, Rustavi Highway, Tbilisi, Georgia. (See Appendix 1). The four buildings at Marneuli street where the complainants live are each shared by several households, and residents include children and elderly people. In an initial teleconference with CRP attended by five complainants including at least one from each of the four buildings, one of the complainants was nominated and agreed to act as a focal point for email communication with the CRP. The CRP has not obtained specific written confirmation that all eighteen complainants consent to their details being made public and has accordingly redacted the published version of the complaint.

9. The ADB-financed construction of the road at Ponichala entails the acquisition of the complainants' homes and land on which they are built. The complainants assert that the compensation that they have been offered does not reflect the current market price in their location and is not sufficient for them to obtain proper housing. Their complaint requests a designated committee to "take a closer look at our situation and manage to find a solution acceptable for both parties", either by providing compensation at market prices to buy new housing or alternatively to "provide us with the different living space in accordance to the square of the land/house we possess at given moment." The complainants express the fear that without proper compensation they will be left homeless. The complainants have provided the CRP with

⁵ Resettlement Plan: GEO: Sustainable Urban Transport Investment Program – Tranche 3 (Tbilisi-Rustavi Urban Link – [Section 2 Part B]). Available online at <https://www.adb.org/sites/default/files/project-document/175052/42414-043-rp-03.pdf>.

copies of valuation reports that they commissioned in 2016, though at the time of writing this report, they have not shared these with the ADB operations department.

10. During initial processing of the complaint by the CRO, the complainants requested compliance review with the CRP. Accordingly, the CRO forwarded the complaint to the CRP on 11 October 2018.

IV. ADB MANAGEMENT'S RESPONSE

11. The CRP informed ADB Management, the Government, and the complainants of the receipt by the CRP of the complaint on 18 October 2018 and requested ADB Management's response. The CRP received the response within the requested timeframe, on 19 November 2018. (See Appendix 2.)

12. The response sets out ADB Management's account of events leading to the complaint. Following evaluation of the Marneuli street properties by a licensed audit company commissioned by MDF, verbal negotiations with householders for acquisition of the properties began in 2014. The owners of the four Marneuli Street buildings were reportedly sent official offers by MDF to purchase the properties together with the valuations on separate dates between March 2015 and June 2016. An October 2015 appeal from a number of the complainants requesting increased compensation was considered but was not satisfied by the MDF Complaints Review Commission when it met in January 2016. In December 2015, MDF was granted the right to seek expropriation following consideration by the Commission on Expropriation Issues of the Ministry of Economy and Sustainable Development. In separate decisions of May 2016 and February 2017 Tbilisi City Court granted MDF's application for expropriation and the ownership of the properties by the state was subsequently registered in the public land register. The ADB Management's response states that compensation sums were placed in a special deposit account and were notified to the complainants but have not been claimed. By mid-2018, MDF had by means of four separate court enforcement orders obtained the right to evict the complainants. At the time of this report, MDF has not exercised that right.

13. A letter of complaint from a number of the complainants to ADB dated 31 July 2018 was reportedly received by the project team at ADB Headquarters on 27 August 2018 via the ADB Georgia Resident Mission (GRM) in Tbilisi. The ADB Management's response describes the actions taken by the project team in the period from receipt of the complaint, including communication with the complainants, obtaining and translating relevant documentation from MDF, and the steps taken by CWRD to date, to engage an independent valuer in Georgia to carry out an independent valuation of the complainants' properties. The ADB Management's response states that MDF has assured ADB that no forced eviction will be done and that this has been communicated to a representative of the complainants following a visit by one complainant to GRM on 09 November 2018.

14. As required by paragraph 178 of the AMP, the ADB Management's response also provides an account of how, in ADB Management's view, the Project has complied with the relevant ADB operational policies and procedures, specifically those set out in the 2009 Safeguards Policy Statement.

V. ELIGIBILITY

15. The CRP has reached its determination of eligibility in accordance with provisions of paragraphs 179 and 180 of the AMP, which state:

“179. Within 21 days of receiving the ADB Management’s response, the CRP will determine the eligibility of the complaint. The CRP will review the complaint, ADB 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; (iii) 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.

180. As part of the eligibility determination, the CRP will review and determine whether the complainants made prior good faith efforts to resolve issues with the operations department concerned. The CRP will forward the complaint to the operations department concerned if the complainants did not make such efforts.”

16. In light of the ADB Management response, the CRP has also considered paragraph 151 of the AMP, which states, in part, that:

“151. The complaint must specify the following:...
(vii) a description of the complainants’ good faith efforts to address the problems first with the operations department concerned, and the results of these efforts;...”

