



Final Report of the Special Project Facilitator

Project Number: 50064-001
Loan Numbers: 3520/8328
September 2019

Georgia: Batumi Bypass Road Project (Complaint Received: 2 October 2018)

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Asian Development Bank

ABBREVIATIONS

ADB	-	Asian Development Bank
CRO	-	complaint receiving officer
CWRD	-	Central and West Asia Department
EIA	-	environmental impact assessment
GRM	-	grievance redress mechanism
LARP	-	land acquisition and resettlement plan
OSPF	-	Office of the Special Project Facilitator
RDG	-	Roads Department of Georgia
SPF	-	special project facilitator

NOTE

In this report, "\$" refers to United States dollars unless otherwise stated.

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KEY DATES

1. Project approved by ADB Board	28 March 2017
2. Complaint filed with CRO	25 July 2018
3. Complaint forwarded to OSPF	2 October 2018
4. Complaint declared eligible for OSPF problem-solving	9 October 2018
5. Review and Assessment Mission	16–17 October 2018
Action Plan Implementation	
6. Independent valuation report	24 April 2019
7. Agreement on compensation amount	22 June 2019
8. Contracts for additional compensation between RDG and Complainants	27 June 2019
9. Payment of compensation to Complainants	29 June 2019
10. OSPF case closure	30 June 2019

ADB = Asian Development Bank, CRO = complaint receiving officer, OSPF = Office of the Special Project Facilitator, RDG = Roads Department of Georgia.

Source: OSPF Complaint File and Project Registry.

I. BACKGROUND

A. The Project

1. A loan for the Georgia: Batumi Bypass Road Project (the Project), approved by the Asian Development Bank (ADB) on 28 March 2017, is helping Georgia build a new bypass road skirting the port city of Batumi in order to reduce traffic congestion and improve transport movements along a key east-west highway near the city. The Project cost is \$315.20 million, jointly financed by ADB and the Asian Infrastructure Investment Bank. A summary of the Project is included as Appendix 1.

2. The Project is categorized A for environment. An environmental impact assessment (EIA) report was prepared in 2009, covering a larger scale Adjara bypass, and updated in 2011 as part of detailed design. The EIA was again updated in 2016 to incorporate environmental impacts, new legislation, environmental management costs, new public consultations, climate change risks, and an assessment of the cumulative impacts. The updated EIA was disclosed on the ADB website on 2 November 2016.

3. The Project is categorized as A for involuntary resettlement. Based on the detailed inventory prepared during the land acquisition and resettlement plan (LARP) preparation in 2016, 963 privately owned land parcels were identified to be affected due to mostly small-scale land acquisition. Total private land to be acquired is 46 hectares. There are 741 affected households comprising 4,051 affected people. Of these, 369 affected households have been or will be physically displaced and 562 affected households, comprising 3,024 affected people, have been or will be severely affected (either physically displaced and/or losing 10% or more of income-producing assets). The Project's draft LARP was prepared in 2015 and updated in 2016 based on the detailed design of the project. Community consultations were conducted during Project preparation and continued throughout LARP implementation.

4. There are no Indigenous Peoples, as defined in Safeguard Policy Statement 2009, in the Project area, so the Project is categorized C for Indigenous Peoples.

5. The implementing agency of the Project is the Roads Department of Georgia (RDG), which is responsible for overall management of the Project, including supervision of the design and implementation of civil works and implementation of the LARP.

B. The Complaint

6. The special project facilitator (SPF) received a complaint on the Project on 2 October 2018. The Complainant is a household headed by the husband, with the wife as co-signatory to the complaint, whose land and assets were acquired as a result of the Project. They alleged that there was a Georgian lari 100,000 (equivalent to about \$40,000) difference between the 2016 appraisal and subsequent compensation paid for their property by the RDG. The Complainant was paid the 2016 assessed compensation for their land and assets in 2016. However, they maintained their objection to the assessment and conveyed such objection periodically to the RDG and other government agencies and officials prior to filing a complaint with the ADB Accountability Mechanism.

C. Determination of Eligibility

7. To determine the eligibility of the complaint, the Office of the Special Project Facilitator (OSPF) staff reviewed relevant Project-related documents, held a teleconference with the

Complainant, and met with concerned staff from the Central and West Asia Department (CWRD)/Georgia Resident Mission to better understand the issues. The SPF concluded that the complaint met the ADB Accountability Mechanism Policy criteria for eligibility of a complaint for problem-solving and declared it eligible on 9 October 2018.

