

Nenskra HPP

Complaint SG/E/2018/32

Georgia

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

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Complainant: CEE Bankwatch Network and Green Alternative

Promotor: JSC Nenskra Hydro

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Management Committee

Secretary General

Inspector General

EIB services concerned

ABOUT EIB-CM

The European Investment Bank Group Complaints Mechanism is a tool enabling resolution of disputes in case any member of the public feels that the European Investment Bank and/or the European Investment Fund has done something wrong, i.e. if the European Investment Bank Group has committed an act of maladministration.

Maladministration means poor or failed administration. This occurs when the European Investment Bank Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples of failure to respect the principles of good administration are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information and unnecessary delay. Maladministration may also relate to the environmental and social impacts of the European Investment Bank Group's activities and to the implementation of project cycle-related policies and other applicable policies of the European Investment Bank Group. Decisions, actions or omissions by the European Investment Bank Group which fail to give due consideration to legitimate concerns of stakeholders may also be considered as maladministration.

For more information on the European Investment Bank Group Complaints Mechanism, please visit:
<http://www.eib.org/about/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

On 6 February 2018, the EIB approved financing of the Nenskra Hydropower Project, providing a loan of up to USD 150 million for the construction of a high-head hydropower scheme with an installed capacity of 280 megawatts ("the project"). Project promotor JSC Nenskra Hydro is a special purpose entity established in Georgia with the sole purpose of designing, building, financing and operating the project. All project components will be located in the Nenskra and Nakra River valleys of Mestia Municipality in the Upper Svaneti region of north-western Georgia.

On 1 June 2018, the EIB-CM received a complaint from CEE Bankwatch Network with support of Green Alternative, a Georgian non-governmental organisation, collectively acting as representatives of project-affected people. The complaint is rooted in the claim that the Bank failed to identify the Svan ethnic group as an indigenous people under EIB Environmental and Social Standard 7 (Standard 7), thus failing to afford the group protections provided for by the Bank's environmental and social framework.

Application of EIB Standard 7: The complainants believe that the Svan ethnic group qualify as an indigenous people under Standard 7 and have been wrongly excluded from indigenous peoples status for purposes of the project. They allege that the Bank failed to conduct a proper assessment against its own indigenous peoples eligibility criteria within the framework of the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention 169. The complainants note that the project's environmental and social impact assessment assesses the applicability of lenders' indigenous peoples policies on the basis of the European Investment Bank for Reconstruction and Development (EBRD) and Asian Development Bank (ADB) criteria. They consider that while broadly similar, the EIB's indigenous peoples criteria varies in important details. The complainants also allege that the Bank failed to ensure adequate and meaningful consultation as set forth in the EIB Environmental and Social Standards. They believe specific protections under Standard 7, namely the indigenous right to free prior informed consent, have not been respected.

The applicability of the proposed lenders' indigenous peoples policy, as assessed in the 2017 Social Impact Assessment, was conducted pursuant to more restrictive EBRD and ADB Standards. The EIB-CM finds that no separate and documented assessment under EIB Standard 7, paragraph 12, was available. The EIB-CM notes that the Bank did not provide supporting evidence establishing that the EIB had in fact carried out its own social due diligence in this respect, accounting for gaps between that and other lenders'. **The EIB-CM has therefore concluded that there is no evidence that the Bank took the adequate steps to assure itself of the proper application of Standard 7 to the project. It is recommended that the EIB reassess and document whether or not the Svans qualify as an indigenous people under Standard 7, also in line with the principles of good international practice, prior to stage two approval by the Management Committee.**

The EIB-CM notes that the EIB Environmental and Social Framework is presently the subject of ongoing review. In this context, the EIB-CM encourages the Bank to take note of good international practice in

the identification of whether there are indigenous peoples present in the project area, for future revisions of the 2013 Standards.

Assessment and Management of Labour Influx Risks and Impacts: The complainants allege the Bank failed to identify, assess and manage risks to and potential impacts on Svans associated with the temporary influx of labour. This includes community exposure to health and safety risks, including transmission of communicable diseases and sexual abuse; and adverse impacts on Svan culture and integrity, including values, traditions and language.

The EIB-CM considers both the assessment of risks and impacts as well as the measures defined in the project Environmental and Social Management Plan (ESMP) to address such problems are insufficient at this time. The EIB-CM has determined it necessary to further assess and manage risks associated with the influx of labour, including those associated with intangible cultural heritage, and to develop a more specialised instrument, such as a Labour Influx Management Plan.

Assessment of Alternatives: The complainants allege that meaningful alternatives to the project have not been assessed.

The EIB-CM has obtained no documentation to verify whether the Bank adequately ensured application of Standard 1: Assessment and Management of Environmental and Social Impacts and Risks. Given the inability to review documentation or corroborate the complainants' claims, the EIB-CM is unable to respond to this particular allegation. The EIB's acceptance of a problematic alternatives analysis without sufficient documentation of the rationale for selecting the particular course of action proposed is troubling. The EIB-CM considers that the Bank should have drawn appropriate attention to the risks inherent in accepting a restricted assessment of alternatives not fully consistent with the applicable EIB requirements.

The EIB-CM will monitor the implementation of these proposed corrective actions by the Bank.

Nenskra Hydropower Project**Complainant:** CEE Bankwatch Network and Green Alternative on behalf of project-affected people**Date received:** 1 June 2018**Confidentiality of the complainant:** Non-confidential**Project status:** Pending signature**Approved:** 6 February 2018**Authorised amount (up to):** USD 150 million

1. BACKGROUND

THE PROJECT

On 6 February 2018, the European Investment Bank (EIB or "the Bank") approved financing of the Nenskra Hydropower Project (HPP), providing a loan of up to USD 150 million for the construction of a high-head hydropower scheme with an installed capacity of 280 megawatts ("the project"). The loan is part of a larger financing package that includes the European Bank for Reconstruction and Development (EBRD) and other envisaged international financial institutions¹. Project promotor JSC Nenskra Hydro (JSCNH or "the promotor") is a special purpose entity established in Georgia with the sole purpose of designing, building, financing and operating the project. JSCNH is majority-owned by Korea Water Resources Corporation (85%), a company wholly owned by the Government of Korea, with minority participations from Georgian state-owned JSC Partnership Fund (10%) and the EBRD (5%).

The project entails construction of a 125-metre high, 870-metre long asphalt face rockfill dam on the upper Nenskra River creating a live storage of about 176 million cubic metres. The dam will capture the flows of the Nenskra River and adjacent Nakra River, exploiting the available head of 725 metres. The Nakra River is connected to the main scheme through a 12-kilometre long gated transfer tunnel. The power waterway comprises a headrace tunnel of 15.1 kilometres, a pressure shaft and an underground penstock of 1,790-metre long. The surface powerhouse is located on the left side of the Nenskra River and will house 3x70 megawatt pelton turbines. Project construction will also require a number of associated facilities such as roads, construction camps and a transmission line.

All project components will be located in the Nenskra and Nakra River valleys of Mestia Municipality in the Upper Svaneti region of north-western Georgia. It is estimated that the Nenskra valley and the Nakra valley house 1,148 (268 households) and 300 (85 households) permanent residents, respectively. A vast majority of residents were born there; are Georgian nationals; and belong to the Svan ethnic group.

