Asian Development Bank Accountability Mechanism
Compliance Review Panel

TERMS OF REFERENCE OF COMPLIANCE REVIEW

Compliance Review Panel Request No. 2021/1
on the
North–South Corridor (Kvesheti–Kobi) Road Project in Georgia
(Asian Development Bank Loan 3803)

5 May 2021

This document is being disclosed to the public in accordance with ADB’s Access to Information Policy.
TERMS OF REFERENCE OF COMPLIANCE REVIEW

I. INTRODUCTION

1. Following the Board of Directors (Board) decision on 21 April 2021 to authorize compliance review in respect of CRP Request No. 2021/1, the Compliance Review Panel (CRP) has prepared these Terms of Reference (TOR) for clearance by the Board Compliance Review Committee (BCRC) in accordance with para. 183 of the AMP. CRP Request No. 2021/1 was filed on 6 January 2021 (Complaint) under Loan 3803-GEO: North–South Corridor (Kvesheti–Kobi) Road Project (project). The Complaint is attached as Appendix 1. Following clearance by BCRC, the TOR will be provided to the Board, with a copy to ADB Management, and thereafter posted on CRP website, within 10 working days from receipt of the Board’s authorization of the compliance review.

2. On 10 March 2021, the CRP determined that the Complaint was eligible and recommended to the Board that it authorize a compliance review of the project. The Board considered the CRP’s report on eligibility in a full Board meeting and authorized a compliance review on 21 April 2021.

3. In accordance with para. 183 of the Accountability Mechanism Policy (AMP) read in conjunction with para. 76 of Operations Manual (OM) Section L1/Operating Procedures, this TOR sets out below the scope, methodology, estimated review time frame and budget for the compliance review, as well as the assignment of CRP members to the compliance review:

II. THE REQUEST FOR COMPLIANCE REVIEW

4. Brief particulars of the complaint and the project are summarized below:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Loan 3803-GEO: North–South Corridor (Kvesheti–Kobi) Road Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>Georgia</td>
</tr>
<tr>
<td>Borrower</td>
<td>Georgia</td>
</tr>
<tr>
<td>Project approval date</td>
<td>01 August 2019</td>
</tr>
<tr>
<td>Project closing date</td>
<td>31 December 2026</td>
</tr>
<tr>
<td>Requesting parties</td>
<td>Complainants, who requested non-disclosure of their identities, are represented by Manana Kochladze and Mariam Devidze, both from Green Alternative (an NGO based in Tbilisi).</td>
</tr>
<tr>
<td>Complaint issues</td>
<td>The complaint raised broad issues that relate to questions of ADB’s compliance with its policies and indicated probable harm to affected persons in the valley as follows:</td>
</tr>
<tr>
<td>ADB operations department responsible</td>
<td>Central and West Asia Department (CWRD)</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Project safeguards categorization</td>
<td>Category A for environmental impact</td>
</tr>
<tr>
<td></td>
<td>Category A for resettlement impact</td>
</tr>
<tr>
<td></td>
<td>Category C for indigenous peoples’ impact</td>
</tr>
</tbody>
</table>

**Project description**

The project includes the following outputs: (i) the construction of a road which has about 23 km of climate-resilient bypass road between Kvesheti and Kobi (which is a portion of the North–South Corridor which connects Tbilisi to the Mtskheta–Mtianeti region in the north and to the KvemoKartli region in the south), and about 5 km of climate-resilient all-weather access roads to roadside towns and villages; (ii) the establishment of a Khada Valley visitor center; and (iii) capacity-building of the Roads Department of Georgia on project and contract management. The total project cost is $558,600 million with a $415 million loan from ADB’s ordinary capital resources; a $60 million loan from the European Bank for Reconstruction and Development (EBRD), not administered by ADB; and $83,600 as government counterpart funding. The Borrower is Georgia; with the Ministry of Regional Development and Infrastructure (MRDI) as project executing agency and the Roads Department as implementing agency. In CWRD, the Georgia Resident Mission is responsible for ADB’s oversight of the project with support provided by the Transport and Communications Division (CWTC) at the ADB Headquarters.
### Project status

