



CAO ASSESSMENT REPORT

**Regarding Complaint in Relation to
Adjaristsqali Georgia LLC (AGL)
(IFC #33435, #37781, #601449 and MIGA #12315)**

July 2018

Office of the Compliance Advisor Ombudsman
for
International Finance Corporation
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org

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LIST OF ACRONYMS

ADB	Asian Development Bank
AGL	Adjaristsqali Georgia LLC
EBRD	European Bank for Reconstruction and Development
CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
OSPF	Office of the Special Project Facilitator
PCM	Project Complaint Mechanism

1. OVERVIEW

In February 2018, CAO received a complaint signed by 17 residents of the Rabati District of the Makhalakidzebi village, Shuakhevi Municipality in the Autonomous Republic of Adjara, Georgia. The Complainants claim that construction activities related to the Shuakhevi power plant have had a negative impact on their lives, causing an increase in risk of rockfalls and landslides, a decrease in groundwater levels, and negative impacts on the biodiversity of the Adjaristsqali river, including the disappearance of red-listed fish species. They further allege that AGL failed to properly address the geological and social risks linked to the project and to comply with an agreement entered into with the Government of Adjara and village residents in 2014 to provide compensation in case of damages caused by the construction.

CAO found the complaint eligible for further assessment in April 2018 and began an assessment of the issues raised in the complaint. During the assessment, the Complainants and the Company agreed to engage in a voluntary dispute resolution process facilitated by CAO. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1 The Project

According to IFC, the Adjaristsqali Georgia LLC project (“the Project”) involves the construction of a cascade of hydroelectric power plants in the Adjaristsqali region, Adjara, Georgia. The cascade was originally proposed to include three phases, namely the 185 megawatt (MW) Shuakhevi scheme, the 150MW Koromkheti scheme, and the 65MW Khertvisi scheme.

The Khertvisi scheme was not pursued by AGL due to significant economic and environmental risks and Koromkheti is in early stages of development under a separate InfraVentures project. Therefore only Shuakhevi is considered ‘the Project’ and is being developed by Adjaristsqali Georgia LLC (“AGL” or “the Company”) as a joint venture between India’s Tata Power, Norway’s Clean Energy Invest (40 percent each) and IFC (20 percent). IFC’s investment consists of an A loan of up to US\$70 million and straight equity of up to \$34 million (IFC project numbers 33435 and 37781). IFC also had an Advisory Services project to advise on AGL’s retrenchment strategy and associated implementation plans, including sustainable livelihood opportunities for the communities and workforce (IFC project number 601449).

In addition to IFC, MIGA is providing a \$63 million guarantee to Tata Power International Pte. Ltd. to cover its equity investment in the project (MIGA project number 12315).

2.2 The Complaint

The complaint to CAO was filed by 17 members of the community residing in the Rabati District of the Makhalakidzebi village, Shuakhevi Municipality, Adjara, Georgia (“the Complainants”). During the assessment, the Complainants’ representatives explained to CAO that five additional community members had intended to sign the complaint, but had not managed to do so due to personal reasons, and that the number of affected individuals represented through the complaint amounts to about 100.

The complaint alleges several real and anticipated negative impacts to the residents of Makhalakidzebi and the local environment as a result of AGL’s construction activities in developing the Shuakhevi hydropower plant. The Complainants claim that drilling operations

and explosions carried out for the Company's tunneling works have triggered geological processes which increased the frequency of landslides and rockfalls, threatening the lives and safety of community members. The Complainants also claim that the construction works resulted in the diversion of river waters, which allegedly caused a significant drop in groundwater flows in the region, leaving the Makhalakidzebi community with insufficient water for drinking and irrigation, with further impacts on harvest volumes. In the Complainants' views, the environmental and social impacts are so serious that peoples' lives and the survival of the Makhalakidzebi village are at risk.