The project was subject to an environmental and social impact assessment (ESIA) carried out by Gamma Consulting Limited in 2015. The Georgian environmental authorities subsequently granted an

¹ In November 2017, the potential Lenders included the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Korean Development Bank (KDB), the Asian Infrastructure Investment Bank (AIIB) and K-sure (Korea Trade Insurance Corporation).

environmental permit in October 2015. At the request of the Lenders, the promotor was required to carry out supplementary environmental and social studies. The November 2017 ESIA package is available in English on the EIB website.²

THE COMPLAINT

The complaint at issue is the third received to date by the EIB-CM concerning the Bank's involvement in Nenskra HPP.

In January 2017, a **first** complaint³ was submitted to the EIB-CM by Green Alternative on behalf of affected community members of Nakra valley. The complaint raised concerns around the adequacy of the promotor's natural hazard risks assessment at a time when the project remained under appraisal by the EIB.

In March 2018, a **second** complaint⁴ was submitted to the EIB-CM by CEE Bankwatch Network concerning the requested disclosure of project-related documents. It expressed concerns about the transparency and disclosure practices of the EIB.

This report responds to a third complaint regarding Nenskra HPP. The Project Complaint Mechanism of the EBRD (EBRD-PCM) has also received a similar complaint as that specified below. In the interest of efficiency, the EIB-CM and EBRD-PCM have coordinated some tasks in the processing of these complaints.

On 1 June 2018, the EIB-CM received a complaint from CEE Bankwatch Network with support of Green Alternative, a Georgian non-governmental organisation, collectively acting as representatives of project-affected people. The complaint is rooted in the claim that the Bank failed to identify the Svan ethnic group as an indigenous people under EIB Environmental and Social Standard 7 (Standard 7), thus failing to afford the group protections provided for by the Bank's environmental and social framework. The specific issues raised are:

Application of EIB Standard 7

The complainants believe that the Svan ethnic group qualify as an indigenous people under Standard 7 and have been wrongly excluded from indigenous peoples status for purposes of the project. They allege that the Bank failed to conduct a proper assessment against its own indigenous peoples eligibility criteria within the framework of the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention 169. The complainants note that the project's ESIA assesses the applicability of lenders' indigenous peoples policies on the basis of Asian Development

² <https://www.eib.org/en/projects/pipelines/all/20150670>

³ <https://www.eib.org/en/about/accountability/complaints/cases/sq-e-2017-04-pr-nenskra-hpp>

⁴ <https://www.eib.org/en/about/accountability/complaints/cases/nenskra-hpp>

Bank (ADB) and EBRD criteria. They consider that while broadly similar, the EIB's indigenous peoples criteria varies in important details.

The complainants also raise a number of questions concerning the expertise sought on the issue of indigenous peoples. They are concerned the Bank's due process in the scoping stage of categorisation relied solely on the opinion of one local scholar. Despite a request for information, the complainants state that the Bank failed to disclose a study obtained from a 'highly qualified Georgian anthropologist'. According to the complainants, the Bank assured them that it commissioned an independent analysis separate from that of the ESIA. Absent this information, the complainants find there is no evidence to suggest that such an opinion was sought.

Consultation

The complainants allege the Bank failed to ensure adequate and meaningful consultation as set forth in the EIB Environmental and Social (E&S) Standards. They believe specific protections under Standard 7, namely the indigenous right to free prior informed consent (FPIC), have not been respected. They claim the consultation process did not allow for early and informed participation in decision-making processes, arguing that consultations were carried out after development consent was granted.

Assessment and Management of Labour Influx Risks and Impacts

The complainants allege the Bank failed to identify, assess and manage risks to and potential impacts on Svans associated with the temporary influx of labour. This includes community exposure to health and safety risks, including transmission of communicable diseases and sexual abuse; and adverse impacts on Svan culture and integrity, including values, traditions and language.

Assessment of Alternatives

The complainants allege that meaningful alternatives to the project have not been assessed.

METHODOLOGY

This compliance review has been conducted in accordance with the EIB-CM Operating Procedures (2012), with significant input from an external indigenous peoples expert as provided for in paragraph 5.6.3. It has included a review of internal EIB documents, documents shared by the promotor and public domain information. Over the course of the compliance review, the EIB-CM team participated in face-to-face and conference call meetings with relevant parties, including the EIB project team, CEE Bankwatch Network and EBRD-PCM. During a joint EIB-CM / EBRD-PCM visit to Georgia, meetings were held with EIB and EBRD regional staff; national, regional and sub-regional level authorities; JSCNH management; and academic scholars retained by JSCNH in assessing whether the lenders' social safeguard policies on indigenous peoples applied. The team also met with complainants and their representatives; community members of Nenskra and Nakra valleys, including proponents of the project; and Lalkhor members of Upper Svaneti.

2. APPLICABLE REGULATORY FRAMEWORK

Complaints Mechanism

The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012) task the EIB-CM with addressing complaints concerning alleged maladministration by the EIB⁵. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures⁶. Maladministration may also relate to the environmental or social impacts of EIB's activities⁷.

The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure specifies the role of the EIB-CM. The EIB-CM, inter alia, gathers and reviews existing information on the subject under complaint, conducts appropriate inquiries with a view to assess whether the EIB Group's policies and procedures have been followed and fosters adherence to the EIB Group's policies⁸.

Complainants to the EIB-CM must not be subject to any form of retaliation, abuse or any kind of discrimination based on the fact that they exercised their right to complain. This applies to the EIB Group as well as any other counterpart of a business relation with the EIB⁹.

In order to safeguard the interest of the complainants, complaints lodged under the EIB's internal complaints mechanism are normally dealt with confidentially unless otherwise requested by the complainant¹⁰.

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to file a confirmatory complaint, may file a complaint of maladministration against the EIB with the European Ombudsman¹¹.

Bank Policies

This compliance review addresses the EIB's E&S due diligence up to the point at which the EIB approved to invest in the project. It considers the adequacy of the EIB's appraisal of its investment in Nenskra HPP against the general requirements of the EIB's Environmental and Social Handbook (2013) and EIB Statement of Environmental and Social Principles and Standards (2009).

⁵ EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), Section II, § 3 and 4 and Section III, § 1.4.

⁶ EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), Section II, § 1.2.

⁷ EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), Section II, § 1.2.

⁸ EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), Section III, § 4.2.

⁹ The European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), IV - Rules of Procedure, § 15.1.

¹⁰ The European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), IV - Rules of Procedure, § 13.1.

¹¹ The European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (2012), IV - Rules of Procedure, § 12.1.

This compliance review will consider, in light of the issues raised in the complaint, the EIB's environmental and social performance with respect to:

Environmental and Social Standard 1: Assessment and Management of Environmental and Social Impacts and Risks

Environmental and Social Standard 7: Rights and Interests of Vulnerable Groups

Environmental and Social Standard 9: Occupational and Public Health, Safety and Security

Note that relevant policy provisions are embodied in corresponding sections below.