As of April 2021, the ADB project team informed the CRP that the following activities had taken place, or were under way:

1. commencement of permanent works in October 2020 with the excavation of 890m of the emergency tunnel in Kobi;
2. arrival in Georgia of the tunnel boring machine for the main tunnel that is being transported to the project site;
3. establishment of 3 labor camps (ongoing) and 2 batching plants (ongoing);
4. works on 3 temporary access roads in Lot 2;
5. acquisition of 83% of land plots (i.e., 243 of a total of 293); and
6. preparation of development of a Khada Valley Masterplan which will be the basis for the design of activities and interventions relating to the establishment of the Khada Valley visitor center.

### CRP Team

CRP member Ajay Deshpande will be the Lead Reviewer for this compliance review, with assistance from Halina Ward, CRP member, and Elisea Gozun, Chair, CRP. The CRP team will be supported by the Office of the Compliance Review Panel (OCRP).

### Contact Person

Elisea Gozun  
Chair, CRP, concurrently, Head, OCRP  
Email: crp@adb.org

### III. SCOPE OF THE COMPLIANCE REVIEW

5. In accordance with paras. 183-187 of the AMP and paras. 76 to 80 of OM Section L1/OP, the compliance review will investigate alleged non-compliance as set forth in the complaint by ADB of its operational policies and procedures in the course of the formulation, processing, and implementation of the project that directly, materially and adversely harm or will likely harm project-affected persons. In accordance with para. 199 of the AMP, the scope of this TOR will be limited to the specific complaint. It will not investigate and make findings on the Borrower’s compliance and will exclude the items set forth in paras. 142 and 148 of the AMP. The CRP’s compliance review and its subsequent compliance report will take account of the status and outcomes of any actions taken by ADB Management to resolve complainants’ issues in the period following the complaint. After carrying out a compliance review, the CRP will prepare its draft report and seek comments from the complainants, Management, and the Borrower. Finally, the CRP will submit its final report to the Board, through BCRC, including its findings.

6. Based on the CRP’s findings in its eligibility review, the CRP will investigate ADB’s compliance with its operational policies and procedures in the following areas: (i) EIA study area and project components (para. 36 of the eligibility report); (ii) air, noise, and vibration impacts (para. 44); (iii) design and deferment of the environmental management plan (para. 51); (iv) physical cultural resources (paras. 65-66); (v) socio-economic impacts and project benefits (para. 82); (vi) gender (para. 94); (vi) involuntary resettlement (para. 108); and (vii) access to information (para. 121). Compliance will be assessed against the following
operational policies and procedures that were in effect at the time of Board approval of the loan regarding project formulation, processing, and implementation:

i. Safeguard Policy Statement (2009)


iii. OM Section F1 (Safeguard Policy Statement) issued on 1 October 2013;

iv. OM Section C2 (Gender and Development in ADB Operations) issued on 06 December 2010;

v. OM Section C3 (Incorporation of Social Dimensions into ADB Operations) issued on 06 December 2010; and


IV. CONDUCT OF COMPLIANCE REVIEW AND METHODOLOGY

7. The compliance review is likely to include the following:

i. review of relevant project files and related documents;

ii. project site visits with prior consent of the Government of Georgia;

iii. consultation meetings, including interviews, with:

- ADB Management, staff and relevant consultants;
- complainants, with or without their representative/s;
- other project affected persons;
- the Borrower, including its executing and implementing agencies and relevant consultants and contractors, as necessary;
- officials from other relevant government agencies, as necessary;
- relevant NGOs and civil society organizations, as necessary; and
- the Independent Project Accountability Mechanism of EBRD which is also conducting compliance review of the project, as appropriate.

iv. engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work;

v. coordination with EBRD to explore opportunities for collaboration in the conduct of the compliance reviews of both IAM; and

vi. any other review or investigatory methods that the CRP consider appropriate in carrying out its work.