II. REVIEW AND ASSESSMENT AND PROBLEM-SOLVING

A. Review and Assessment

8. The OSPF conducted a review and assessment mission to Tbilisi and Batumi on 16–17 October 2018. The mission, supported by CWRD/Georgia Resident Mission, (i) consulted with the RDG and Complainant to better understand their respective views about the complaint, (ii) explored readiness for joint problem-solving and possible options for resolution, and (iii) recommended a course of action with an implementation timeline.



9. The SPF, Country Director (Georgia Resident Mission), and other CWRD staff met with Government representatives led by the Vice-Prime Minister/Minister of Regional Development and Infrastructure and First Deputy Minister/Chairman of RDG in Tbilisi on 17 October 2018. The SPF reviewed the complaint and explained the reason it was deemed eligible. The Government responded that the amount of compensation paid to the Complainant was fair based on competent valuation and that the Complainants had accepted the payments for compensation. Thus, the

Government position was that the case should not be reopened, and it was therefore not prepared to negotiate.

10. The SPF, with assistance from an OSPF facilitation consultant and CWRD resettlement specialist, met with the Complainants and visited the Project site in Batumi on 18 October 2018. The Complainant informed that he had signed the contract and accepted the compensation payment because the letter from the Government indicated that if they did not accept the offered price then expropriation procedures would be initiated. The Complainant was worried that he would lose everything and reluctantly agreed to the compensation. The Complainant presented documentation to show that he had continuously objected to the compensation amount and had even retained the services of a different valuation entity, which had assessed the land value to be much higher than the Project valuation.

B. Negotiated Settlement

11. The site visit and subsequent research by the OSPF facilitation consultant verified that it was likely that the initial Project valuation by RDG of the Complainant's land was on the low side. It was not possible to assess the accuracy of the valuation for buildings, because these had already been demolished by the Complainant in order to salvage construction and other materials (see photos of the disputed land area). The SPF therefore urged RDG to reopen the case with a letter to the Vice-Prime Minister/Minister of Regional Development and Infrastructure and First Deputy Minister/Chairman of RDG on 26 November 2018. CWRD/Georgia Resident Mission followed up on the matter and were informed that RDG was still not willing to reopen the case.



Photos of the subject property by Colliers International for ADB.

12. In view of the possible undervaluation of the Complainant's property by the Project and the reluctance of RDG to reopen the case as recommended by the SPF, CWRD engaged an international entity to serve as external valuer following International Valuation Standards (2017). An inspection and valuation of the disputed land was carried out on 5 March 2019. The effective date of valuation was 1 November 2016 to be consistent with the Project valuation. The independent valuation, based on the Market Approach, considered location, size, and other characteristics of the property. The resulting value was about 20% higher than the original Project valuation and compensation.

13. In April 2019, CWRD submitted the independent valuation report to RDG. High-level discussions between ADB Management and the Government, held in May 2019, resulted in reconsideration of the RDG position and expression by RDG of willingness to reopen the case and negotiate a settlement based on the differences between the amount originally paid to the Complainant and the independent valuation. OSPF fielded a final mission on 21–22 June 2019 to inform the Complainant about the results of the independent valuation and RDG's willingness to enter into contract with the Complainant and to discuss the Complainant's options. The Complainant proposed some minor caveats but signed consent to the proposal from RDG on 22 June 2019. RDG agreed to the minor changes and sent the relevant contracts to the Complainant on 27 June 2019, which were signed by the Complainant on that day. Receipt of payment in full was confirmed by the Complainant on 29 June 2019. This concluded the OSPF case.

III. LESSONS LEARNED

14. **Project Grievance Redress Mechanism.** An effective grievance redress mechanism (GRM) was not in place to receive the complaint and deal with it early in a neutral, unbiased, and transparent way. This likely led to three results: (i) delays in responding in a constructive way to the concerns of the Project-affected people, which led to (ii) an elevated level of distrust between parties over time, and (iii) considerably greater engagement and inputs from ADB staff than would otherwise have been required. This demonstrates the need to establish/strengthen project-level GRMs that are functional, open to Project-affected people so that they feel they are being listened to and treated appropriately, and alert executing agencies and, if necessary, ADB operations departments at an early stage about complaints/problems.

15. **Land and Property Valuation/Compensation Methodology.** The fundamental flaw in this case was the Project land valuation of the Complainant's property. For projects with significant land acquisition such as roads/highways, additional measures should be considered to ensure a high quality/indisputable valuation of properties of affected people.