In addition to filing a complaint to CAO, the Complainants submitted a complaint to the European Bank for Reconstruction and Development's (EBRD) Project Complaint Mechanism (PCM) and Asian Development Bank's Office of the Special Project Facilitator (OSPF), respectively. These institutions are co-financing the Shuakhevi hydropower project. Since the three complaints raise identical issues and relate to the same project, CAO, PCM and OSPF sought consent from the parties to cooperate with each other and with the parties in their respective processes. This is to ensure efficient use of time and resources and consistency of approaches, while respecting the independence of the different mechanisms.

3. ASSESSMENT SUMMARY

3.1 Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainants, gather information on the views of different stakeholders, and determine whether the Complainants and the IFC/MIGA Project Sponsor (AGL) (the "Parties") would like to pursue a dispute resolution process facilitated by CAO or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's/MIGA's performance (see Annex A for CAO's complaint handling process). As per its Operational Guidelines, CAO is not a legal enforcement mechanism or a substitute for court systems in host countries. CAO aims to address the underlying issues and concerns as expressed in the complaint and can offer its respective processes for addressing the complaint to the parties.

In this case, CAO's assessment of the complaint included:

- desk review of project documentation;
- desk review of all reports and documentation made available by PCM and OSPF, with consent from the Complainants and in an attempt to mitigate burdening the Parties with unnecessary field trips that would delay finalization of CAO's assessment;
- phone calls with the Complainants' representatives;
- phone calls with the Company's representatives;
- meetings and phone calls with IFC and MIGA project teams;
- meetings and phone calls with the PCM team; and
- meetings and phone calls with the OSPF team.

3.2 Summary of views

This section summarizes the perspectives held by the parties with regard to the complaint issues as reported to CAO during the assessment phase, either through direct conversations between CAO and the parties, or as shared with CAO by PCM and OSPF, with the consent of the parties.

3.2.1. Complainants' perspectives

- Safety concerns in relation to increased landslides and other geological risks: The Complainants indicated that the most concerning issue for them is the perceived imminent threat to the safety of their community posed by the chance of hazardous geological events in the Makhalakidzeebi village. The Complainants believe that the drilling operations and numerous explosions carried out by AGL during the tunneling works have created the geological conditions for landslides and rockfalls and for a large accumulation of water to form an artificial lake underneath the Makhalakidzeebi village. The Complainants claim that they have voiced their concerns to the Company several times, but that the Company has been unresponsive.
- Impacts on groundwater levels and damages to houses: The Complainants claim that AGL's construction works have had considerable impacts on the livelihoods of the Makhalakidzeebi residents, and have caused damage to their houses and other properties. According to the Complainants, the Company's tunneling operations have disrupted the village groundwater spring flow, which constitutes the primary water supply source for the community, leaving about 100 people from 22 households in the Rabati District without enough water to support their basic needs. The reduced availability of water for irrigation is believed to have also caused a reduction in harvest volumes and quality, with serious consequences for the subsistence of villagers. The Complainants further claim that the vibrations and rockfalls caused by AGL's blasting and drilling activities have damaged several private houses and shelters in the village.
- Company's failure to assess the environmental and social risks associated with the projects and to compensate the community for the harms suffered: The Complainants claim that they have not been compensated for any of the harms caused by the Project, including loss of potable water and harvest, and damage to their houses. They report that in 2014, the Government of Adjara, AGL, and the Makhalakidzeebi village entered into an agreement¹ to regulate their respective obligations with regard to the implementation of the Project. The Government of Adjara committed to provide resettlement to households that are destroyed or damaged as a result of a natural disaster (Article 1 of the agreement). The Company committed to several actions, including to remediate any damages occurred to private property and to the water supply attributable to the Project, and to survey the water supply in the village (Article 2 of the agreement). The Complainants indicated to CAO that the regional government offered them some compensation, but that they refused it as they deemed the amount to be disproportionately low to the harms they had suffered.
- Impacts on the biodiversity of the Adjaristsqali river: The Complainants claim that the negative impacts of the Project extend to the biodiversity of the Adjaristsqali river. Several fish species, including an endangered one, have allegedly disappeared from the river since the Company began the construction works of the Shuakhevi plant.