17. The CRP’s eligibility determination process has involved the following steps:

- i) review of the complaint and other documents provided subsequently by the complainants to the CRP;
- ii) review of the ADB Management’s response, including related project documents subsequently requested by the CRP;
- iii) teleconference discussion between the CRP and five of the complainants who were joined for this purpose by an independent interpreter appointed by the CRP; and
- iv) discussions with the ADB project team at the ADB Headquarters.

18. Following these steps, and in consideration of the specific eligibility issue raised regarding ‘prior good faith efforts’, as discussed below, the CRP decided that it was not necessary to carry out a site visit in order to arrive at a robust determination of eligibility in respect of the complaint. The paragraphs below further elaborate the CRP’s eligibility determination.

19. In accordance with paragraph 179 of the AMP, the CRP must be satisfied that the complaint meets all of the eligibility criteria in the AMP, satisfies the scope, and does not fall within the exclusions set out in paragraph 142 and paragraphs 145-149 of the AMP. Paragraph 179 additionally states that 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) the noncompliance is serious enough to warrant a compliance review.

20. Paragraph 180 of the AMP sets out an additional matter that the CRP must address as part of the eligibility determination; namely whether the complainants made prior good faith efforts to resolve issues with the operations department concerned. If they did not make such efforts, the CRP will forward the complaint to the operations department concerned

21. Paragraph 180 of the AMP is not explicitly framed as an eligibility requirement. However, paragraph 196 of the AMP refers to ‘the ineligible’ complaints forwarded to operations departments because complainants did not make prior good faith efforts to solve issues with the operations department concerned. This makes it clear that paragraph 180 should be treated in effect as containing an additional eligibility requirement and that if upon review, the CRP determines that the factors set out in the first sentence of paragraph 180 are not present, the CRP will forward the ineligible complaint to the operations department concerned.

22. The CRP notes that complainants have made efforts to raise the issues in their complaint with CWRD. They have followed up their initial contacts with requests for updates on progress, including by means of email contact and visits to GRM. CWRD has maintained contact with the complainants by means of letters and in-person discussion with an ADB consultant in Georgia with whom the complainants can communicate without need for an interpreter. ADB has also obtained and translated key documents regarding the complainants’ properties and has begun the procurement process to appoint an independent valuer to provide a valuation of the complainants’ properties. A valuer has been identified and the CRP has been informed that the procurement process is well under way but the valuation itself has not yet been prepared. Consequently, the initial exchanges and the operations team’s follow-up to date have not yet reached a point where ADB and the complainants are able to discuss substantive resolution of the compensation issues raised in the complaint.

23. Notwithstanding the complainants’ contacts with CWRD over the period since August 2018, the CRP finds that it is premature at this stage for the CRP to conclude that the complainants made prior good faith efforts to resolve issues with the operations department. The CRP emphasizes however that the immediate next step in that process of good faith efforts depends in practice on ADB Management’s timely progress with the independent valuation process that it has initiated.

24. The CRP notes that the ADB Management’s response cites paragraph 151 of the AMP which begins *“The complaint must specify the following:...”* and includes the following reference in sub-paragraph (vii): *“a description of the complainants’ good faith efforts to address the problems first with the operations department concerned, and the results of these efforts”*. The CRP notes that the complainants did not include such a description within their complaint but simply state “we already tried, but without result” in Section E of the Accountability Mechanism complaint form. In light of the foregoing analysis and the CRP’s conclusion under paragraph 180 of the AMP, the CRP has not found it necessary to decide whether there has been an omission from the required content of the complaint or whether this can provide a basis for the CRP to determine under paragraph 179 that a complaint is not eligible for compliance review. Furthermore, in light of the CRP’s conclusion above under paragraph 180 of the AMP, there is no need for the CRP to consider the remaining eligibility criteria and exclusions explicitly set out in paragraph 179.

VI. CONCLUSION

25. Pursuant to paragraph 180 of the AMP, the CRP determines that the complaint is ineligible for compliance review. The CRP notes that complainants living in each of the four buildings at Marneuli Street that are addressed by the complaint as well as ADB Management have expressed their willingness to continue efforts to resolve the issues raised in the complaint. At the time of writing this report, those efforts are still very much alive. The CRP’s determination on eligibility should in no way be understood as a negative reflection on the complainants or the steps taken by them to address the issues raised in their complaint.

26. The CRP strongly encourages CWRD to continue constructive and consultative engagement with the complainants. The CRP further draws the attention of ADB Management to paragraphs 195 and 196 of the AMP, which set out the obligations of operations departments when complaints are forwarded to them because the complainants have not made prior good faith efforts to solve problems or issues with operations departments. These obligations include, among other things, tracking the process and results in resolving such complaints.