16. **Communication.** Consultation and communications with Project-affected people need to be meaningful, respectful, adequate, and timely. In this case the Complainant did not consider that the communication met such criteria. Assessing quality and effectiveness of the past communications was not required for the problem-solving process, but the fact that the Complainant expressed dissatisfaction is indicative that consideration should be given to strengthening the capacity of RDG for consultation and communications.

IV. CONCLUSIONS

17. A critical requirement for the OSPF problem-solving process to succeed is the willingness of all parties to participate. Initially this condition was not met, since RDG considered that the compensation already paid to the Complainant was fair and therefore was not willing to reopen the case. However, RDG eventually changed its position, leading to resolution and closure. Key factors that contributed to the successful case closure are as follows:

- willingness of the Complainant to participate in the dispute resolution process and continuous communications and meaningful engagement of OSPF and CWRD with the Complainant led to a high level of trust in ADB by the Complainant;
- consistency in the position of CWRD with regards to compliance with ADB land acquisition and resettlement requirements by the Project led to the decision to retain the services of an independent valuator;
- the credibility of the independent valuation was instrumental in reaching agreement on the final compensation amount; and
- prompt action by RDG, once the decision was taken to pay the Complainant the difference between the initial compensation and the independent valuation amount, enabled very quick contractual agreement and payment, thus closing the case.

Project Summary

Project Name	Batumi Bypass Road Project
Project Number	50064-001
Country	Georgia
Source of Funding/Amount	<p>Loan 3520-GEO: Batumi Bypass Road Project Ordinary capital resources: US\$114.00 million</p> <p>Loan 8328-GEO: Batumi Bypass Road Project Asian Infrastructure Investment Bank: US\$114.00 million</p>
Sector/Subsector	Transport / Road transport (non-urban)
Project Description	The project will (i) construct a new two-lane bypass road of 16.2 km skirting Batumi; and (ii) contract out routine and periodic maintenance work for about 200 km of international roads combined with connecting secondary roads based on performance-based maintenance contract. Batumi is a major port city in the southwest part of Georgia, bordered by the Black Sea to the west and Turkey to the south. The existing main road connecting Sarpi at the border with Turkey to Poti, a major port at the Black Sea, is a key transit route along the coastline of the Black Sea for heavy goods and passenger traffic from Turkey to Tbilisi and then onto Azerbaijan and the Caspian Sea.
Description of Outcome	Efficiency for road transport along the East West Highway in Georgia improved
Safeguard Categories	Environment: A Involuntary Resettlement: A Indigenous Peoples: C
Board Approval	28 March 2017
Responsible ADB Department/Division	Transport and Communications Division Central and West Asia Department
Executing Agency	Ministry of Regional Development and Infrastructure of Georgia 12 Khazbegi Str., 0160 Tbilisi, Georgia
Source	https://www.adb.org/projects/50064-001/main#project-pds

Complaint Letter

From: webunit@adb.org <webunit@adb.org>
Sent: Wednesday, July 25, 2018 2:46 AM
To: Complaint Receiving Officer <amcro@adb.org>
Subject: Inquiry from ADB.org

This inquiry was submitted Wednesday, July 25, 2018 - 02:45 through the e-mail contact forms on ADB.org to: amcro@adb.org Submitted values are:

Recipient Email amcro@adb.org

First name Givi

Last name Gurgenedze

Affiliation Asian Development Bank

Your E-mail Address genabsm29@gmail.com

Dear All

Good Day

Due to the construction of the Batumi bypass road project I had to resettle. The resettlement process started back in 2011 and hasn't been completed yet. Since my letter as a complaint is intended for the wide range of people and aims at protecting government's as well as my interests, I will try to formulate my attitude about the entire process in general. Based on the facts I would like to emphasize the difference between appraisal of my property from the Roads Department of Georgia and alternate appraisal from the Levan Samkharauli National Forensics Bureau (appendix 1, 11 pages) totally 100,000 GEL (40,000 USD) which either was consciously prepared or resulted from indifferent attitude to my private property during the appraisal process.

In 2011 Asian Development Bank with the management from the Roads Department of Georgia invited us to a meeting and announced that we were subject to resettlement. In the same year when drawings were being prepared with the guidance of the Georgian government at that time many families from the mountainous areas as well as Batumi settled on the territory, some other people settled in the same road construction territory with their own initiative. At the moment the total amount of families in the area is nearly 4,000 which created so called "dream city" settlement. Very few families had legal rights on the land. The Roads Department of Georgia put all those lands as well as my land (which is adjacent to the main Batumi-Khelvachauri road) into the same third category. The purpose of the land was not taken into consideration whereas the audit company hired by the Roads Department explains that the price of the non-agricultural land is higher than agricultural (citation from the answer to my letter to the Roads Department is attached in appendix 2, 1 page)

Another fact that casts doubt on money laundering is gasification of the road construction territory in 2016, which as far as I know was used only by 1 family in the entire settlement.