3. COMPLIANCE REVIEW

APPLICATION OF EIB STANDARD 7

Policy Application

The main criteria used to determine whether a group or community is indigenous in the context of EIB-financed projects derives from **Standard 7: Rights and Interests of Vulnerable Groups**. For purposes of this Standard, applicability is determined during the E&S impacts and risks identification process on the basis of ten characteristics presented in paragraph 12:

12. Indigenous peoples are defined as a distinct social and cultural group, possessing some or all of the following characteristics in varying degrees:²³

- a) Self-identification as indigenous;*
- b) A shared experience of oppression or colonisation;*
- c) Historical continuity within a given region prior to colonisation or annexation;*
- d) Collective entitlement and/or attachment to ancestral lands, territories and natural resources in their habitats and use thereof;*
- e) An indigenous language, often different from the national or regional language;*
- f) Distinct social, economic and political systems;*
- g) Activity in non-dominant sectors of society;*
- h) Distinct languages, spiritual traditions, culture, beliefs and knowledge;*
- i) Land/natural resources-dependent means of existence; primarily self-sufficient production; and*
- j) A shared wish to maintain and develop a distinctive shared identity, spirituality as well as social economic, cultural and political institutions.*

²³ Based on ILO Convention 169 and the work of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

As is made clear in the opening paragraph, it is not required that a group meet all ten enumerated criteria or that it meets any one of them fully. It is required to meet *some or all* of the criteria *in varying*

degrees. This formulation implies and necessitates that overall consideration will be given to both the number of criteria met and the degree to which each of them is met by a group. The opening paragraph also includes the requirement of an indigenous people being *a distinct social and cultural group* which overlaps with multiple explicit references to distinctiveness or difference in the formulation of criteria e), f), h) and j).

One notion that appears in definitions or eligibility criteria of indigenous peoples, including in the international financial institutions context, is *vulnerability*¹². In the case of Standard 7, paragraph 12, many of the ten criteria include implicit references to vulnerability, perhaps most clearly criterion g) through its notion of *non-dominant*. More importantly, other paragraphs of Standard 7 are explicit in that the Standard as a whole is aimed at the protection of vulnerable groups. In the context of Standard 7, indigenous peoples are presented as one main sub-category of the broader notion of vulnerable groups.

Vulnerability is defined in paragraph 8 as follows:

8. Vulnerability is determined by (1) the exposure to risks, shocks, and stress situations befalling people, (2) their sensitivity to those risks, shocks and stress situations, and (3) the means they possess to withstand or adjust to damaging loss. Vulnerability can be understood in terms of a lack of resilience to changes that threaten welfare; these can be environmental, economic, social and political, including those linked to project impacts. Such changes usually bring risk and uncertainty. Poverty, isolation, insecurity, entrenched social attitudes, gender roles, systemic discrimination and language barriers, amongst others, constitute causal factors for the emergence or reinforcement of vulnerability.

The application of Standard 7, paragraph 12, cannot be isolated from the broader framework of vulnerability, even if vulnerability is not mentioned separately as one of the enumerated criteria for determining a group or community as an indigenous people. The drafting of Standard 7, paragraph 12, suggests a two-step process: on the basis of best available information, it is first assessed, point-by-point, whether a group meets in varying degrees (fully, to a degree, or not at all), some or all of the ten criteria. Thereafter, as a second step, the broader vulnerability framework of Standard 7 has a legitimate role in the final overall assessment to be made under the opening paragraph, read in the context of Standard 7 as a whole.

In accordance with Standard 7, paragraph 12, determination of eligibility should account for a number of additional factors, particularly in circumstances where a lack of legal recognition is found:

¹² For an example in the international financial institutions context, see, e.g., ADB Safeguard Policy Statement (2009), Appendix 3, paragraph 6. Emphasis on descent from populations that were in an area earlier in time than the current dominant population is common in constitutional or human rights discourses that often relate indigenousness to dispossession of traditional lands and entail a strong dimension of remedying historical wrongs through the recognition of indigenousness and rights related to that recognition, such as title to traditional lands. Particularly in development discourses often such approaches are complemented by an emphasis on current-day vulnerability of indigenous and similarly situated groups, often applied beyond a strict conceptual construction of what indigenousness entails in the sense of *having been first* in an area.

Determining whether a particular group is considered indigenous peoples normally requires reference to the concerned country's own legislation. However, as indigenous people may sometimes not be recognised by their own national context, attention should be paid to evidence of self-identification as indigenous people, to the activity of indigenous people's representative organisations and institutions, to relevant international or regional intelligence, and to shared IFI knowledge and practice. Finally, the technical judgment of qualified social scientists should be sought.

EIB Services' Position

In its response, the EIB Services explain that a pragmatic, independent and informed process was followed in line with the EIB's Standard 7 requirements. The EIB Services emphasise that the SIA includes coverage of all the criteria (10) required to assess the qualification of Svans as indigenous people under EIB Standard 7. According to the EIB Services, this information and other ancillary documentation, was sufficient for the Bank to make its determination that the EIB's indigenous peoples standards would not be triggered, as set out in the EIB Environmental and Social Data Sheet (ESDS). The EIB Services confirm the applicability of EIB Standard 7 specifically with respect to the vulnerability of the Nenskra and Nakra Valley communities affected by the project. The EIB Services note that the outcome of the EIB's vulnerability assessment is reflected in livelihood restoration activities and in a robust community investment plan designed and implemented with appropriate governance structures. The EIB Services further note that other assessments such as the Climate Risk Assessment address the vulnerability of the communities and proposes adaptive and mitigating measures to support the communities.

Documentation

The EIB Environmental and Social Handbook (2013) establishes a clear division of responsibility in its policy. As relates to Standard 7, the promotor is expected to identify vulnerable groups present in the project area, including indigenous peoples, during the environmental and social impacts and risks identification process:

19. During the screening phase, the promotor will identify the individuals and groups who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts, be discriminated against or excluded from intended benefits in the given project context. The promotor will ascertain the presence of any groups of peoples with particular rights that will need to be respected, for example indigenous peoples, ethnic minority groups, or children.

The Bank is then required to carry out due diligence to ensure the promotor meets this obligation and that the resulting assessment forms a solid and reliable basis for the EIB's own decisions.

It is important to note in regard to the complaint, that where the EIB is one of a number of financing partners, the Bank may utilise the Lenders' respective existing policy frameworks, provided that the EIB account for any gaps between that and other lenders:

12. When the EIB is co-financing in partnership with other IFIs that have developed, and apply their own E&S policies, adequate implementation of those policies may prove enough to meet the EIB standards, pursuant to EIB's own assessment. Such possibility does not relinquish the EIB's own environmental and social due diligence duty and any gaps between that and other lenders' shall be duly accounted for.¹³

The main documentation pertinent to the issue in question and concerning the project comes in the form of multi-volume *Supplementary Environmental & Social Studies* of November 2017, prepared for the promotor by SLR Consulting France SAS. It is the primary source relied upon and referenced by the Bank both publically and internally.

The Non-Technical Summary (Volume 1) includes the following conclusion:

The Consultants conducting the Supplementary E&S Studies assessed whether the "Indigenous Peoples" policies of the potential Lenders apply to this Project. The criteria used to assess if the Lenders policies on "Indigenous Peoples" apply are quoted from the EBRD and the ADB policies. Although slightly different in wording, policies used by other lenders to be involved in the Project are similar in substance and spirit [...]

The findings of the Supplementary E&S Studies and a detailed historical and anthropological study conducted for JSCNH by a reputed Georgian Scholar suggest that the people in the Project area identify themselves as Svans, and are recognised as such by the rest of Georgia. The Svan are an ethnic sub-group within the broader "Kartvelian" (Georgian) ethnos, which also includes other ethnic sub-groups such as Mingrelians, Lazes. The Svans have been historically attached to the Upper and Lower Svaneti territories where they currently live; they speak Svan which is a language different from Georgian but derived from the same Proto-Kvartelian ancestor language. The Svans are integrated into modern Georgian society. They are subject to and adhere to Georgian laws, have no specific governance systems and live a lifestyle that is similar to others who live in similar remote mountainous regions of Georgia. Svans have access to and benefit from the same resources and socio-economic infrastructure as other groups. From an administrative perspective Svans are not considered, by the Georgian state, as a distinct minority group. There is no evidence that Svans were or are a marginalized and vulnerable social and cultural group vis-à-vis other ethnic groups in Georgia. Based on these findings, the Consultants conducting the Supplementary E&S Studies assessed that the "Indigenous Peoples" policies of the potential Lenders do not apply.