27. The CRP suggests that ADB Management update the CRP on a quarterly basis, or more frequently if appropriate, until issues raised by the complainants have been resolved. The CRP further requests that, at the end of the process, CWRD provide the CRP with a copy of the report that it is required to prepare under paragraph 196 of the AMP.

/S/Dingding Tang

Chair, Compliance Review Panel

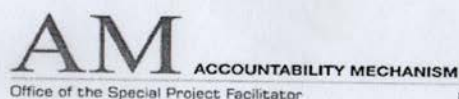
/S/Ajay Deshpande

Part-time Member, Compliance Review Panel

/S/Halina Ward

Part-time Member, Compliance Review Panel

Request for Compliance Review



Asian Development Bank (ADB), Accountability Mechanism, Complaint Form
(Add rows or pages, if needed)

A. Choice of function - problem solving or compliance review (Choose one below)

- ☐ **Special Project Facilitator** for problem solving (Assists people who are directly and materially harmed by specific problems caused, or is likely to be caused, by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned)
- ☒ **Compliance Review Panel** for compliance review (Investigates alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects, or is likely to affect, local people, as well as monitors the implementation of remedial action relates to the harm or likely harm caused by noncompliance)

B. Confidentiality

Do you want your identities to be kept confidential? ☐ Yes ☒ No

C. Complainants (Anonymous complaints will not be accepted. There must be at least two project-affected complainants.)

Name and designation (Mr., Ms., Mrs.)	Signature	Position/ Organization (If any)	Mailing Address	Telephone number (landline/mobile)	E-mail address
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

7.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
8.A	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
9.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
10.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
11.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
12.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
13.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
14.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
15.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
16.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
17.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
18.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Authorized Representative or Assistant (if any). (Information regarding the representatives, or persons assisting complainants in filing the complaint, will be disclosed, except when they are also complainants and they request confidentiality.)

Complainant represented	Name and designation (Mr., Ms., Mrs.)	Signature	Position/ Organization (If any)	Mailing Address	Telephone number (landline/mobile)	E-mail address

D. Project

Name	Rustavi-Tbilisi Highway
Location	0114.Tbilisi,Marneuli street
Brief description	Offered compensation is not responding to property, Actually we will be without our house, our home.

E. Complaint:

What direct and material harm has the ADB-assisted project caused, or will likely cause, to the complainants?

We already tried, but without any result

Have the complainants made prior efforts to solve the problem(s) and issue(s) with the ADB operations department including Resident Mission concerned?

✓ Yes. If YES, please provide the following: when, how, by whom, and with whom the efforts were made. Please describe any response the complainants may have received from or any actions taken by ADB. With their offered amount, we can't buy live times

Cheaper real estate to live inside. We can not buy the new home

☐ No

F. Optional Information

1. What is the complainants' desired outcome or remedy for the complaint? Quiet real and normal compensation in the same district to buy the new real, the new house.

2. Anything else you would like to add? As ADB, as well Georgian law of justice about expropriation is considering us, complainants conditions to make better and not in any case denied. Please take into consideration our requests as well.

Name of the person who completed this form: _____

Signature: _____

Date: _____

Please send the complaint, by mail, fax, e-mail, or hand delivery, or through any ADB Resident Mission, to the following:

Complaint Receiving Officer (CRO), Accountability Mechanism
 ADB Headquarters, 6 ADB Avenue, Mandaluyong City 1550, Philippines,
 Telephone number: +63-2-6324444 local 70309, Fax: +63-2-6362086,
 E-mail: amcro@adb.org

Location	0114.Tbilisi,Marneuli street
Brief description	Offered compensation is not responding to property, Actually we will be without our house, our home.

E. Complaint:

What direct and material harm has the ADB-assisted project caused, or will likely cause, to the complainants?

We already tried, but without any result

Have the complainants made prior efforts to solve the problem(s) and issue(s) with the ADB operations department including Resident Mission concerned?

✓ **Yes.** If YES, please provide the following: when, how, by whom, and with whom the efforts were made. Please describe any response the complainants may have received from or any actions taken by ADB. With their offered amount, we cannot buy live times

Cheaper real estate to live inside. We cannot buy the new home

☐ **No**

F. Optional Information

1. What is the complainants' desired outcome or remedy for the complaint? Quiet real and normal compensation in the same district to buy the new real, the new house.

2. Anything else you would like to add? As ADB, as well Georgian law of justice about expropriation is considering us, complainants conditions to make better and not in any case. Please take into consideration our requests as well.

Name of the person who completed this form: _____

Signature: _____

Date: 1409.2018.