Resettlement process was strictly centralized, and it didn't include local and central government of Adjara region. Nobody was taking into consideration their ideas. Low qualification level was revealed by the Roads Department's Adjara branch, the entire process literally was entrusted to the Geographic LTD which did appraisals of the properties.

Within 2 years via television or in writing I was asking for a meeting with the head of the Roads Department Mr. Seturidze, unfortunately it never happened. Within 2 years I was not able to prove to the Roads Department of Georgia that proceeds from renting private property that is taxed with 20% should be compensated in accordance to the provision regarding compensating business and resettlement (appendix 3). I had to write a letter to the Prime Minister of Georgia regarding this.

I also would like to emphasize several facts about the role of the Geographic LTD in ruining me and since there will be many other big and small projects company's activity will ruin others as well. I have a good education with the university degree; I worked on many different positions including organizations that control processes. How come nobody knows that the land adjacent to the main road which also is non-agricultural and has commercial area on it (shop, office) cannot have the same price as the land located 100-200 meters from the same main road, which also is illegally owned by somebody. Position of the Adjara's and Georgia's Roads Department is more surprising; regardless of the fact that I provided alternate appraisal of my land according to which 1 square meter costs 93 USD, I still was compensated 44 USD. In order to save 3 GEL per square meter Roads Department and Geographic LTD undertook actions that a professional with high qualification wouldn't allow. Without my approval they tried to change purpose of the land under my possession, fortunately, I noticed this on time and withdrawn my letter from the Public Registry (copy is attached, appendix 4, 4 pages and 1 CD). According to Geographic LTD my land is under category 3 since it is located on the right side of the road which is full of houses and in front there is a windbreak which is a government property.

My property had two entrances. One for the commercial purposes from the main road's side (photo is attached, appendix 5), the second one from the far back side which would allow separation of the territory for commercial and private purposes if additional commercial buildings were to be built. According to Geographic LTD densely populated area is an obstacle for business (see citation in appendix 6). I didn't tell the Geographic LTD that I was going to build a livestock farm on the territory. If there was local knowledgeable expert, who knew Batumi, he/she would tell you, that land located on the right side of the Batumi-Khelvachauri road is 30% more expensive than those located on the left side, which also is confirmed by the Samkharauli's appraisal. Moreover, 60-70% of the manufacturing facilities and commercial areas of Batumi are located on the right side of this road, specifically on F.Khalvashi Avenue. Due to this reason this area, where my land is also located, is known as an industrial zone, where around 90% of all construction materials of the Adjara region is produced. There is high demand on labor and there are private houses in the area which are not the obstacle, but are bigger incentive for the business. Geographic LTD in its letter emphasize that I don't have direct access to the main road due to the windbreak in front of my land. I assure you this is not accurate information. There was no land reform fully conducted in Adjara region and due to this old constructions from the times of Georgia's independence and new constructions currently being built on the Batumi-Khelvachauri highway have this windbreak area. In fact all of those people who have lands adjacent to road have access to it within this windbreak area, but due to lack of reforms purposes of these windbreak lands have not changed. I am sending video recording from the F. Khalvashi highway 5 kilometers long (appendix 6, 1 CD)

How fair Roads Department's action is when Geographic LTD based its appraisal of the data from 2013-2015 from the public registry and local brokerage firms with land resale information. Appraisal of the property was done in 2016-2017, written reply to my letter

was provided to me on January 21, 2017, i.e. nearly 2 years after the fact when the price of the land was increasing every day and continues to do so even today which also was confirmed by the same Geographic LTD (citation from the Geographic LTD letter is attached, appendix 7, 3 pages). Many times, I sent a letter to the Roads Department of Georgia and suggested to provide me with alternate land or let me buy government land for the same 44 USD they appraised my property and in addition to that as a contribution I would transfer 20,000 GEL to the Roads Department for the road construction purposes, but I have never received a reply. I attached a letter sent to the Roads Department back in March 2017 (appendix 8, 4 pages). The provision about resettlement doesn't consider providing alternate land, but it also doesn't provide restrictions on such kind of action, suggestion still is in valid.

