



DISPUTE RESOLUTION CONCLUSION REPORT

GEORGIA: AGL-01/ MAKHALAKIDZEEBI, OCTOBER 2020

This report provides an overview of the CAO dispute resolution process in relation to the Shuakhevi hydropower project, supported by IFC (#33435; #37781; #601449) and MIGA (#12315), in Georgia.

SUMMARY

In February 2018, CAO received a complaint from a group of residents of the Rabati settlement of the Makhalakidzebi village (“the Complainants”), in the Shuakhevi Municipality of the Autonomous Republic of Adjara, Georgia. The complaint raised several concerns about existing and anticipated negative impacts of the construction of the Shuakhevi hydropower project. The project was developed by Adjaristsqali Georgia LLC (AGL or “the Company”) as a joint venture between Tata Power International Pte. Ltd., Norway’s Clean Energy Invest, and IFC. In addition to IFC’s financing, MIGA issued a guarantee covering an equity investment of Tata Power International Pte. Ltd. of Singapore in the project.

As the European Bank for Reconstruction and Development (EBRD) and the Asian Development Bank (ADB) are co-financiers of the project along with IFC, a complaint was also lodged with EBRD’s Project Complaint Mechanism (PCM, replaced in July 2020 by the Independent Project Accountability Mechanism or IPAM) and ADB’s Office of the Special Project Facilitator (OSPF) by the same group of Complainants.

During the assessment of the complaint, the Complainants and the Company (“the Parties”) expressed interest in engaging in a voluntary dispute resolution process to try and resolve the issues raised in the complaint. They also agreed that CAO and

PCM would co-facilitate the dialogue process, with OSPF acting as observer.

Between June 2018 and June 2020, CAO and PCM facilitated several bilateral and joint meetings between the Parties and other relevant stakeholders, including representatives of the municipal and regional government. Several challenges were encountered by CAO, PCM, and the Parties along the way, which contributed to the lengthiness of the process. These challenges included the need to allocate time to develop the Parties’ capacity to engage in the mediation, the involvement of the government as a key stakeholder, and the restrictions brought by COVID-19. In August 2020, after two years of engagement, the mediation process concluded without a final agreement regarding the issues raised in the complaint. The complaint will now be transferred to CAO Compliance for appraisal of IFC’s and MIGA’s performance related to the project, as provided by CAO’s Operational Guidelines for complaints that cannot be resolved through dispute resolution.

In July 2020, the Parties met for a final joint meeting, which was facilitated by CAO and PCM via online video conferencing, due to the existing COVID-19-related travel restrictions. During the meeting, the Parties discussed the possibility of continuing their engagement through dialogue after the closure of the dispute resolution process, with a view to further discussing options to

address the community's concerns related to the project.

This Conclusion Report gives an account of the dialogue process and various outcomes achieved, and offers some reflections and lessons learned from the Parties and the CAO-PCM teams.

BACKGROUND

The Project

AGL is a special-purpose company set up to develop a cascade hydropower project (“the project”) in Adjara, Georgia. While the project was originally proposed to include three phases – the 185 megawatt (MW) Shuakhevi scheme, the 150MW Koromkheti scheme, and the 65MW Khertvisi scheme – the Khertvisi scheme was not pursued by AGL, due to significant economic and environmental risks, and Koromkheti was envisaged to be developed as a separate project through a legal entity other than AGL. Therefore, only the Shuakhevi plant was developed by AGL, as a joint venture between Tata Power International Pte. Ltd. and Norway’s Clean Energy Invest (40 percent each), and the International Finance Corporation (IFC) (20 percent).

IFC’s investment consists of an A-loan of up to US\$70 million (IFC project number 33435). At the time of the complaint, IFC also had a straight equity investment of up to US\$34 million (IFC project number 37781) and an Advisory Services project, to advise on AGL’s retrenchment strategy and associated implementation plans, including sustainable livelihood opportunities for the communities and workforce (IFC project number 601449). Projects #37781 and #601449 are now both closed.

In addition to IFC, the Multilateral Investment Guarantee Agency (MIGA) is providing a US\$63 million guarantee to Tata Power International Pte. Ltd. of Singapore

to cover its equity investment in the project (MIGA project number 12315).



Figure 1 - Makhalakidzeebi village

The Complaint

The complaint to CAO was submitted by community members representing 22 households (about 100 individuals) of the village of Makhalakidzeebi in the Rabati District of the Makhalakidzeebi village, Shuakhevi Municipality, Adjara, Georgia.

