



Independent
Project
Accountability
Mechanism

Compliance Review Report

North-South Corridor (Kvesheti-Kobi) Road Project
EBRD Project Number 50271

Case 2020/01

November 2022

The Independent Project Accountability Mechanism (IPAM) is the accountability mechanism of the EBRD. It receives and reviews concerns raised by Project-affected people and civil society organisations about Bank-financed Projects, which are believed to have caused harm. IPAM may address Requests through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the Project-specific provisions of the Public Information Policy; and Problem-Solving, which has the objective of restoring dialogue between the Requesters and the Client to resolve the issue(s) underlying a Request without attributing blame or fault. Affected Parties can request one or both of these functions.

For more information about IPAM, contact us or visit <https://www.ebrd.com/project-finance/ipam.html>

Contact information The Independent Project Accountability Mechanism (IPAM) European Bank for Reconstruction and Development 5 Bank St, London E14 4BG Telephone: +44 (0)20 7338 6000 Email: ipam@ebrd.com	How to submit a complaint to the IPAM Concerns about the environmental and social performance of an EBRD Project can be submitted by email, telephone or in writing, or via the online form at: https://www.ebrd.com/project-finance/ipam.html
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List of Abbreviations

ADB	Asian Development Bank
AIP	EBRD Access to Information Policy
Bank (or EBRD)	European Bank for Reconstruction and Development
BAP	Biodiversity Action Plan
Board	The Board of Directors of the EBRD
CAO	The EBRD's Chief Accountability Officer and Head of IPAM
UNESCO	The United Nations Educational, Scientific and Cultural Organization
CHAP	Cultural Heritage Action Plan
CHM	Cultural Heritage Monitor
CHMP	Cultural Heritage Management Plan
CR23	China Railway 23rd Bureau Group Co. Ltd.
CRTG	China Railway Tunnel Group Co., Ltd.
CRP	Compliance Review Panel
CSO	Civil Society Organization
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
EHS	Environment Health and Safety
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESAP	Environmental and Social Action Plan
ESP	The EBRD's Environmental and Social Policy in force at the time of Project approval
ESD	EBRD Environment and Sustainability Department
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
ESP	EBRD's Environmental and Social Policy
EU	European Union
EUR	Euro
GIP	Good International Practice
GoG	Government of Georgia
HHRP	Historic Heritage Reference Plan
ICOMOS	International Council on Monuments and Sites
IPAM	Independent Project Accountability Mechanism
IPAM Head	The head of IPAM, responsible for the running of IPAM, the implementation of the Project Accountability Policy, and for making the decisions that are the responsibility of IPAM under the Project Accountability Policy
JICA	Japan International Cooperation Agency
Lenders	ADB and EBRD
MAP	Management Action Plan
MoEPA	Ministry of Environmental Protection and Agriculture of Georgia
NACHP	National Agency for Cultural Heritage Preservation of Georgia
NGO	Non-governmental Organisation
NTG	National Trust of Georgia
NTS	Non-Technical Summary

PAP	2019 Project Accountability Policy
PCM	The Project Complaint Mechanism of the EBRD in operation from 2010 to June 2020.
Policy	IPAM Project Accountability Policy that governs IPAM functioning
PR	Performance Requirement
President	The President of the Bank
PSD	Project Summary Document
RD	Roads Department
SEP	Stakeholder Engagement Plan
ToR	Terms of Reference
UNECE	United Nations Economic Commission for Europe Convention
USD	US dollars
WB	World Bank

Executive Summary

The National Trust of Georgia (NTG), a Civil Society Organisation (CSO) dedicated to the protection and preservation of Georgian cultural heritage, submitted a Request¹ to the EBRD grievance mechanism on 27 September 2019, in relation to the North-South (Kvesheti-Kobi) Road Project ([50271](#)). The Requesters alleged that the chosen alignment of the Project through the Khada Valley, a pristine area known for its historical military towers and mountainous landscapes, would permanently affect the cultural heritage of the area and limit the development of the eco-tourism sector. According to the Request, the Bank had failed to adequately assess the impacts on cultural heritage and ecotourism that the road would generate. They suggested that an alternative alignment going through the Lakatkhevi valley was a better option and should be considered. Furthermore, they alleged that the decision had been taken without proper consultation of interested parties. They considered that alternative alignments with less impact were available and should have been selected instead of the current alignment.