¹³ EIB Environmental and Social Handbook Standard 1, paragraph 12, December 2013.

What appears as the key document that sets out the criteria used in the exclusion of Svans from the status of an indigenous people for purposes of the project is the Social Impact Assessment (SIA) produced as Volume 3 of the Supplementary Environmental & Social Studies. The matter is addressed on pages 22-26 and elaborated on in Annex 4 on pages 219-222. The Svans are assessed as meeting in full one of the five EBRD/ADB criteria and partially two of the five criteria. Under two criteria, numbers 3¹⁴ and 5¹⁵, the conclusion is negative.

The reasons given for the Svans not qualifying under EBRD/ADB 3 and 5 deserve to be quoted here in full, as they demonstrate how the SIA in fact reflected a pro et contra approach, i.e. presented arguments both for and against the Svans meeting criteria 3 and 5. The first bullet point in both assessments represented the pro argument which could be interpreted as an admission of the Svans meeting the two criteria in question to a degree but in the view of those who conducted the assessment to an insufficient degree to justify their positive conclusion:

The third characteristic does not apply to Svans:

- Svans do attach importance and value to traditional practices, including a traditional dispute resolution system involving village elders;
- However :
 - Such systems can be found in other areas of Georgia and are not specific to Svaneti;
 - In the Project area, where elders cannot resolve the dispute, it is resolved through official Georgian institutions such as local authorities and/or justice.
 - Svaneti is fully integrated into the legal, socio-economic and political institutions of Georgia.

The fifth characteristic does not apply to Svans:

- The Svans are descended from populations who have traditionally pursued non-wage subsistence strategies (although their contemporary subsistence strategies are diversified and include wages, as explained in the section on livelihoods in Annex 4),
- However, the Svan society has been linked to, and integrated into the rest of Georgia since the 9th century AD, from a legal, political, social, economic and administrative perspective, without specific laws or regulations.

In the same context, a negative conclusion was presented in respect of the vulnerability criterion present in the opening paragraph of the ADB standard:

Vulnerability of a socio-cultural group is another key aspect of the 2009 ADB SPS application of the definition of Indigenous Peoples. Vulnerable social and cultural groups can be defined as social and cultural groups that experience a higher risk of poverty and social exclusion than the general population. This is not found to be the case for the Svans and the people living in the Project area. There is no available information that shows the Svans as a marginalized and vulnerable social and cultural group vis-à-vis other ethnic groups or sub-groups in Georgia.

¹⁴ 3: Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture.

¹⁵ 5: Descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations.

Also, livelihoods of the Svans in the Project area are generally similar to those found in other remote mountainous region of Georgia. The Svans have access to, and benefit from, the same modern commodities as the rest of Georgian population.

This assessment was further substantiated in Annex 4 of the SIA, where the potential vulnerability is assessed particularly as a matter of poverty and dependence on social benefits, in comparison to similarly situated groups in Georgia. While the national average of poverty was 11% of households, in Svaneti the number was 22% which, however, was below the average 25% in rural areas. The percentage of households receiving pensions or social packages in Samegrelo-Zemo Svaneti was high, 29% (second highest in the country) but lower than in the Racha-Lechghumi and Kverno Svaneti region where it was even higher, 38%.

As is seen in the Management Committee's proposal to the EIB Board of Directors, the Bank accords with and reiterates the conclusion arrived at in the SIA:

Indigenous Peoples: The Supplementary social impact assessment confirms that there are no indigenous people's communities in the project location that will be impacted by the Project and which would trigger EIB's or the other Lenders' Standards and requirements on indigenous peoples.

Similarly, in the EIB Environmental and Social Data Sheet (ESDS)¹⁶, published on the Bank's website in March 2018, it was summarised:

Indigenous Peoples: The Supplementary social impact assessment confirms that there are no indigenous people's communities in the project location that will be impacted by the Project and which would trigger EIB's or the other Lenders' Standards and requirements on indigenous peoples.

Finally, the EIB retrospectively set out its assessment on the applicability of Standard 7 in a summary produced for the complainant in the context of requested information:

Following its own assessment and in consultation with respected and highly qualified Georgian anthropologists, as well as the Lender's Social Advisors and the Social Expert on the International Panel of Experts, the EIB's assessment concluded that the Project did not trigger the application of Indigenous People (IP) requirements under EIB Standard 7. However, the social impact assessment confirmed the applicability of EIB Standard 7 specifically with respect to the vulnerability of the Nenskra and Nakra Valley communities affected by the project in relation to (i) the exposure to adverse risks and impacts; (ii) the

¹⁶ <https://www.eib.org/en/registers/all/79579680>

sensitivity of those risks and impacts and (iii) the adaptive capacity of the affected communities for coping with those risks and recovering from the impacts.

While acknowledging the Bank's position as detailed in its response, it must be noted that the EIB did not provide EIB-CM with any document, such as an appropriate note to file, which might have supported its position that it had carried out an independent, comprehensive assessment of all ten criteria at the time of appraisal. The EIB-CM did not receive any supporting written evidence establishing that the EIB had in fact carried out its social due diligence in this respect, accounting for gaps between that and other lenders'. In the absence of such supporting evidence, the EIB-CM has no means of verifying the Bank's compliance with the obligations incumbent upon it on the basis of documentation.¹⁷

Analysis and Conclusions

This report does not purport to present an expert opinion on whether the Svans are an indigenous people, but will use the provisions of EIB Standard 7 to consider from the viewpoint of the EIB-CM, whether the EIB took adequate steps to assure itself of proper application of EIB Standard 7 to the project, particularly as relates to the Bank's defined criteria for indigenous peoples.

The first issue identified is that no separate and documented assessment under EIB Standard 7, paragraph 12, was carried out. Instead, as explained in footnote 11 (page 24) of the SIA, the Social Impact Assessment was conducted pursuant to more restrictive EBRD and ADB standards, with the justification that they were "similar in substance and spirit" as (for instance) the EIB standard. It is true that there is significant overlap between the EIB criteria and the EBRD or ADB standards. This transpires from the comparative Table 1 presented below. However, the main difference is that while the EBRD and the ADB standards require that a group meet *all*, respectively, five or four criteria, even if *in varying degrees*, for the EIB standard it is required that a group meets *some or all* of its ten criteria in varying degrees. As the assessment was carried out under the all criteria approach of EBRD and ADB, no direct assessment was made under the EIB standard and the essential step of an overall assessment under the some or all criteria approach of the EIB was never undertaken. As a consequence, there was also no full assessment of the varying degree to which each criterion on its own was met.

Below, a comparison between the applicable EIB eligibility criteria (left-hand column) and the criteria applied in the SIA (right-hand column) is presented in the form of a table (Table 1). As the EIB standard is structured in the form of a chapeau and ten criteria, while the standard applied in the SIA relied on five criteria and some chapeau elements, the EIB-CM sought to identify a best-fitting counterpart for each of the ten EIB criteria in the shorter list of five EBRD/ADB criteria. Therefore, some of the EBRD/ADB criteria appear more than once next to one of the more numerous EIB criteria. This is particularly the case for criterion number 5, derived from the EBRD standard.