The Complainants voiced concerns regarding a range of existing and anticipated environmental and social impacts of the project affecting the Makhalakidzeebi village, including:

- an increased risk of landslides and rockfalls allegedly caused by the operations and explosions carried out by AGL during tunneling works, posing a threat to the safety of the community;
- damages to private houses and impacts on groundwater levels, allegedly related to the vibrations and rockfalls caused by AGL’s blasting and drilling activities undertaken to construct the underground tunnels; and
- impacts on the biodiversity of the Adjaristsqali river.

The Complainants further alleged that AGL failed to properly address the risks linked to the project implementation and to comply with a previous agreement entered into with the Adjara regional government and the community members in 2014 to provide

compensation in case of damages caused by the Company.

Given that the complaint filed by the Makhalakidzeebi community with CAO, PCM, and OSPF raised identical issues and related to the same project, the mechanisms sought consent from the Parties to cooperate with each other and with the Parties, to ensure efficient use of time and resources, and consistency of approaches.



Figure 2 - Makhalakidzeebi village

CAO ASSESSMENT

After finding the complaint eligible in April 2018, CAO began an assessment of the complaint. With consent from the Parties, and to avoid burdening the Parties with unnecessary field trips that would delay the finalization of the assessment, CAO conducted the assessment remotely, relying on calls with the Parties and other relevant stakeholders, and on the documentation made available by PCM and OSPF.

Through the assessment, CAO aimed to develop a thorough understanding of the issues and concerns raised in the complaint and determine which CAO role the Parties sought to initiate. CAO's assessment does not entail any judgment on the merits of the complaint.

In the course of the assessment, both the Complainants and the Company agreed to pursue dispute resolution. As a non-judicial, non-adversarial, and neutral forum, CAO's Dispute Resolution function provides a process through which the parties may find mutually satisfactory solutions to the issues raised in the complaint. The Parties agreed that CAO and PCM would co-facilitate the dialogue process, with OSPF acting as observer.¹

THE DISPUTE RESOLUTION PROCESS

Process Design and Capacity Building

In June 2018, CAO and PCM began facilitating meetings with the Complainants and the Company, with the support of two regional mediators, hired by CAO and PCM. As a preliminary step, the mediation team engaged the Parties to establish how the process would be structured. This included reaching an agreement regarding what issues would be discussed, meeting structure, and ground rules.

Furthermore, the Parties were encouraged to designate trusted representatives to participate in the process, who received capacity-building support from the mediation team, including trainings in negotiation, conflict resolution, and communication skills.

As a result of the capacity-building support, representatives of the Parties developed knowledge and skills to help them engage more effectively and constructively in the dialogue process and make informed decisions regarding both the process and its outcomes. The early meetings facilitated by the CAO-PCM team were tense. The Complainants' urgent need for assurances about the safety of their community and the Company's position that it is not responsible

¹ For more information about the assessment of this complaint: [http://www.cao-](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=1271)

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for the anticipated environmental impacts from natural risk events such as landslides and rockfalls made the initial communications between the Parties quite contentious.



Figure 3 - Makhalakidzeebi community members and the CAO-PCM mediation team

Initiating the Dialogue

During the first mediation joint meeting convened by CAO and PCM in June 2018, the Parties signed a Framework Agreement for the dialogue process, which identified a set of agreed principles governing the process, including but not limited to the roles of participants, the format of meetings, the rules regarding decision making, confidentiality, and communications. The Parties agreed to treat the content of the Framework Agreement as confidential during the process.

Both the Complainants and the Company shared the vision that the local municipality administration, represented by the Mayor of Shuakhevi, should be considered an important stakeholder for the mediation and be invited to participate in the process.

At the first joint meeting, the Parties exchanged their views regarding the issues raised in the complaint. Specifically, the Complainants identified the community's safety from landslides and rockfalls and the decrease in the water supply as priority issues to be addressed by the process. The Complainants also identified communication with the company and future cooperation to support community

development as additional priority areas for discussion.

The Company representatives provided their views on the issues and explained measures already taken by AGL to improve the situation and monitor the construction-related risks, and the standards to which the company complies. In response to the Complainants' safety concerns, the Company responded that it believes that the risks are based on perception rather than concrete evidence, and they relate to pre-existing geological characteristics of the local environment, rather than to the Company's activities. The Company maintained that it had demonstrated and provided enough information about the approach adopted for the construction and monitoring of the project, and that these approaches ensure there had been no adverse impact on the dwellings of the Makhalakidzeebi village.

Further, the Company offered to participate in joint monitoring activities for assessing safety risks due to rockfalls and indicated its willingness to provide support wherever feasible as part of its Corporate Social Responsibility (CSR) initiative.