The North-South (Kvesheti-Kobi) Road Project was approved by the EBRD Board of Directors on 2 October 2019. It consisted of a sovereign loan of EUR 53.4 million granted to the Government of Georgia (GoG) to co-finance with the Asian Development Bank (ADB) the construction of the Tskere-Kobi tunnel (Lot 1), which forms part of the Kvesheti-Kobi Road section (the Project), located on the Jinali-Larsi Road (North-South Corridor). The greenfield project was categorised A under the EBRD's 2014 Environmental and Social Policy (ESP) due to its potential to have significant Environmental and Social (E&S) impacts associated with the construction and operation of a new road between Kvesheti and Kobi.

The investigation undertaken by IPAM found that the Bank did not comply with some of the provisions of the 2014 ESP and failed to ensure compliance by the Client with several provisions related to Performance Requirements 1, 8 and 10. The lack of compliance of the Bank (see Table 1 below) with the ESP is centred on three main areas:

1. Verification, by the Bank, that prior to its involvement, the Project had an updated cultural heritage study to assess impacts and that cultural heritage experts and organisations were consulted. The Bank failed to identify these gaps and act immediately upon them once involved.
2. Requiring the Client to undertake cultural heritage studies (both tangible and intangible) during the appraisal stage, to ensure that a full assessment of impacts was done and corresponding mitigation measures were established prior to starting construction. The Bank failed to require the studies at that stage and management plans were issued reflecting a limited stock of physical cultural heritage sites and no consideration of intangible cultural heritage. The studies were commissioned much later and, therefore, mitigation plans would require amendment to accommodate the revised baseline.
3. The Project did not include cultural heritage experts and associations in the early stages of decision making, prior to the Bank's involvement. Once the Bank was involved, it did not require the Client to include them, although once these stakeholders got to know about the Project, the Bank engaged with them continuously and provided information as requested. However, from the perspective of these groups, the lack of information and consultation when decisions on Project location were made, has led to an alignment that will permanently harm the cultural heritage and pristine landscape of the Khada Valley.

¹ The original Request can be accessed in the [virtual case file](#) located in the [IPAM Case Registry](#)