¹⁷ The EIB Services note that there is no procedure that requires an in-depth documentation of the reviews of Standard 7 (i.e. point by point) to support the conclusions made by the team.

In Table 1, significant substantive differences between the EIB and EBRD/ADB standards are marked in boldfaced italics. The yellow highlights, in turn, indicate issues where one or the other standard *prima facie* appears as more demanding than its counterpart. The more restrictive standard is highlighted.¹⁸ The asterisk in the right-hand column indicates the two criteria (EBRD/ADB criteria numbers 3 and 5) that were in the SIA assessed as not met by the Svans.

Table 1. Comparison between EIB vs. EBRD/ADB standards as to eligibility criteria as indigenous peoples

Applicable standard: EIB Standard 7	Standard applied by the Client: derived jointly from EBRD and ADB standards
Chapeau: <i>some or all</i> of the following characteristics in varying degrees	Chapeau: <i>all</i> of the following characteristics in varying degrees (four under ADB and five under EBRD)
Chapeau: distinct social and cultural group. Note: vulnerability is not mentioned in the chapeau but is strongly present in ESS 7	Chapeau and 1. ... distinct ... ethnic or cultural group; in the case of ADB, "distinct, <i>vulnerable</i> , social, and cultural group"
a) Self-identification as indigenous;	1. Self-identification as... indigenous ethnic or cultural group <i>and recognition of this identity by others</i>
b) A shared experience of <i>oppression or colonisation</i> ;	Chapeau: distinct from dominant groups within national societies
c) Historical continuity within a given region prior to <i>colonisation or annexation</i> ;	* 5. Descent from populations who have traditionally...
d) Collective entitlement and/or attachment to ancestral lands, territories and natural resources in their habitats and use thereof;	2. Collective attachment to geographically distinct habitats (traditional lands) or ancestral territories in the project area and the natural resources in these habitats and territories
e) An indigenous language, often different from the national or regional language;	4. A distinct language (or dialect for EBRD 7), often different from the official language (or dialect for EBRD PR 7) of the country or region
f) Distinct social, economic and political systems;	* 3. Customary <i>cultural</i> , economic, social or political institutions that are separate from those of the dominant society and culture
g) Activity in <i>non-dominant</i> sectors of society;	* 5. ... have traditionally pursued <i>non-wage</i> (and often nomadic/transhumant) subsistence strategies
h) Distinct languages, <i>spiritual traditions, culture, beliefs and knowledge</i> ;	4. <i>A distinct language (or dialect for EBRD 7)</i> , often different from the official language (or dialect for EBRD PR 7) of the country or region
i) Land/natural resources-dependent means of existence; primarily self- sufficient production; and	* 5. Descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations
j) A shared wish to maintain and develop a distinctive shared identity, <i>spirituality</i> as well as social economic, cultural and political institutions.	* 5. ... whose status was regulated by their own customs or traditions...

¹⁸ The reason why criterion 4 in the right-hand column is highlighted in comparison against EIB criterion h) is in the "varying degree" approach: to meet EIB criterion h) a group may be assessed as distinctive as to its spiritual traditions, culture, beliefs and knowledge and therefore as meeting the criterion to a degree, even if it had lost its own distinctive language.

A second issue relates to the exclusion of the Svans on account of two of the five EBRD/ADB criteria. The reasons for a negative conclusion under criteria numbers 3 and 5 were quoted in full above.

As there is significant overlap between the five criteria applied in the SIA and the ten EIB Standard 7 criteria, the SIA reasoning on why two of the five criteria were not met would be relevant also in respect of a proper application of the EIB criteria, even if less critical, as the EIB standard is based on the same or all approach, to the effect that a group not meeting some of the ten criteria is not a basis for automatic exclusion. As Table 1 indicates, the counterpart of those two EBRD/ADB criteria that were not met, in the EIB standard, can be found in five out of ten enumerated criteria. Potentially, the significance of the Svans not meeting EBRD/ADB criteria 3 and 5 could be quite significant in the overall assessment under the ten criteria of EIB Standard 7, paragraph 12. However, there is a problem in this line of reasoning, namely that the argumentative (pro et contra) nature of the reasoning provided in the SIA for the Svans not meeting criteria 3 and 5 in fact suggests that the outcome could have been that they *do* meet the criteria, even if only to a varying degree. This is even more likely in respect of some of the five EIB criteria which substantively overlap with EBRD/ADB criteria 3 and 5 but may relate to specific aspects of them, some aspects of which would be met.

The negative conclusion presented in the SIA was in part based on an assessment of the group's vulnerability under the ADB standard. It is to be noted that neither the EBRD nor the EIB eligibility criteria of indigenous peoples include an explicit criterion of vulnerability, either among the enumerated criteria or in the chapeau preceding the respective list of criteria. However, as was explained above, EIB Standard 7 clearly deals with indigenous peoples as a sub-category of vulnerable groups and therefore assessing a group's vulnerability will have a legitimate place in an eligibility assessment under the standard. Hence, the EIB-CM does not consider as erroneous to address a group's vulnerability as an element in the proper application of Standard 7, paragraph 12. What, in contrast, is an actual issue here, is that the ADB approach to vulnerability applied in the SIA, focusing on relative poverty of a group, is very different from the definition of vulnerability in EIB Standard 7. The EIB-CM concludes that no proper assessment was made as regards the vulnerability of the Svans under EIB Standard 7 and that to the extent their exclusion was based on the ADB approach to vulnerability, this was erroneous.

The two separate issues addressed above (i.e. lack of documented assessment under EIB Standard 7 -and exclusion of the Svans on account of two of the five EBRD/ADB criteria provided in the SIA) entail indications of non-compliance with EIB Group policies, procedures and standards. The SIA as prepared under other comparable but nevertheless significantly different standards, and its consideration by EIB Management did not represent a due diligence approach in respect of EIB Standard 7. As the proper EIB Standard 7 was not applied when producing the SIA and the Svans were assessed as ineligible for indigenous peoples status for purposes of the project on account of not (sufficiently) meeting two of the EBRD/ADB criteria, and not being a vulnerable group under the ADB standard, no full documented assessment is available under each of the ten criteria enumerated in EIB Standard 7, paragraph 12, to assess the degree to which the Svans met each respective criterion, and no overall assessment under

the chapeau was therefore performed. Such an overall assessment would have included also the question about the Svans' vulnerability under the terms of the proper definition of vulnerability, set forth in EIB Standard 7, paragraph 8. In the view of the EIB-CM, the gaps between that and the other lenders' should have been assessed and documented by the Bank. **The EIB-CM therefore concludes that there is no evidence that the EIB took the adequate steps to assure itself of the proper application of Standard 7 to the project.**

On the basis of the above, it is recommended that the EIB reassess and document whether or not the Svans qualify as an indigenous people under the applicable EIB Standard using a qualified and experienced social scientist with expertise in social and cultural groups and indigenous peoples' rights. This entails the need to address all ten criteria, including an overall assessment under the chapeau of Standard 7, paragraph 12. The vulnerability of the group would have a proper place in the overall assessment phase of the eligibility determination. This assessment should be consistent with the principles of good international practice and completed prior to stage two approval by the Management Committee.