Figure 4 - Joint meeting facilitated by CAO-PCM

The Parties further discussed possible solutions that would be available and acceptable by both sides and identified information gaps between the Parties which the dispute resolution process could help to address.

As a follow-up to the questions raised by the Complainants during the first joint meeting in relation to the environmental impacts of the project, the Parties agreed to meet again in July 2018 for an information exchange session regarding the plant's ongoing construction operations and AGL's safety measures and risk-monitoring activities.

Negotiations on the Issues

After jointly identifying the priority issues to be addressed in the mediation, the Parties began engaging in negotiations and exploring viable solutions available to them, with the continuous support of the CAO-PCM mediation team. At the second joint meeting, in September 2018, the Parties agreed to create a Working Group composed of representatives of the Complainants, the Company, and the Shuakhevi municipal government. The purpose of the Working Group was to provide a constructive space for effective cooperation and action planning between the representatives of the Parties, who were mandated to routinely report back to their constituencies and eventually propose a mutually acceptable action plan addressing the issues raised in the complaint.



Figure 5 - First Meeting of the Working Group (Office of Shuakhevi Mayor) – September 2018

In preparation for the third joint meeting in December 2018, and with the Parties' consent, the mediation team engaged a representative from the Adjara regional government, to inform him about the

ongoing mediation process and discuss the scope of an existing government program providing financial support to households impacted by natural disasters (the "eco-migrants" program). Given the relevance of such a program for the Makhalakidzeebi community and the interest of the regional government in the resolution of the concerns raised by the village, the Adjara government was invited to become involved in the process and to participate in the fourth joint meeting, which took place in June 2019.

Between joint meetings, the negotiations continued through in-person and remote bilateral conversations with the Parties and other involved stakeholders, facilitated by the local CAO mediator.



Figure 6 - Bilateral members with the representatives of the Complainants

During the fourth joint meeting, on June 28, 2019, the Parties agreed on the structure of a Joint Program for Community Safety and Development (the "Program"). At the heart of the Program is the Makhalakidzeebi community's safety needs and a structure for cooperation among the Parties and the local and regional governments, to provide support for the community's safety and development. Specifically, the objective of the Program was to build on the existing governmental eco-migration program, with reasonable financial contributions from the Company's CSR program as support for the resettlement and development of the affected community.



Figure 7 - The mediation team and the community members from Makhalakidzeebi

The Parties agreed that the implementation of the Program would begin in 2020, as soon as the company started its operations and could determine the available budget. The representative of the Adjara regional government who attended the fourth joint meeting confirmed the government's commitment to lead the project, in terms of both structure and implementation. As for the implementation of the Program, the community members accepted the proposal of a phased implementation, according to which the households most exposed to the risk of landslides and rockfalls would be the first to receive support, followed by the others.



Figure 8 - Community members and CAO-PCM mediation team before a bilateral meeting in Makhalakidzeebi

Following the fourth joint meeting, the mediation team continued to facilitate bilateral meetings with the Parties, in an attempt to advance the negotiations regarding the terms of a final settlement agreement that would incorporate the program designed by the Parties. Due to the restrictions to travel and social gathering brought about by COVID-19, the dialogue

was carried on through bilateral telephone calls, facilitated by the local CAO mediator.

By July 2020, the Parties had not been able to agree on the details of the program, and it became clear that reaching agreement was unlikely. One of the most contentious points in the discussion related to the disagreement about the Company's position that the community members should register for the eco-migration program before they could benefit from the Company's support.

The Company explained that since the risks of landslides and rockfalls cannot be causally linked to the Company's activities, the Company has no obligations to support the resettlement of the Complainants. At the same time, AGL confirmed that it would provide assistance to the local government agencies in finding a solution to the problem and provide additional support under its CSR framework if a business case was made out for such support, through registration under the government's eco-migration program.

The Complainants felt that the amount of money offered to them by the Company would have been insufficient to cover the cost of resettlement, considering current market prices, even if combined with the funds allocated by the government's "eco-migrants" program.

As the Parties expressed willingness to meet once again under the auspices of CAO and PCM, a joint meeting was facilitated on July 14, 2020. Due to the existing COVID-19-related restrictions, the mediation team joined the session by videoconference, while the Parties met in person, complying with the applicable social distancing rules.

During the joint meeting, the Parties discussed a proposal presented by the Company to the representatives of the Makhalakidzeebi community, which

envisioned a "neighbor of choice" concept built on the Company's corporate social responsibility philosophy. Notwithstanding the efforts and commitment to find mutually acceptable solutions to the issues, the Parties were unable to overcome their disagreement regarding the terms of the proposal and to reach a common understanding on the way forward.