Table 1. Summary of Compliance Review Findings

PR	Findings
PR 1 on Assessment and Management of Environmental and Social Impacts and Issues	<p>IPAM found the Bank non-compliant with the 2014 ESP provisions on the assessment of impacts as they relate to cultural heritage as the archaeological baseline studies, recommended by experts and consultants, were not undertaken in a timely fashion. This lack of timeliness meant that the EIA did not include the full impact on tangible cultural heritage, did not consider intangible cultural heritage and in consequence, lacked mitigation measures commensurate to the unidentified impacts (mainly in relation to a deficient survey of existing tangible cultural heritage). In addition, relevant stakeholders were not included in the consultation process.</p>
PR 8 on Cultural Heritage	<p>IPAM found the Bank non-compliant with provisions on international conventions (as they relate to cultural heritage), as the Bank failed to structure the Project during the appraisal stage, under the guidance of the relevant principles and substantive requirements set out in the <i>Council of Europe Framework Convention on the Value of Cultural Heritage for Society</i> and the <i>Council of Europe European Landscape Convention</i> as required by general provisions of the ESP.</p> <p>IPAM found the Bank non-compliant with the 2014 ESP provisions on assessment, development of mitigation measures and their inclusion in Environmental and Social Management Plans (ESMPs), as the Bank failed to ensure that the Client conducted the assessment of cultural heritage in a manner commensurate with the nature and scale of the Project. Due to the lack of an updated baseline, the ESMPs only reflected a partial stock of affected tangible cultural heritage. At that stage, the Bank also failed to require the assessment of impacts on intangible heritage. Furthermore, the approved Cultural Heritage Action Plans lacked specific mitigation measures, designation of responsible actors, timelines and estimated costs as is required in the 2014 ESP, but were, nevertheless, considered adequate by the Bank.</p>
PR 10 on Information Disclosure and Stakeholder Engagement	<p>IPAM found the Bank compliant with provisions on disclosure of relevant information, as the information prescribed by the Policy has been disclosed and the Bank promoted good practice in stakeholder engagement and consultation with the Client.</p> <p>IPAM finds the Bank partially compliant regarding the efforts to ensure that the Client disclosed the examination of technically and financially feasible project alternatives to stakeholders, based on the actions and inactions of the Bank regarding these provisions and in general on PR 10.</p> <p>IPAM found the Bank non-compliant with provisions on appropriate stakeholder identification, as the Bank did not ensure that the Client included experts and civil society organisations in the field of cultural heritage, as required by the relevant provisions in PR 8.</p> <p>IPAM found the Bank non-compliant in requiring a meaningful consultation process as it failed to ensure that the consultation processes included, beyond the affected parties, any groups or individuals who had an interest in the Project.</p>

Following careful consideration, IPAM makes the following Project-level recommendations to Bank Management to address the instances of non-compliance in relation to the Project, identified through the Compliance Review process in relation to the issues raised in the Request for Case [2020/01](#):

Recommendation 1: Ensure that the Project develops mitigation measures commensurate to the newly identified stock of physical cultural heritage in the area of influence

Purpose: to address EBRD's non-compliance with commitments under paras. C.29 and the relevant requirements of PR1 and PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

The Khada Valley was identified from the initial scoping stage of the Project as unique in terms of cultural heritage. Furthermore, it was recognised that it had not been sufficiently studied, so a full assessment of the archaeological potential of the area was required to avoid adverse impacts and establish adequate mitigation measures. However, as confirmed by the IPAM findings, no archaeological studies were undertaken during the impact assessment stage to determine the stock of physical cultural heritage in the area that would be impacted by the Project. As a result, only a few monuments were identified and current mitigation measures and resources are limited to this stock.

At a later stage, the Client was asked to undertake in-depth archaeological studies, which resulted in the identification of over 70 additional monuments. However, no update to the Cultural Heritage Management Plans (CHMPs) has taken place, nor the resource implications to ensure adequate protection and conservation.

Therefore, IPAM considers that the following actions by Bank Management are required to address the current non-compliance:

Recommendation 1	Timeframe
i. Require the Client to ensure updates to the Cultural Heritage Management Plans to cover specific recommendations made by the NACHP ² in its Interim Reports and Cultural Heritage Action Plan and verify that the updated CHMPs include who is responsible, an implementation timeline and an estimation of resources needed to implement each of the mitigation measures	Immediately
ii. Require the Client to disclose the updated CHMPs on the Project website	As soon as updated plans receive the Lenders' non-objection
iii. Require the Client to develop a CH monitoring plan for the operation phase	By end of construction phase at the latest
iv. Require the Client to update the baseline of existing CH in the area and document the condition of each one of the objects and publically disclose this information in the Project Website	By end of construction phase
v. Require the Client to undertake an external expert audit of CH condition within 300m on each side of the Right of Way after one year of operation (noise, vibration, air pollution impacts) and ensure that there are conservation resources to address potential impacts. A potential expert audit could be carried out by the NACHP as a follow up to the 2020-2021 inventory and CHAP. Management to include the planning for any additional resources in the MAP.	One year into the operation of the road

² The National Agency for Cultural Heritage Preservation of Georgia (est. 2008) is the Georgian regulatory authority responsible for preservation, protection, research and promotion of the cultural heritage of the country. It brings under its umbrella several major heritage monument complexes of national and global significance in Georgia.