Please send the complaint, by mail, fax, e-mail, or hand delivery, or through any ADB Resident Mission, to the following:

Complaint Receiving Officer (CRO), Accountability Mechanism
 ADB Headquarters, 6 ADB Avenue, Mandaluyong City 1550, Philippines,
 Telephone number: +63-2-6324444 local 70309, Fax: +63-2-6362086,
 E-mail: amcro@adb.org

To: Bank of Asia

From: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Statement

As you are notified – there is construction of Tbilisi-Rustavi highway in progress which has been conducted by the Municipal Development Fund of Georgia and financed by Bank of Asia. According to the current project of Highway, our property (houses) on Marneuli street are in the area of planned construction works and we have been offered a compensation in order to leave our houses, compensation that is below any price standard available for current location at given time. To be more specific we have been offered 40 GEL per square meter of the land and 649 GEL (which according to current exchange rate equals to 264 USD) for living space (housing).

According to current situation on the real estate market – price for 1 square meter of land in the same Fonichala District (near Marneuli street) costs minimum 40 USD and living space minimum 600 USD.

Also we have to underline that some of the houses are shared between few families, having there a permanent living space together with the children and elder people. So considering all above mentioned compensation offered at this stage is not even the mere of what is needed in order to obtain proper housing, not to leave our families homeless.

We request your esteem enterprise to pay an attention to this issue, allocate designated committee which will take a closer look at our situation and manage to find a solution acceptable for both parties, either issue for us a proper compensation (according to market prices) which will enable us to buy new housing or provide us with the different living space in accordance to the square of the land/house we possess at given moment.

Please pay your attention to the problem given above as otherwise we will be forced to take other measures, involve political parties, make large scale demonstrations and refuse to leave our property as we cannot leave our family homeless.

Sincerely

██████████

ADB Management's Response



Asian Development Bank

Memorandum

Central and West Asia Department
Office of the Director General

19 November 2018

To: Dingding Tang
Chair, Compliance Review Panel

Through: Wengai Zhang
Vice President (Operations 1)

From: Werner E. Liepach
Director General, CWRD

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

ASIAN DEVELOPMENT BANK
RECEIVED
19 NOV 2018
VICE-PRESIDENT (OPERATIONS)

Nov. 19, 2018
NOV 19 2018

1. The Compliance Review Panel (CRP) requested Management's response regarding the request for compliance review forwarded by the Complaint Receiving Officer (CRO) to the CRP on 11 October 2018 on the above subject (Attachment 1).
2. This complaint is the fourth complaint to the CRP and relates to the 6.8 km Tbilisi Rustavi Urban Road Link Section 2 subproject, which is financed under Sustainable Urban Transport Investment Program - Tranche 3 (Loan 3063), approved on 25 November 2013. The tranche is categorized as A for resettlement, B for environment and C for indigenous people.
3. The previous three complaints are being addressed under the Remedial Action Plan (RAP) approved by the ADB Board of Directors on 30 June 2017, which is currently under implementation. The fourth complaint is outside the area covered in the RAP and of a different nature.
4. This complaint pertains to 4 households in Marneuli Street, Tbilisi, for which expropriation rights were granted to the Municipal Development Fund of Georgia (MDF) by Tbilisi City Court on 11 May 2016 and 24 February 2017, following refusal of the owners to accept compensation offered in accordance with the Land Acquisition and Resettlement Plan (LARP). The Court upheld compensations as estimated by MDF following the methodology for computation of compensation rates set out in the LARP. MDF notified the complainants in writing of the placement of court upheld compensation amounts in deposit accounts in January and June 2017, and the properties in question are now formally state property. MDF has continued to negotiate with the complainants and has not resorted to forced eviction. Details of the case are provided in **Attachment 2**.
5. Paragraph 151 of the Accountability Mechanism Policy (2012) ("**AM Policy**") specifies that a complaint must specify "a description of the complainants' good faith efforts to address the problems first with the operations department concerned, and the result of such efforts." Paragraph 180 of the AM Policy specifies that as part of the eligibility determination, "the CRP will review and determine whether the complainants made prior good faith efforts to resolve issues with the operations department concerned. The CRP will forward the complaint to the operations department concerned if the complainants did not make such efforts."

6. The complainants first approached the concerned operations department (CWRD) with their complaint in a letter received by CWRD on 27 August 2018, after the complaint had been lodged with the CRO. ADB sent a response dated 11 September 2018, acknowledging the complaint and assuring them that ADB would discuss the case with MDF, examine the valuations undertaken in respect of the properties in question, advising that the investigation will require some time and that ADB would continue to keep them informed on progress of the investigation. Copies of these letters are provided in **Attachment 2**.