8. The project site visit(s) is needed for the following reasons:
i. to hold discussions with complainants and other affected persons and stakeholders in the project area, particularly those who would have difficulty engaging remotely with the CRP;

ii. to have a first-hand observation and measurement of the project’s noise and vibration impacts and to understand air quality standards and values, especially in the absence of the baseline study in the project area;

iii. to understand the preparation of topic- and site-specific environmental management plans (TSEMPs/SSEMPs) by contractors and scope for participation of affected persons in the process;

iv. to visit the project area in general, more particularly the access roads, dump sites, plantation areas, spoil transportation routes, asphalt plant, borrow pits, among others;

v. to meet with Georgian technical experts in fields relevant to the compliance review, such as physical cultural resources (PCR), environment and land/property law;

vi. to validate and assess the implementation of planned activities relating to PCR;

vii. to understand the preparatory activities relating to the establishment of the Khada Valley visitor center, particularly on how it would strengthen the delivery of socio-economic benefits of the project to project-affected persons, especially women;

viii. to understand better the project’s location in relation to the existing road and tourist facilities and development in Gudauri;

ix. to ascertain the project’s impact on livelihood and appropriateness of income and livelihood restoration program;

x. to better understand the land acquisition and registration process and its impacts on the APs; and

xi. to engage with relevant project stakeholders and to conduct visual observations to determine whether any or all issues raised by the complainants and within the scope of the compliance review have been resolved as a result of subsequent actions by ADB Management or others.

9. Actual site observation and measurements, meetings with project contractors and onsite consultants, and face-to-face interviews with complainants and other project affected persons will be used to gather information during the field visit.

V. TIMEFRAME

10. The CRP plans to complete the compliance review process for this project within 12 months from clearance of this TOR by the BCRC. Below is the estimated timeframe of the
review. Time frame will be flexible especially due to uncertainties relating to the COVID-19 pandemic.

<table>
<thead>
<tr>
<th>AMP Step</th>
<th>Activity</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td><strong>Conducting compliance review</strong></td>
<td>May 2021 to May 2022 (Timing of a site visit will depend on the pandemic situation in Georgia and CRP/OCRP countries of residence and ADB policy on international travel. Site visit is tentatively planned in October 2021, or in last week of March 2022. Note: The project site and surrounding communities are not meaningfully accessible in winter for purposes of a compliance review.)</td>
</tr>
<tr>
<td>5</td>
<td><strong>Compliance Review Panel's draft report.</strong> CRP issues its draft report with findings to the Management, the Borrower, and the complainants for comments. CRP also shares the draft compliance review report with BCRC for their review. (Comments/responses to CRP draft report are expected by 03 August 2022.)</td>
<td>01 June 2022 (comment period is 45 working days)</td>
</tr>
<tr>
<td>6</td>
<td><strong>CRP Final Report.</strong> After considering the Management's, Borrower's and complainants' comments, CRP finalizes its report. Each party's comments are considered by the CRP but only CRP's final view is reflected in the final compliance review report. CRP then submits the Final Report to the Board through BCRC, including the comments from the complainants, the Borrower, and Management; and a matrix prepared by the CRP summarizing how it has responded to such comments.</td>
<td>23 August 2022 (within 14 working days from receipt of responses)</td>
</tr>
</tbody>
</table>

11. This timeline does not account for any additional time required for translation; requested extensions for filing of responses; unforeseen COVID-19 related restrictions; or other significant local political events that may delay the site visit(s). If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC’s clearance of the revised timeframe.
VI. BUDGET FOR THE COMPLIANCE REVIEW

12. Below is the proposed tentative budget for the compliance review. The budget and the need for consultants will be reviewed and adjusted, as needed, if deemed essential during the compliance review.