Additional Remarks

The EIB-CM notes that the EIB E&S Framework is presently the subject of ongoing review. In this context, the EIB-CM encourages the Bank to take note of good international practice (GIP) in the identification of whether there are indigenous peoples present in the project area, for future revisions of the 2013 Standards. It should be noted that for purposes of this compliance review, the EIB-CM will not assess whether there were aspects of the identification process that did or did not correspond to GIP, for instance what concerns the hiring and use of independent experts. Such an assessment would require more detailed information concerning the actual chain of events than what is currently at the disposal of the EIB-CM.

In respect of the notion and characteristics of GIP, and in absence of the EIB's own guidance, reference is made to pertinent instruments of the International Finance Corporation (IFC),¹⁹ the World Bank Inspection Panel (WBIP),²⁰ and the ADB.²¹ What is common to the good practice approaches of the IFC, the WBIP and the ADB is, inter alia, that it is good international practice to consult the pertinent groups themselves as to whether they meet the applicable criteria of indigenesness. Below, a closer look is taken at the ADB approach to GIP.²²

GIP is presented in the ADB Sourcebook, which discusses the continuous nature of meaningful consultation and the identification of indigenous peoples, explicitly stating: "Meaningful consultation is essential to appropriately *identify* IP" (emphasis added). Notably, this conclusion relates not to actual

¹⁹ Performance Standard No. 7 (2012) on Indigenous Peoples adopted by the International Finance Corporation (IFC), and IFC Guidance Note (2012) on the implementation of the said standard.

²⁰ WBIP, "Indigenous Peoples": Emerging Lessons Series No. 2 (2016).

²¹ ADB, Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook (2013).

²² The IFC and WBIP guidance concerning GIP would justify the same conclusion as is presented in the text in respect of the ADB Sourcebook, see IFC Guidance Note 6 (page 4); WBIP Emerging Lessons (pages 5-7).

project implementation, but to the process for identifying indigenous peoples in the project area. The conclusion precedes more specific guidelines concerning the methodology applied in assessing whether a group is to be regarded as an indigenous people when designing and implementing a project. In a carefully balanced manner, the Sourcebook then approaches the methodology for assessing whether project-affected people are indigenous peoples, identifying that “an assessment of the people involved against the four [ADB] characteristics, along with their relative vulnerability, is needed. Involving a qualified social science expert, IP representative organization, or a local scholar in this field early in project preparation will greatly help to identify those to whom the SPS will apply”. As a group’s “[s]elf-recognition as a distinct group is a fundamental criterion for identification” [as an indigenous people] ... “[t]his subjectivity highlights the need for the borrower/client to have good interaction with local leaders and indigenous-specific organizations early in the project process (at concept stage, perhaps)”. In the Sourcebook such early consultation of the group itself, however, complemented by important additional elements, as follows:

37. Such self-recognition should therefore also be corroborated by others, which may include local community groups, neighboring self-ascribed IP groups, government entities, academic scholars, or other experts. Reports from private companies may also be useful for identifying groups (although these reports are sometimes hard to obtain). Neither self-recognition nor recognition by others necessarily requires the term IP by the groups themselves, but might refer instead to terms popularly used in the borrower/client country to refer to such groups.

ASSESSMENT AND MANAGEMENT OF LABOUR INFLUX RISKS AND IMPACTS

Bank Policies

Standard 1: Assessment and Management of Environmental and Social Impacts and Risks, paragraph 42, states, in part, that “*The level of detail and complexity of the ESMP and the priority of the identified measures and actions shall be commensurate with the nature and magnitude of project’s impacts and risks, and will take account of the outcome of the engagement process with affected stakeholders, as appropriate.*” Paragraph 44 elaborates that “*Where stakeholders were identified as disadvantaged, marginalised or vulnerable during the assessment process, the ESMP will include differentiated measures so that adverse impacts do not fall disproportionately on them, and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project.*”

Pursuant to Standard 7, paragraph 17, the promotor is expected to “*take the necessary measures to appropriately manage the risks and adverse impacts of the EIB operation on vulnerable individuals and groups, including on women and girls, minorities and indigenous peoples. In doing so, the promotor will seek to avoid, minimise, or otherwise mitigate or remedy the exposure of vulnerable populations to project-related risks and adverse impacts.*”

It is important to note in regard to the complaint that **Standard 9: Occupational and Public Health, Safety and Security**, paragraphs 42 and 43, make clear that the promotor is required to address risks associated with the influx of project workers:

42. To the extent possible, the promotor will take the necessary measures to avoid, mitigate and manage the risks and potential adverse impacts on public health and safety arising from the influx of project workers. Such risks and impacts may be associated with changes in population composition, intangible cultural heritage, health implications and exposure to communicable diseases and the increased vulnerability of communities in the area of influence of the project due to increased pressure on already scarce natural resources [...]

43. The promotor will especially endeavour to protect women and girls from sexual violence and harassment; and avoid and contain the spread of communicable diseases associated with in-migration, especially sexually transmitted diseases (including HIV/AIDS), Tuberculosis and Malaria. To these ends, the promotor shall organise training and awareness programmes, and ensure that code of conduct (for workers and people living in labour camps if any) are implemented. The promotor will further find alternative means for remedying significant stress on natural resources caused by the increased population numbers. When relevant, the promotor shall develop an influx management plan.

The EIB Environmental and Social Handbook (2013) Volume II, paragraph 138, indicates that special attention should be paid to the rights and interests of vulnerable groups especially in "areas where the influx of workers (during construction and, especially, during operation) [...] focuses on distinct local cultural features." In doing so, pursuant to paragraph 134, the EIB should "determine, in consultation with the promotor, the approach to be adopted to appropriately manage the potential adverse impacts resulting from project activities and/or associated facilities on vulnerable groups, including on indigenous populations and minorities"; and to "assess all necessary health and safety management plans [...] included in the overall project ESMP" (paragraph 156). Paragraph 156 goes on to note that "Where the operation financed is likely to involve significant numbers of labourers arriving on site from beyond the local context, the ESMP will also need to comprise an influx management plan."

EIB Services' Position

In its response, the EIB Services note that lenders have worked extensively together with SLR and the lenders' consultants to ensure that the assessment and management of E&S risks and impacts are well identified and managed. According to the EIB Services, this has resulted in a comprehensive E&S Management Plan and E&S Action Plan which, in its implementation, is continuously monitored with the requirement of E&S experts on the ground. The EIB Services note that adaptive management measures are currently in place with the participation of affected communities. The EIB Services assert that the Svan community cannot be compared to isolated tribes and that the ESIA has long demonstrated the integration of the Svans' community living in the Nenskra and Nakra valleys into the Georgian and international community, as well as their capacity to accept foreigners.

Documentation

The SIA estimates that some 1,094 workers (364 unskilled and 730 semi-skilled/skilled) will be employed during construction works. According to the SIA, the project will aim to maximise local recruitment, with the following anticipated recruitment rates: 100% unskilled workers from the Nenskra and Nakra valleys; 50% semi-skilled workers from Mestia Municipality; and 75% total workers within Georgia. Of relevance to the project's induced in-migration health and safety risks, the SIA concludes that *"the probability of project-induced in-migration is low, and the possible magnitude of such influx would unlikely be significant."* However, the SIA points out that this predicted risk, while low, *"could be serious if that risk would materialize."*

With regard to communicable diseases more specifically, the SIA notes, *"the arrival of these temporary workers may increase the incidence of communicable diseases - including STI/HIV."* It continues to explain that the HIV epidemic remains a significant public health concern in Georgia and given this sensitivity, *"the risk that Project workers increase the risk of transmission of HIV/AIDS is considered as low moderate."* In order to prevent an increase in the prevalence of communicable diseases, the SIA notes that the project will organise awareness raising campaigns on health issues for settlements close to camps and its associated facilities (via posters, leaflets, through health clinics and community meetings). These awareness campaigns will be organised in cooperation with the local Health Authorities. Additional measures are said to be included in the E&S specifications of the engineering, procurement and construction (EPC) contract.