7. On 11 September 2018, ADB requested from MDF, all documents pertaining to the complainants' case, including valuations and minutes of grievance redress committee decisions, which were received by ADB on 17 September 2018. These documents are voluminous and ADB received English translations on 12 October 2018. Upon review of the documents, ADB is recruiting an independent valuator to assess if the compensation level granted to the complainants was appropriate following the LARP and in compliance with the Safeguard Policy Statement (2009). In the intervening period between ADB's assurance letter to the complainants of 11 September 2018, and ADB receiving the valuations and grievance redress committee decisions from MDF on 12 October 2018, unbeknownst to the operations department, the complainants lodged a request for compliance review with the CRO. On 19 October 2018, ADB issued a follow up letter to its 11 September 2018 notifying the complainants that ADB has commenced examination of the valuations undertaken in respect of the properties and will recruit an independent expert valuator to conduct a separate and independent valuation of the properties (**Attachment 2**).

8. As evidenced by the aforementioned correspondence and actions, good faith efforts are currently being made by the operations department to address this complaint, and such efforts cannot be deemed to be exhausted at this stage. The purpose of prior good faith efforts envisaged in the AM Policy, among other things, is to give operations departments the opportunity to solve problems, in joint efforts with all stakeholders, including complainants and project executing agencies, before they are elevated to the CRP. However, notwithstanding ADB's assurance letter of 11 September 2018, and unbeknownst to the operations department, the complainants submitted the complaint to the CRO which was received by the CRP on 11 October 2018.

9. In determining whether the complaint is eligible for compliance review under paragraphs 179 and 180 of the AM Policy, the CRP will make a determination on whether, in light of the above circumstances, the complainants made prior good faith efforts to resolve issues with the operations department concerned, and if the complainants did not make such efforts, the CRP will determine whether the complaint falls within the exclusion in paragraph 142(ii) of the AM Policy, and if so, the CRP will forward the complaint to the operations department concerned.

10. In addition to concerns on whether the complaint satisfies the eligibility test in paragraphs 179 and 180 of the AM Policy, there are also concerns whether the complainants' choice of function is appropriate. The complainants are concerned solely with valuation and compensation. In the letter submitted to CRO, the complainants stated: "We request your esteemed enterprise to pay an attention to this issue, allocate designated committee which will take a closer look at our situation and manage to find a solution acceptable for both parties, either issue for us a proper compensation (according to market prices) which will enable us to buy new housing or provide us with the different living space in accordance to the square of the land/house we possess at given moment." In section F of the complaints form, the complainants state that their desired outcome is fair compensation, in order to purchase new property. In this regard, details of ADB's compliance with ADB's Safeguards Policy Statement (SPS) are provided in **Attachment 3** and a

location map is provided in **Attachment 4**. Notwithstanding ADB's compliance with the SPS, ADB will, as a measure of good faith, extend additional assistance to facilitate resolution of the complaint by recruiting (and bearing the costs of) an independent expert valuator to conduct a separate and independent valuation of the properties. This assistance was already communicated in ADB's letter to the complainants dated 19 October 2018. This is the specific approach that the Office of the Special Project Facilitator has taken previously, in similar situations in Georgia, and could be expected to take in this case.

11. The ADB team will continue dialogue and open consultations with the complainants. Management stands ready to provide further clarification and materials to CRP upon request.

Attachments: 1. CRP Memo on the fourth complaint dated 18 October 2018
2. Marneuli Street Case History
3. Compliance with ADB's Safeguard Policy Statement
4. Location Map


cc: Anthony McDonald, Executive Director
Hong Wei, Deputy Director General, CWRD
Nessim J Ahmad, Deputy Director General, SDCC concurrently Chief Compliance Officer
Yong Ye, Director, CWUW
Nianshan Zhang, Advisor and Head, CWOD-PSG
Yesim Elhan-Kayalar, Country Director, Georgia Resident Mission



Memorandum

CRP2018DT061
18 October 2018

To: Wencai Zhang
Vice President (Operations 1)

From: Dingding Tang 
Chair, Compliance Review Panel and concurrently Head, Office of the
Compliance Review Panel

Subject: **GEO: MFF-Sustainable Urban Transport Investment Program Tranche 3
(Loan No. 3063)—Request for Management's Response**

1. The Complaint Receiving Officer forwarded to the Compliance Review Panel (CRP) on 11 October 2018 the attached request for compliance review on the above project.
2. Following paragraph 71 of the Operations Manual Section L1/OP on the Accountability Mechanism (AM), the CRP carried out an initial assessment and confirmed that the complaint falls within the mandate of the compliance review function.
3. As such, Management is requested a response by **19 November 2018** which should (i) provide substantive information that ADB has complied with the relevant ADB policies and procedures, including prior and ongoing efforts by ADB Management and the implementing agency to address the complainants' concerns; or (ii) acknowledge that there have been failures in ADB's compliance with its policies and procedures, and express its intention to take actions to ensure compliance to the extent possible.
4. The CRP has separately informed the Government of Georgia, through its Ministry of Finance, and the Executive Director of ADB representing Georgia about this complaint.