<table>
<thead>
<tr>
<th>Budget Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Travel (assuming one site visit)</td>
<td>$65,500</td>
</tr>
<tr>
<td>Professional Fees of CRP part-time members</td>
<td>$310,000</td>
</tr>
<tr>
<td>Consultants</td>
<td>$68,500</td>
</tr>
<tr>
<td>Administrative Costs (Translation, Interpretation, Representation, &amp; Courier services)</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$459,000</strong></td>
</tr>
</tbody>
</table>

Elisea Gozun  
Chair, Compliance Review Panel

Ajay Deshpande  
Member, Compliance Review Panel

Halina Ward  
Member, Compliance Review Panel

05 May 2021
Request for Compliance Review

Dear officer,

We would like to ask you to start the compliance review process, in order to ensure that the 23 kilometer Kvesheti-Kobi road project, a new section of the North-South Corridor, would be in compliance with the ADB’s environmental and social standards and minimize the impacts of the project, that is on the early stage of construction.

The project causes implicit danger to the unique valley, well known as the valley of 60 towers, without proper safeguarding and mitigating impacts on cultural heritage and landscape, people’s economic and social life, not bringing any traceable benefits for local communities.

**Destruction of the Khada Valley and incomplete alternatives**

Local communities have been vocal when asking the state Roads Department to find out the ways that would avoid the destruction of the Khada valley, its landscape and cultural heritage, that directly threatens the livelihood of the people. We have been asking that the highway avoids the valley and go alternatively through the neighboring valley (with almost no population and cultural heritage sites), or design other alternatives. That was explicitly stated during the public hearings in spring 2019, however, the project proponent never provides clear arguments for the final selection road route, including the...
provision of alternatives. Opposing the claim that the major selection criteria for the alternatives were the geo-engineering assessment, neither the ESIA, nor any other documents published later, do not contain the full pledge analysis of the alternatives and reasons for their rejection, including the essential constructible alternative (a single tunnel from Kvesheti to Kobi, estimated length 15.5 km, versus 9 km tunnel proposed in the project), as well as “No-project” alternative essentially not considered and discarded outright. Meanwhile, we heard numerous concerns regarding geological and seismological safety from the local community members and experts during the consultation period.

Therefore, we consider that it’s important to ensure that all alternatives are properly studied and disclosed to the public. Also the project documentation does not specify all necessary details, including the detailed route, so that the project implementation should be on hold while all the mitigation and safeguard measures would not be in place.

Impact on livelihood and local benefits

The project claimed that it will bring prosperity to the region and according to the project documentation, one of the major beneficiaries is the local population. It is expected that the incomes of the local population will increase, as the project will make it possible to use the local road and the newly established Khada Valley Visitor Centre during all seasons. However, in general, for the local benefits from 538 mln USD projects benefits for locals are more than modest. The project even not clearly addresses the need to ensure the internal four season road within the Valley that would be functional and easily accessible for villagers, while a new highway may even prevent accessibility of the people towards their own lands.

According to the project and follow up communications, “the EIA considered all types of Project-related impacts during construction and operation (noise, vibration, air quality, biodiversity...) and their relevant functional boundaries. As set out in the EIA, air quality and noise modelling established that traffic utilizing the road would not cause significant noise and air pollution above national or international standards.”

However, the lack of proper baseline studies for noise and air pollution and considering the impacts during the exploitation phase presented by ESIA does not bring any confidence. e.g. despite the claims that IFC standards for air quality would be applied, in baseline study the air pollution monitoring was done in line with Georgian standards, and only for very few sites. Vibration was not also measured in the valley, instead of identifying and mitigating risks of the vibration in Khada, EIA states: “At this point, it is difficult to accurately calculate the extent to which the vibration exceeds the allowable limit.” Air quality management and Noise pollution prevention action plans have been transferred as the obligations to the project constructor. It raises questions, especially on the background of the non-existence of proper legislation on noise pollution. Therefore, during the construction and later exploitation phase, for some communities the noise and air pollution level may be higher than WHO given standards. This would definitely deteriorate the livelihood of the locals.