With regard to social cohesion, the SIA acknowledges, *"the Project potentially could cause local social tension or social fractures due to actual or perceived treatment by or benefits from the Project to one community or stakeholder group over another."* This may include in-migrants in search of economic opportunities and subsequent perceived or actual wage differences within or between promotor employees and contractors. The SIA states that disruption to communities might also be triggered by project's staff or contractors, which may include antisocial behaviour (exploitative sexual behaviour, alcohol use, etc.). The first measure to minimize the risk of disturbance of the local communities from project's employees is to maximize the use of local workers. To mitigate any risk of anti-social behaviour from the project employees coming from other parts of Georgia and abroad, the project will develop and implement a worker's Code of Conduct. In addition, three construction camps will be constructed in order to provide workforce accommodation on site. These will include recreational facilities to minimize contact with local communities during leisure time.

With regard to intangible cultural heritage, while acknowledging that *"the project might to some extent induce social change and outside cultural influence"*, the SIA anticipates that the project will not have any direct impact on the local intangible cultural heritage.

As part of the promotor's due diligence, an Environmental and Social Management Plan (ESMP) was prepared as part of the Supplementary Environmental and Social Studies. With respect to protection of

adjacent communities and areas, the ESMP requires the preparation and implementation of a Community Safety Plan by the EPC contractor which outlines (i) the coordination with local health authorities; (ii) community awareness raising campaigns on health issues in both valleys via posters, leaflets, through health clinics, and community meetings; and (iii) the monitoring of implementation of workers health specifications by sub-contractors. According to the project's Environmental and Social Action Plan (2018), this document should be submitted for Lenders' review prior to construction activities.

The primary document prepared by the promotor in respect of the issues raised by complainants is the Nenskra HPP Local Code of Conduct (2018). The Code, intended to apply to all contractors, suppliers and visitors to the project site, sets out required behaviours, compliance of which is required for continued employment with the project. Those terms and conditions most relevant to the complainants concerns are highlighted below:

- *Do not make unwelcome sexual advances, engage in abusive language, intimidation, physical violence or threat of physical violence at any of the project work sites or in the communities*
- *Refrain from alcohol abuse at all times*
- *It is forbidden to*
 - *carry or use any type of drugs*
 - *engage in riotous and drunken behaviour*
 - *assist visitors to enter the project working areas for the purpose of commercial sex*
 - *engage in casual sexual relations with members of the local population*
 - *leave the camp after working hours without approval from the Camp Manager*
 - *engage in the illicit trade of alcohol and/or drugs in the sites and/or communities*

Analysis and Conclusions

Using the above recruitment figures, it can be estimated that the host community will experience between a one quarter and one half increase in the population of its valleys. While the EIB-CM acknowledges the promotor's recruitment and training strategies, it considers that anticipated recruitment rates are ambitious and that predicted risk levels as presented in the SIA could potentially be underestimated. In this respect, the EIB-CM notes the following risk factors left unidentified in the SIA: significant incoming workforce in relation to host community; limited local government presence and law enforcement; project size and duration; and significant potential cumulative impacts resulting from HPP development in the Enguri catchment basin. In EIB-CM's view, the current ESMP does not address issues that arise from the presence of vulnerable groups involving labour influx. The EIB-CM considers that both the assessment of impacts and risks as well as the measures defined in the project ESMP to address such problems are insufficient at this time. In addition, the proposed mitigation measures are primarily focused on labourers and lack safeguards to protect the host community from sexual abuses and to preserve cultural assets. It is important to note that potential impacts may only become fully known once a contractor is appointed and decides on sourcing the required labour force;

therefore, it is paramount that responsibilities for managing adverse impacts are reflected as contractual obligation. That said, it should be noted that the EIB-CM was unable to review E&S specifications under the new EPC contract.

On the basis of the above, the EIB-CM therefore considers it necessary to assess and manage the above-identified risks associated with the influx of labour, including those associated with intangible cultural heritage, and to develop a more specialised instrument, such as a Labour Influx Management Plan, as necessitated in Standard 9, paragraph 43.²³

ASSESSMENT OF ALTERNATIVES

Bank Policies

Standard 1 calls on the promotor, where required, to prepare a comprehensive ESIA. Guiding principles for the ESIA are elaborated on in the EIB Environmental and Social Handbook (2013) Volume II, paragraph 120:

- *The assessment must examine reasonable alternative courses of action and their environmental and social significance, even if the promotor does not have the power to implement these alternatives*
- *Alternative courses of action include the option of doing nothing*
- *The assessment must be a real analysis and not merely dispose of alternatives in favour of a decision that has already been reached*

It should be mentioned that the EIB E&S Handbook does not explicitly address how the Bank should evaluate or document the analysis in the case of a specific project. However, it does require the Bank, in its assessment of the project, to determine if the promotor has carried out the critical stages in the ESIA process.

EIB Services' Position

In its response, the EIB Services note that the ESIA contains a description of the reasonable alternatives studied which are relevant to the project and an indication of the main reasons for the option chosen taking into account the effects of the proposed project on the environment. According to the EIB Services, it is normal practice that the project site, technology and initial design were confirmed at the time of the Supplementary E&S Studies, as part of an iterative process involving socio, techno-economic and environmental inputs. The EIB Services note that, in good practice, all key design parameters and prospective sites for the construction of the project were determined at pre-feasibility stage between 2010-2011, including political and economic constraints and early E&S inputs.

²³ For further guidance on managing the risks of adverse impacts on communities from temporary project induced labour influx, see <http://pubdocs.worldbank.org/en/497851495202591233/Managing-Risk-of-Adverse-impact-from-project-labor-influx.pdf>.

Documentation

An examination of the Supplementary Environmental & Social Studies Volume 2: Project Definition reveals that the alternatives analysis was conducted at the prefeasibility and feasibility stages in 2010 and 2011, respectively. The Volume states that the two technical studies in which the alternatives analysis are documented are confidential; however, it indicates that the alternatives have been summarised in the 2015 ESIA. The Volume notes that the project site, technology and initial design had been selected at the time of the Supplementary E&S Studies. The Volume also notes, "*there are other considerations such as politics preference (e.g. reducing dependence on import of electricity and fossil fuels necessary for operation of thermal power plants) which have - and will - prevail-(ed).*"

The EIB-CM has obtained no documentation to verify whether the Bank adequately ensured application of Standard 1 in this respect. Given the inability to review documentation or corroborate the complainants' claims, the EIB-CM is unable to respond to this particular allegation.

The EIB's acceptance of a problematic alternatives analysis without sufficient documentation of the rationale for selecting the particular course of action proposed is troubling. The EIB-CM considers that the Bank should have drawn appropriate attention to the risks inherent in accepting a restricted assessment of alternatives not fully consistent with the applicable EIB requirements.

4. CONCLUSION

The EIB-CM has identified non-compliance in relation to the EIB's handling of this project. These non-compliances relate to the Bank's E&S due diligence up to the point at which the Bank approved to invest in the project.