Despite not having been able to reach agreement through the CAO- and PCM-facilitated process, the Parties expressed openness to stay engaged through dialogue outside the CAO-PCM framework, employing the skillsets they developed as part of the capacity building received during the mediation process.

During the meeting, CAO solicited feedback and questions from the Parties about the process, and explained the next steps, including the transfer to CAO's Compliance function for appraisal of IFC and MIGA's due diligence.



Figure 9 – Representatives of AGL, Shuakhevi municipality government, and Makhalakidzeebi during the fourth joint meeting

DIALOGUE OUTCOMES

Since the beginning of the dialogue process in June 2018, 19 mediation field missions and five joint meetings were completed. Despite the lack of a final settlement agreement, the efforts made by the Parties throughout the process achieved some positive outcomes:

- A trusted and safe space for dialogue was created between the Company

and the Makhalakidzeebi community to discuss the community concerns and expectations.

- The Parties' capacities to be effectively engaged in dialogue processes were developed and strengthened. Throughout the process, the Parties complied with the principles agreed upon in the Framework Agreement.
- The scope of the stakeholders involved in the discussion regarding the safety of the Makhalakidzeebi community was broadened to include the municipal and regional governments.
- Although negotiations reached an impasse, the community was able to receive the requested acknowledgement from both the Company and the government of its need for continuous support and assistance in response to the existing geological risks in the Shuakhevi area.
- The Makhalakidzeebi community was also able to receive the requested information from AGL about the status of the project and its potential impacts on the local environment.
- Both Parties recognized that the public resources that are available to communities affected by geological risks in the Adjara region are not sufficient to support their resettlement.
- The Shuakhevi municipality agreed in principle to the establishment of a "Natural Disasters Fund" that would be available for all villages in the Shuakhevi municipality and open for contributions from the Company and other funders.
- By establishing the Working Group, the Parties were able to create a format for ongoing engagement between AGL, the Makhalakidzeebi community, and the local government.
- The Company's support program for the Makhalakidzeebi community could

be further explored by the Parties on their own after CAO and PCM exit from the process.



Figure 10 – Representatives of the community, company, government, and mediation team at the end of the fourth joint meeting in Shuakhevi

LESSONS LEARNED

The case presented several challenges and learning opportunities for the mediation team, including the following:

Trust building through process design

In order to arrive at a process that the Parties could agree to and feel comfortable with, the mediation team had to work with them to understand their needs and preferences and design a structure that worked for all. The Parties' involvement in the design of the ground rules and of the dialogue structure gave them ownership of the process and strengthened their mutual trust. For example, the creation of the Working Group and the agreement that the process would be governed by confidentiality provided them with a safe space to comfortably engage with each other.

Effective stakeholder mapping

The involvement of the government in the dispute resolution process, which was suggested and agreed by the Parties, enabled the mediation process to proceed. As a key stakeholder, the involvement of the

government was helpful in motivating the Company's participation and enabling the Parties to access firsthand information about the existing government programs that were relevant to the issues being discussed in the mediation.

Ongoing capacity building

Capacity building is relevant at every stage of the dispute resolution process. While it is an important part of the early convening phase to prepare the parties for dialogue and address any pre-existing disparities, it should be an ongoing effort throughout the process. To this end, mediators play a crucial role in identifying capacity gaps and skills that need to be strengthened and working with the parties to support them with the required expertise.

Gender inclusion

Gender groups are affected in different ways by conflict, and may have different needs, vulnerabilities, aspirations, and interests in the conflict's resolution. The inclusion of women among the representatives of the Parties was fundamental to ensure that their perspectives and concerns were discussed, so that any agreed steps by the Parties could be responsive to the needs of the Complainants' group in its entirety. Furthermore, encouraging female representatives to take on more than formal or limited roles and to contribute to the consultations and decision-making processes was an effective strategy to address inherent power imbalances resulting from gender norms.

Use of technology

Extensive team preparation and technical support from CAO and PCM were essential to ensure that the mediators could effectively facilitate the fifth joint meeting via

online conferencing with simultaneous interpretation.

CONCLUSION AND NEXT STEPS

Despite the efforts of all the Parties in seeking to resolve all the issues raised in the complaint, they did not reach a final agreement on the terms of the Joint Program for Community Safety and Development and will consider engaging in an ongoing dialogue process in smaller working groups outside the CAO and PCM framework.

CAO's Dispute Resolution function has concluded its involvement in this case, and the case will be transferred to CAO Compliance for appraisal of IFC's and MIGA's performance related to the project.