The ESIA only addresses the needs and impacts of people directly affected by the project in some villages (Tskere, Kobi, Kvesheti, Arakhveti, Zakatkari, Beniani, Begoni, Sviana, Rostiani and Mugure) of the Khada Valley; it does not address the wide array problems (pollution, noise, intensification of traffic flows, etc.) that all of the project-affected communities will face, including those of villages not listed here (see below). Furthermore, the report does not assess the socio-economic and gender impact of the project on the communities within the project area during construction and exploitation, including the impact of the workforce. The study also poorly addresses the direct impact of land acquisition on project-affected
It should be noted that several of villages in Khada Valley are not considered ‘affected’ in the project documents, although there are plans for additional infrastructure that impacts those villages. The response from the ADB and EBRD confirms that the project documentation does not include the environmental and social impacts of these activities or risk reduction plans for the road of Gudauri. “The existing track from Zakatkari to Gudauri will be temporarily improved during construction to enable access to spoil disposal sites and for other construction purposes subject to all necessary EMP requirements. Specific method statements will be prepared by the works contractors for all temporary roads, which will then be reviewed and approved by the Construction Supervision Consultant and RD before commencement of works. As indicated in the EIA (Section B.5.4) and during earlier consultations, the existing track to Gudauri is envisaged to be made into a permanent road in the future. Prior to that, the potential social and environmental impacts associated with the road will be studied further and additional consultations will be held with relevant stakeholders. The same approach will be followed for the proposed visitor center. Thereafter, the EIA and LARPs for the road section will be updated accordingly with property valuations that reflect current market value for land and replacement cost of non-land assets.” Therefore, it looks like that while Gudauri road is considered to be permanent, it is not considered as a part of the project and all activities are postponed for an undefined future.

ESIA claims that local households’ income would increase through the development of the touristic opportunities and local employment opportunities. However, the amount of local workforce that would be obligatory for the company is not specified.

In addition, the local touristic companies express their concerns as they consider that the new road will reduce the touristic opportunities within the valley due to increased noise, pollution and other construction and exploitation risks. The touristic companies never have been part of the project review, that comes clear from their statements.

Besides, when asked about long term development of the Khada valley, surprisingly it comes out that only now project sponsor, the Ministry of the Regional Development and Infrastructure, “requested ADB’s assistance to help develop a plan for sustainable land-use in the Project area, which will be prepared in coordination with all relevant stakeholders. Specific attention will be paid to preserve nature based and cultural heritage values, and to improve women’s access to social services and economic opportunities. The findings of this plan will also determine the concept of tourism development and the potential visitor center development, with the aim of maximizing benefits for local community members and supporting sustainable tourism value”\(^1\). How in that case the project claims that it will bring increased incomes from tourism when even the concept was not developed? How would the project respond if the newly developed sustainable land use plan will require certain changes in highway design?

All above mentioned are concerns of the local community members, alongside with the fact that the project does not address any aspect of the social-economic problems that Khada valley communities are experiencing, including absence of kindergarten, school, ambulatory and etc. Investing around half a billion USD and not ensuring even 1% for local communities’ livelihood improvement is an absolutely unacceptable practice.
The lands compensation process in public registry is still problematic, while there is a lack of information about the rights of the people (including existence of the project grievance mechanism, IFI’s accountability mechanisms and etc.) that are affected in different ways - loss of the lands, potential damages of houses during the construction work, air and noise pollution, geological safety and etc. All those issues still are the subject of the concerns for locals. Despite the assurances from EBRD and ADB that the land compensation process goes in line with their own standards, on the ground people are forced to fight to protect their rights. One of the clear examples is the property valuation. The prices for 1 sq.m raised from 5,60 GEL (1,80 USD 2019) to 16-22 GEL (5-7 USD 2020), however still the proposed price was not negotiated with owners.

Problems of project design and impact on cultural heritage

The quality analysis of ESIA, done by the independent expert, confirms our concerns regarding the project’s impact on nature and livelihood.

The EIA clearly “postpones” numerous critical decisions from the EIA stage to the construction stage and therefore it does not get under the proper approval by environmental decision-making statutory authority. That includes issues such as the road from Gudauri, soil disposal, asphalt plants, that left to

1 Extract from EBRD, ADB consolidated answer from 25.09.2020
construction company remits. In numerous cases, the ESIA defines some activities as recommendations, rather than mandatory requirements. The issue of the disposal of 2 mln cubic meter soil is one of the most important issues for our safety, and while the project promoter starts to work, there is no clear answer how it plans to address this very particular issue. The numerous proposals we occasionally hear from the project company on allocation of the disposal on slopes, even more raises our concerns.