The EIB-CM concludes that there is no evidence that the EIB took the adequate steps to assure itself of the proper application of Standard 7 to the project. The EIB-CM notes that the SIA was prepared under comparable but nevertheless different standards, and its consideration by EIB Management did not represent a due diligence approach in respect of EIB Standard 7. In addition, the EIB-CM finds that the EIB underestimated social challenges associated with the project particularly as relates to the assessment and management of the potential impacts of labour influx on communities.

Of importance to future projects, the Bank should take note of the issues raised and addressed in this complaint for future revisions of the EIB E&S Standards in order to strengthen its commitments under the EIB E&S framework.

In light of the findings contained in this report, the EIB-CM will keep this project under monitoring. The EIB-CM, in collaboration with the relevant EIB Services, will ensure follow-up on further developments and implementation of proposed corrective actions and recommendations.

ANNEX 1 TABLE OF FINDINGS AND RECOMMENDATIONS

Issue	EIB-CM Findings and Recommendations
1. Application of EIB Standard 7	<p>The applicability of the proposed lenders' indigenous peoples policy, as assessed in the 2017 Social Impact Assessment, was conducted pursuant to more restrictive EBRD and ADB standards. The EIB-CM finds that no separate and documented assessment under EIB Standard 7, paragraph 12, was available. The EIB-CM notes that the Bank did not provide supporting evidence establishing that the EIB had in fact carried out its own social due diligence in this respect, accounting for gaps between that and other lenders'. The EIB-CM has therefore determined that there is no evidence that the Bank took the adequate steps to assure itself of the proper application of Standard 7 to the project.</p> <p>The EIB-CM recommends that the EIB reassess and document whether or not the Svans qualify as an indigenous people under the applicable EIB standard using a qualified and experienced social scientist with expertise in social and cultural groups and indigenous peoples' rights. This entails the need to address all ten criteria, including an overall assessment under the chapeau of Standard 7, paragraph 12. The vulnerability of the group would have a proper place in the overall assessment phase of the eligibility determination. This assessment should be consistent with the principles of good international practice.</p>
2. Assessment and Management of Labour Influx Risks and Impacts	<p>The EIB-CM considers both the assessment of risks and impacts as well as the measures defined in the project ESMP to address such problems are insufficient at this time.</p> <p>The EIB-CM considers it necessary to further assess and manage risks associated with the influx of labour, including those associated with intangible cultural heritage, and to develop a more specialised instrument, such as a Labour Influx Management Plan, as necessitated in Standard 9, paragraph 43.</p>
3. Assessment of Alternatives	<p>The EIB-CM has obtained no documentation to verify whether the Bank adequately ensured application of Standard 1. Given the inability to review documentation or corroborate the complainants' claims, the EIB-CM is unable to respond to this particular allegation.</p> <p>The EIB's acceptance of a problematic alternatives analysis without sufficient documentation of the rationale for selecting the particular course of action proposed is troubling. The EIB-CM considers that the Bank should have drawn appropriate attention to the risks inherent in accepting a restricted assessment of alternatives not fully consistent with the applicable EIB requirements.</p>

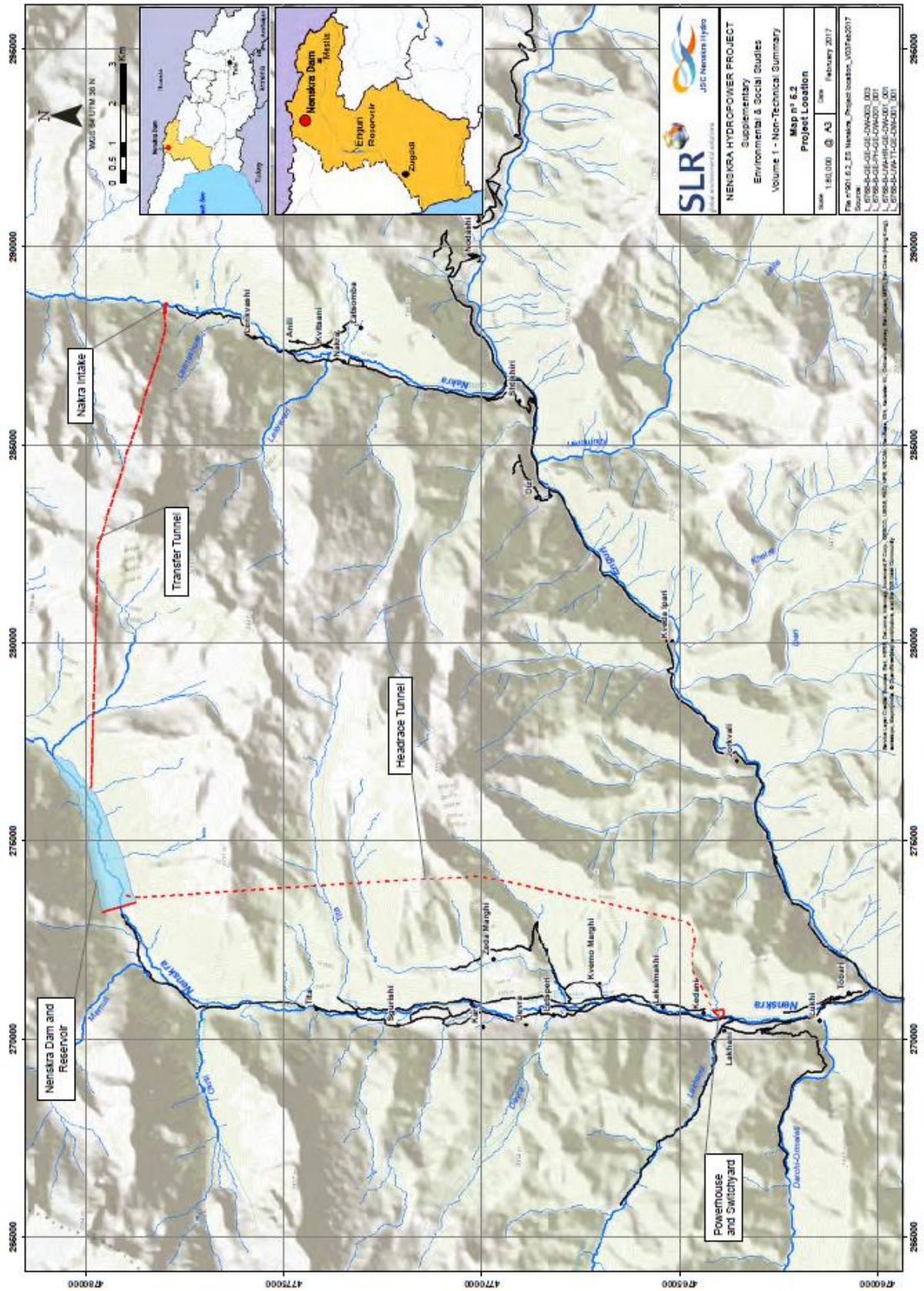
ANNEX 2 ACRONYMS

ADB	Asian Development Bank
CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
EBRD-PCM	European Bank for Reconstruction and Development Project Complaint Mechanism
EIB	European Investment Bank
EIB-CM	European Investment Bank Complaints Mechanism
EPC	Engineering, Procurement and Construction
ESDS	Environmental and Social Data Sheet
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
FPIC	Free Prior Informed Consent
GIP	Good International Practice
HPP	Hydropower Project
IFC	International Finance Corporation
SIA	Social Impact Assessment
WBIP	World Bank Inspection Panel

ANNEX 3 MAPS



Regional map reproduced with permission of SLR Consulting



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