Attachment: as stated

cc: Anthony McDonald, Executive Director representing Georgia
Werner Liepach, Director General, Central and West Asia Department (CWRD)
Nianshan Zhang, Advisor and Head, Portfolio, Results, Safeguards and Gender Unit, CWRD



Attachment 2

History of complaint from residents of Marneuli Street.

The four properties in question were expropriated through the courts in Georgia in May 2016 following LARP implementation by the Municipal Development Fund of Georgia (MDF) in 2014/15. The expropriation procedures followed refusal of the APs to accept the proposed compensation offered by MDF, and confirmation of the amount offered by the grievance redress mechanism of the project. By court order, the compensation amounts have been placed in escrow accounts, but these payments have not been claimed by the complainants. Although MDF obtained the right to evict the residents by court order in 2017, MDF has not exercised this right and has continued to negotiate with the complainants.

It was not until 27 August 2018, via a letter received at Georgia Resident Mission, that the complainants first approached ADB's Operations Department with their complaint, in the form of a letter written in Georgian (Appendix A).

Following translation of the complaint letter into English, a response was sent by ADB to the complainants on 11 September 2018 (Appendix B), acknowledging receipt of the complaint and undertaking to investigate the case.

Information on the case was requested from MDF on 11 September 2018 and received, in Georgian, on 17 September 2018.

Documents supplied by MDF were sent for translation on 20 September 2018 and English versions were received on 12 October 2018.

Examination of the case indicates that the complaint is solely related to disputed compensation and, as such, the way forward to resolution will require independent expert valuation of the properties. ADB has initiated the procurement of specialist valuation services. To ensure independence as well as internationally recognized competence and expertise, it has been decided to recruit Colliers International Georgia via single source selection. It is anticipated that the recruitment will be completed by the end of November, and that the revaluations can be completed during December 2018. MDF will be advised on ADB's policy requirements based on the outcome of the valuations.

On 19 October ADB sent a follow-up letter to the complainants, informing them of the proposal to conduct an independent valuation of their properties (Appendix C).

On 9 November 2018 a representative of the complainants visited ADB Georgia Resident Mission, expressing concern about the length of time taken to address the complaint, and also concerned that the APs may face forced eviction. The representative was assured that the recruitment of independent valuer is in process and that the process may take a few weeks longer. He was also informed that MDF has assured ADB that no forced eviction will be exercised, and that ADB remains committed to ensuring that all the provisions of its safeguard policy are fully complied with in all projects that it finances.

2 Attachment 2

The following is a chronology of events as provided by Municipal Development Fund of Georgia (annexes refer to documents sent to ADB in Georgian – these are not attached but are available on request).

1. The Land Acquisition and Resettlement Action Plan (LARP) for Tbilisi-Rustavi highway construction was approved in 2014. The project affected real estate (buildings-structures, land plot, perennial plants etc.) was evaluated by independent licensed audit company "Athos" Ltd. (Please see the Annex 1: Evaluations for project affected real estate).
2. Verbal negotiations with Marneuli Street beneficiaries for real estate redemption has been in progress since December 2014.
3. On March 29th, October 8th and 15th of 2015 and on June 10th of 2016 the beneficiaries of Marneuli Street were notified once again about redemption of project affected real estate. This time the notifications were provided in writing (Please see the Annex 2: Official notifications).
4. On December 28th, 2015 the residents of Marneuli Street submitted the Statement to the Municipal Development Fund of Georgia (MDF) LEPL with regard to compensation amount increase. The Grievance Review Commission of MDF has not satisfied their claim (Please see the Annex 3: Minutes #11 dated 22.01.2016).
5. In 2015-2016 MDF commenced the procedures stipulated by the Law on dispossession for required public purposes. The referenced procedures were started in accordance with the Safeguard Policy Statement (SPS) of ADB and effective Georgian Legislation, and based on the LARP. Commencement of these procedures was caused due to the fact that achievement of agreement between beneficiaries and MDF on willful redemption of the property was not successful.
6. Associated documents were submitted to the Expropriation Right Granting Commission of the Ministry of Economy and Sustainable Development of Georgia, consisting of representatives of various Ministries and entities. The Commission had reviewed the issue of expropriation of property, owned by Marneuli street beneficiaries and considered expedient the process for deprivation of real estate for required public requirements to be commenced at the Court (Annex #4: Decree #1-1/557 dated December 31st of 2015; Decree #1-1/384 dated July 22nd, 2016)
7. On May 11th, 2016, Tbilisi City Court (Court Case (#3/1951-6) #330315216001278150) resolved the expropriation to be granted for real estates of Nodar Agitiani, Nana Kvavilashvili, Tsitsinatela Kvavilashvili, Emil Manukiani and Leri Manukiani, and on February 24th, 2017 (Court Case #3/1951-16) #330315216001534243) the similar award was granted to Davit Tsintsadze, Ketevan Tsinatsadze and Inga Maisuradze. As per the court award the expropriation case has been immediately delivered to an enforcement entity (Please see the Annex #5: Tbilisi City Court awards on expropriation).