The project ESIA describes the cultural heritage that may be severely impacted but not mitigates it. The analysis and measures taken for cultural heritage protection raise lots of questions. E.g. ESIA claims that all cultural heritage was avoided during the selection of the route, but does not explain how it would do that. e.g. it claims that Begoni tower will not be impacted as it is already ruined. The lack of the proper assessment that has been well proved by the follow up process, developed during the pre-construction phase.²

The latest acknowledgements from the ADB side, states that based on the concerns of local communities, as well as Green Alternative, in order to ensure cultural heritage protection all measures have been undertaken, including feasibility study, identification of the cultural heritage, consultations and so on. Based on it, six residual cultural heritage sites are located within 50m of the project road’s right of way and for these sites and some other sensitive areas mitigation measures have been developed. However, the same time from the letter becomes clear that there will be prepared two management plan; The first one a Cultural Heritage Management Plan (CHMP) that should be developed by the project works contractor, and second a Cultural Heritage General Action Plan (CHGAP) will be developed by Georgia National Agency for Cultural Heritage Preservation with support of international experts. The moves are welcomed, but as the project promoter already started to do work, there is a danger that in some cases mitigation activities will be developed very late, and/or would be not possible at all to reroute the project if needed. Therefore, it is important to ensure the transparency of the process, publicly declare the composition of the working group, Terms of Reference, organise the open discussions around the Action Plans through involvement of different stakeholder groups (NGOs, experts etc).

It’s also important to notice, that the major restrictive factor for the alternatives were the mountainous terrain followed with geological instability and climate fragility, however, in the project EIA for construction of “climate resilient road” that claimed to represent the “adaptation” measures, fails to address how it responds to the increased extreme weather events, the landslides, mudflows, rockfalls and avalanches, that will also affect the newly designed road. The ESIA document also does not address the question, whether various seismic processes will be activated due to the project construction and exploitation process or not.

The quality of ESIA

The analysis of ESIA, which forms the basis for environmental and construction permits under national legislation and of the ADB ESIA, shows that its quality is extremely poor. It does not contain important pieces of information needed for proper understanding of the project impacts that leads towards poor mitigation results. Along with a deficiency of baseline studies, ESIA and its related publicly available materials do not contain sufficient justification of the project, including proper cost-benefit analysis that is required by Georgian Environmental Assessment Code. Even mitigation measures and additional

² Uncertainties with permitting on the National level is described in the publication.
infrastructure due to the project implementation (for example, allocation of Russia-Armenia gas pipelines) are not properly budgeted.

Correspondence with ADB staff and project

Please find attached correspondence

GA letters and responses to ADB

Letter to Director General Mr. Werner Liepach CC: Deputy Director General Mr. Nianshan Zhang
Central and West Asia Department Asian Development Bank, 4 September 2020

Letter to Director General Mr. Werner Liepach CC: Deputy Director General Mr. Nianshan Zhang
Central and West Asia Department Asian Development Bank, September 6, 2019

Letter to ADB local office, March 31, 2020

Letters from local citizens

- Letter from local citizens August 1, 2019, sent to project leader Mr. Kamel Bouhamid, submitted also to ADB accountability mechanism,
- November 18, 2019, to Mr. Werner E. Liepach; Mr. Jesper Klindt Petersen; Mr. Dong Soo Pyo; Numerous letter and communication were held between local communities and project unit both in Khada valley as well as in Tbilisi

Additional information

Brief for ADB AGM 2019, Green Alternative

Experts Opinion on Kvesheti Kobi Road 2019

Report on Kvesheti-Kobi 2020, Green Alternative

Petition,

ESIA quality analysis, M.Gvilava, Georgian language

What we ask:

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, and what should be relevant measures to address them.

Please, protect confidentiality of the local community 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 social & environmental programs expert, Mrs. Mariam Devidze. (see annex 1).