3.2.2. Company's perspective

- Responsibility for the damages incurred by the village residents: AGL questions the claim that the negative impacts described by the Complainants were caused by the Company's operations. AGL explained that in 2014, before active construction commenced on the Project, an inspection was completed in relation to the houses located along the tunnel alignment. The inspection was conducted by a joint inspection committee comprising of local government officials, representatives of the respective communities and independent geological experts. In 2016, after completion of the tunnel construction works, the joint inspection committee evaluated the damages

¹ Agreement between Government of Adjara A.R., Adjaristsqali Georgia LLC, and Residents of Makhalakidzeebi Village (May 1, 2014).

sustained by the village houses and concluded that they were due to natural causes, and were not directly linked to AGL's operations. However, AGL as part of its CSR initiatives, provided support to the local government by offering to contribute towards the resettlement program initiated by the local municipal Mayor office.

- Impacts on groundwater levels in the Makhalakidzeebi village: AGL indicated that from 2014 to date, it has regularly monitored the spring water flow in the Makhalakidzeebi village and has been sharing the monitoring reports with Georgia's Ministry of Environment on a monthly basis. According to AGL, the experts who carried out the water monitoring could not find any causal link between AGL's activities and the decrease in groundwater levels in the village. However, AGL explained that it acknowledges the water scarcity problem affecting the village and, in response, has initiated and implemented two water supply rehabilitation projects in partnership with the Mayor's office for the benefit of the community.
- AGL's engagement with local stakeholders and corporate social responsibility: AGL claims to have started its engagement with the local community in the early stages of project development and to have responded in a timely manner to all the grievances submitted to the company since then. AGL indicated that it has held over 30 meetings with the Makhalakidzeebi community to provide information related to project implementation and impacts. Furthermore, in 2013, it established a public information center and a company-based grievance mechanism, through which it received and addressed over 30 complaints from the local community concerning house deformation, groundwater loss, land acquisition and employment issues. AGL stated that it is committed to funding social projects to support the development of the Adjara region through social responsibility programs delivered in partnership with the Government of Georgia. AGL further indicated that it provided GEL 5000 to the local Government to support a resettlement program for households impacted by landslides in the Makhalakidzeebi village.
- Impacts on the biodiversity of the Adjaristsqali river: In relation to the Complainants' claim that the project has had a negative impact on the biodiversity of the Adjaristsqali river, the Company argued that the claim is irrelevant, since the community is located near the Chirukhistsqali river. Furthermore, the Company explained to CAO that it regularly monitors impacts on the biodiversity of all three local rivers, including the Adjaristsqali, and that the data does not show any changes or concerns. The Company further explained that since they have not reached commercial operations yet, the question of impacts on the river biodiversity due to water diversion is irrelevant and baseless.

4. NEXT STEPS

When CAO began its assessment process, it became aware that the Complainants and Company had already agreed to a dialogue process as part of their engagement with the PCM. CAO also became aware of OSPF's decision to embark on an investigative process, as part of its problem solving function. Given that it would be undesirable to have parallel dispute resolution processes, the Complainants and Company indicated that they would prefer CAO and PCM to work toward one dispute resolution process. It was also noted by the Company and Complainants that it would be ideal if CAO, PCM, and OSPF can coordinate their activities as far as possible. To this end, CAO, PCM and OSPF are liaising with each other to determine the best way forward. Given the Parties' decision to enter into a dialogue process, this complaint will be dealt with by CAO's Dispute Resolution function.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function or whether the case should be referred to CAO's Compliance function for a review of IFC/MIGA environmental and social performance.

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint.

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).

Step 3: **CAO assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based on, or initiated by, a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement, or other mutually agreed and appropriate goals. The main objective of these types of problem-solving approaches is to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties involved.³

OR

Compliance Appraisal/Investigation: If the parties opt for a compliance process, CAO will initiate an appraisal of IFC's or MIGA's environmental and social due diligence of the project to determine whether a compliance investigation is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO will conduct an investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.