In every letter I sent I was asking for a meeting; I would go to Tbilisi but the reply that was coming from Geographic LTD through the Roads Department, was a threat of expropriation that comes from so called "Bolshevik" times.

I am asking Georgian Bar Association to select a lawyer for me and pay special attention to this case, did Geographic LTD have right to initiate expropriation via approaching Roads Department with this request?

I am asking Georgian Parliament to initiate and approve law that will allow both sides, the government and private property owner, on the first stages of the court to be able to negotiate property prices and protect it, and if the agreement is not reached only afterwards expropriation law should be enforced. Government should also cover expenditures of the first stage of the court. The case should be reviewed not in Tbilisi but in the nearest court where the property is located. As I mentioned earlier compensation for the rightful ownership and illegal ownership of the land was the same, which, in my opinion is a very big crime. This action provides more incentives to other people to illegally take government property into possession. If the situation is not changed this process will not be manageable very soon. Should be considered the fact that there are about 4,000 families illegally owning property in so called "dream city", some part of them frequently are fed by Turks during "Ramadan" period, some of them were included in the resettlement program for the second time, and after the project number of families has increased. It won't be a surprise if the same families will be subject to resettlement for the third time on the continuation of the road construction project, this requires additional investigation. I have a reasonable doubt which also is strengthened by the fact that there are only 2-3 families in the same situation as I am, for 3 GEL Geographic LTD tried to fake purpose of my land regardless of the fact that I have appraisal from Samkharauli according to which there is 110% difference in appraised value. When Roads Department write me that I don't have a road in front of my land, when they see there is 6 meter long gate entrance to my land from the roadside and 3-meter gate from the back side, when they see surfaced entrance to my shop that is functioning from 2011 (appendix 9 with the photo), when they say these territories are full of houses and are not attractive for the business and when they show such a big generosity for illegally owned property, is there really a chance for repeating Karaleti fraudulent case, which was started by President Saakashvili, when there was project with highway directions and illegally taking property on its way was not prevented. This case still continues today. As far as I know provision considers compensation of the illegally owned building only, not the land.

In private conversation Roads Department's Adjara branch representatives explained to me that there is consent from the Georgian Parliament and the Prime Minister about compensating illegally owned land as well, I don't want to believe it.

I want to thank the Asian Development Bank for the support they are providing to the

Georgian people. On June 15th, 2018, I heard during the meeting that 1.5 billion USD will be provided to Georgia for implementing different projects. This is a very good initiative, but if you put some more checks and balances and control rational spending of every cent, it will increase not only efficiency of your funds but also will strengthen trust and friendliness from Georgian people; your representative in Tbilisi doesn't provide example of this. If I reach my goal and audit is implemented which presumably will reveal several violations, in my opinion your representatives will also be involved in it. The ADB representative in 2011 during the meeting promised me that my conditions will improve because of these project and the property would be purchased according to market prices. However, Georgian government for the buildings is paying me the amount that is necessary to build similar building, but the land where this should be built with the same purpose and location, it is paid me 44 USD per square meter whereas it costs 93 USD based on 2017 Samkharauli appraisal. In 2018 the similar land costs around 150 USD. Due to this I was not able to buy a land. I lost my shop, lost my business, my conditions have worsened significantly, and I, a 68 years old man, am forced to protect by legal means my honor and private property that is driving the world economy.

I am sending only Samkharauli appraisal of the land to the ADB, as for the buildings, if you request so, I send the same Samkharauli appraisal as well as CD and written correspondence between me and the Roads Department of Georgia. I would greatly appreciate an opportunity of meeting with you in private while you are travelling in Georgia. I will provide you with additional materials. I still have a little hope, that you honestly will approach problems emphasized in this letter, will study and analyze them, will select highly qualified specialists, will study validity of spending project funds by the Georgian government and also evaluate mistakes in appraising my property and timely will resolve them.

I hope I won't need long legal fight with our untrustworthy judicial system.

Dear Ms. Irma, I kindly ask you to share this letter with the defense and security committee and transfer it to prosecutors office for actions on behalf of your fraction.

I kindly ask the Georgian Bar Association to carefully review facts provide in this letter, I can additionally provide more documents. With the appropriate agreement please select a lawyer for me, who will protect my private property ownership rights and also will act on validity of spending government funds.

From Ms. Rusudan Gurgenidze ID 61006017427
Khadzta Street, I Deadlock, House N2, Batumi, Georgia
Trustee (and husband) Mr. Givi Gurgenidze ID 6100601502
Mobile: +995 593198530
Referrer node/81970