8. All real estates that had been subjected to expropriation, were registered as the state owned in 2017 (Please see the Annexes: #6.1; #6.2; #6.3; #6.4 – Extracts from Public Register). It was the same year when according to the Safeguard Policy Statement (SPS) of ADB and effective Georgian Legislation, and based on the LARP, funds allocated for beneficiaries along with additional compensations were placed on special deposit account. Through the Letters dated January 9th, 2017 and June 16th, 2017, MDF notified the Beneficiaries in writing of the placement of compensations on deposit accounts (Please see the Annex #7: Notifications on placement of funds on deposit accounts).
9. The beneficiaries who had been subjected to expropriation, did not release the state owned real estate. As per the regulations stipulated by the Law, MDF started the new court processes pertaining to release of residential houses. By the end of 2017, Tbilisi City court had made the decision for expropriated real estate at Marneuli street to be released and to be delivered to the owner- the State (Please see the Annex #8: Enforcement sheets (docs) issued by the Court). At present stage the referenced subject has been submitted to the "National Bureau of Enforcement" of the Court aimed at its ensuring.

Appendix A of the Management's Response

Redacted by the CRP to protect the identities of the complainants

Attachment 2

Appendix B

11 September 2018

Residents of Marenuli Street
Rustavi Highway
Tbilisi, Georgia

Dear Residents,

Thank you for your letter received at ADB Georgia Resident Mission on 27 August 2018. We understand that you are not satisfied with the compensation offered to you for your properties, which are to be acquired under the Tbilisi to Rustavi Urban Road Link Project.

You have requested ADB to investigate on the valuation of your properties. As a first step, ADB will discuss this case with the Municipal Development Fund of Georgia (MDF) and examine the valuations undertaken in respect of your properties. This investigation will require some time and we thank you in advance for your patience. In order to keep you informed, an authorized representative from ADB will contact you on a regular basis to update you on the progress of the investigation. At first, it would be appreciated if you would nominate one representative and send the name and phone number by email to Mr. Michael Beauchamp of ADB (mbeauchamp@adb.org). Mr. Beauchamp will nominate a representative to be your telephone contact.

Rest assured that ADB requires full compliance with its Safeguards Policy Statement (SPS 2009) on all our projects.

Sincerely,

A blue ink signature of Yong Ye, Director, is written over the word 'Sincerely'.

Yong Ye
Director
Urban Development and Water Division
Central and West Asia Department

cc: Executive Director, Municipal Development Fund of Georgia
Country Director, Georgia Resident Mission
Residents of Marenuli Street: Emil Manukyan, Tsitsinatela Kvavilashvili, Lori Manukyan, Susana Khachaturov, Inga Manukyan, Irma Khachaturov, Nodar Avtayan, Zhora Khachaturov, Davit Tsintsadze, Vladimir Khachaturov, Nana Kvavilashvili, Davit Khachaturov, Inga Khachaturov, Sveta Karanyan, Ani Ghoghia, Tsintsadze Davit, Khachaturovi Valad

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8 Attachment 2

Appendix C

19 October 2018

Residents of Marneuli Street
Rustavi Highway
Tbilisi, Georgia

Dear Residents,

Further to your letter received at the ADB Georgia Resident Mission on 27 August 2018, and our reply on 11 September 2018, ADB would like to advise you that ADB has started its investigation into the valuation of your properties. The case has been discussed with the Municipal Development Fund of Georgia (MDF) and ADB has commenced examination of the valuations undertaken in respect of your properties.

Now ADB proposes to recruit an independent expert valuator to conduct a separate and independent valuation of your land plots. The process has been commenced and we will notify you once the recruitment process is complete. We expect the process to take approximately 3 weeks. Your kind cooperation to facilitate this re-valuation will be requested at that time.

Thank you for your continued patience.

Sincerely,

for 
Yong Ye
Director
Urban Development and Water Division
Central and West Asia Department

cc: Executive Director, Municipal Development Fund of Georgia
Country Director, Georgia Resident Mission
Residents of Marneuli Street: Emil Manukyan, Tsitsinatela Kvavilashvili, Leri Manukyan, Susana Khachaturov, Inga Manukyan, Irma Khachaturov, Nodar Avhyan, Zhora Khachaturov, Davit Tsintsadze, Vladimir Khachaturov, Nona Kvavilashvili, Davit Khachaturov, Inga Khachaturov, Sveta Karamyan, Ani Ghoghia, Tsintsadze Davit, Khachaturovi Valod

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**COMPLIANCE WITH ADB SAFEGUARDS POLICY STATEMENT (SPS)
AND OPERATION MANUAL SECTION F1**

A. Categorization

IR
<ul style="list-style-type: none"> - IR category: A - Draft land acquisition and resettlement plan (LARP) disclosure on 25 August 2013 on MDF website and on 10 September 2013 on ADB website. - Final LARPa (implementation ready) disclosure on 30 October 2014 on MDF website and on ADB website. - Final LARPB (implementation ready) disclosure on 6 October 2015 on MDF website and on 8 October 2015 on ADB website. <p><i>Note: Decision in July 2014 to split the LARP into LARPa and LARPB to allow more time for preparation of LARPB (including the Ponichala section, along apartment buildings).</i></p>

B. Compliance with ADB Social Safeguards Requirements and OM F1:

SPS Requirement (LARP)	Comment
1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.	Undertaken during project preparation and preparation of LARP in accordance with OM Section F1/OP.
2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.	<p>Refer to consultation schedule (below). Vulnerable people identified in socio-economic survey and measures specified in LARP.</p> <p>Note that 2 of the complainant households were identified as vulnerable (Nodar Agitiani is disabled and David Tsintsadze is poor).</p> <p>Grievance redress mechanism established by MDF. In accordance with OM Section F1/OP.</p> <p>July 2013 – Five meetings with local residents (8, 9, 10, 12, and 13 July 2013); One meeting with business owners and operators (18 July 2013). 17 August 2013 – meeting with affected individuals.</p> <p>Public consultations detailed and documented in LARP.</p>
3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods,	Land acquisition and resettlement framework (LARP) and LARP prepared in accordance with SPS and approved by Environment and Safeguards Division (SDES). LARP implemented.

2 Attachment 3

<p>(ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.</p>	<p>Apart from the 4 APs in Marenuli Street, only one other AP has compensation agreement outstanding – that is a pharmaceutical company, GMP Pharmaceuticals, which is only marginally affected and losing a small strip of land, but which has objected to the project on technical grounds.</p> <p>Apart from the above, compensation paid according to market value for land and replacement cost for structures and improvements. Compensation for disruption to livelihoods paid according to agreed and approved framework. All compensation verified by external monitor.</p>
<p>4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.</p>	<p>LARF and LARP prepared in accordance with SPS and approved by SDES. LARP implemented.</p> <p>Compensation is sufficient for equal or better housing. Relocation/transition allowances and supplementary allowances for transport provided. Assistance provided to physically displaced persons in locating suitable replacement housing. Compensation and assistance verified by external monitor.</p>
<p>5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.</p>	<p>LARF and LARP prepared in accordance with SPS and approved by SDES. Socio-economic survey conducted as part of pre-resettlement census of affected persons in order to establish baseline living standards. LARP implemented and verified by external monitor, who also confirmed post resettlement living standards and satisfaction of APs</p>
<p>6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p>	<p>EA implemented LARP in a transparent, consistent, and equitable manner. LARPs (draft and final) disclosed on MFD and ADB web sites, including compensation calculations and entitlements.</p>
<p>7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</p>	<p>LARP included persons without titles to land or any recognizable legal rights as eligible for resettlement assistance and compensation for loss of non-land assets.</p>
<p>8. Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.</p>	<p>LARP prepared, approved by SDES. LARP includes details of compensation entitlements, compensation amounts calculated by qualified experts, institutional arrangements, monitoring and reporting framework, budget, and implementation schedule.</p>

9. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	Draft LARP disclosed to affected persons (APs) prior to appraisal on 25 August 2013 by MDF and on 10 September 2013 by ADB. Final LARP disclosed on 30 October 2014 by MDF and ADB.
10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.	Resettlement conceived and executed as part of development project, and full costs of resettlement included in analysis of project's costs and benefits.
11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.	No physical or economic displacement occurred prior to payment of compensation, and supervision has been provided by ADB and by the External Monitor.
12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.	External Monitor mobilized – semi-annual Social Monitoring Reports (SMR) disclosed in 2016 and 2017

Location Map

Figure 3. Section 2 Part A and Part B