Recommendation 2: Ensure robust and effective avoidance and/or mitigation measures for the protection of intangible cultural heritage in the area

Purpose: to address EBRD's non-compliance with commitments under paras. C.29 and the relevant requirements of PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

As per the IPAM findings, the Bank did not require the Client to undertake studies on the intangible cultural heritage in the Project area, which led to the determination of non-compliance with PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP.

In order to address this issue the Client commissioned the preparation of a Historic Heritage Reference Plan (HHRP), which would include a component on intangible heritage. According to Bank Management, the final document was due by end of March 2022.

For the Project to be compliant with 2014 ESP, the Bank must ensure that the Client and contractors gathered baseline data and developed – in consultations with Project-affected people and relevant third Parties – mitigation measures that reflect the mitigation hierarchy.

Therefore, IPAM considers that the following actions by Bank Management are required to address the current non-compliance:

Recommendation 2	Timeframe
i. Ensure that the Cultural Heritage Management Plans are updated to reflect the findings of the Historic Heritage Reference Plan (HHRP) and any related mitigation plans.	As soon as the HHRP receives the non-objection from the Lenders.
ii. Verify that the HHRP is disclosed on the Project website	Immediately after the non-objection

Recommendation 3: Ensure robust and effective mitigation measures for landscape

Purpose: to address EBRD's non-compliance with commitments under para. PR 8.6 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

According to PR 8.6, landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance are a part of tangible cultural heritage. Therefore, the landscapes of Khada Valley are to be regarded as part of the tangible cultural heritage of the area. However, IPAM found in its assessment that the landscape had not been considered in such a manner during the impact assessment process.

At a later stage, the Client commissioned the additional HHRP referred to in Recommendation 2.

Moving forward, in order to ensure the Bank's compliance with the commitments under para. PRs 8.6 of the 2014 ESP, IPAM recommends the following actions:

Recommendation 3	Timeframe
Bank Management should ensure that the Client:	
i. Undertakes consultations with cultural heritage and tourism experts as well as civil society organisations (including the Requesters of this Compliance Review and their affiliated experts and organisations) on the Khada Valley landscape and its cultural dimension. Their views should be considered and included in the Historic Heritage Reference Plan (HHRP).	Prior to finalising the HHRP.

Recommendation 3	Timeframe
Bank Management should ensure that the Client:	
ii. Submits the HHRP to Bank Management who shall ensure that it complies with the relevant Performance Requirements	During non-objection process
iii. Disclose on the Project website	Immediately after the non-objection
iv. Ensures that Cultural Heritage Management Plans for Lot 1 and 2 and the Land Restoration Plan (as relevant) are updated to include the findings of the studies and avoidance/mitigation measures in relation to the cultural character of the landscape. Mitigation measures should include responsible parties, timelines and estimated costs and reflect the mitigation hierarchy, clearly stating if they aim to avoid or mitigate the impacts.	As soon as non-objection from Lenders is obtained.

Recommendation 4: Strengthen the Stakeholder Engagement process through the inclusion of relevant expert organizations and individuals

Purpose: to address EBRD's non-compliance with commitments under para. PR 8.15 of the 2014 ESP with respect to PR 8 on Cultural Heritage and para. PR 10.9 with respect to PR 10 on Stakeholder Identification.

IPAM recognised the Bank's efforts in conducting stakeholder engagement in line with ESP 2014, but found one weakness relating to the inclusion of all relevant stakeholders, namely the civil society organisations focused on cultural heritage. As prescribed in PR 8.15., "Where a project may affect cultural heritage, (...) Consultation will also involve other relevant stakeholders such as national or local authorities entrusted with protection of cultural heritage, cultural heritage experts and non-governmental and civil society organisations".

Moving forward, in order to ensure the Bank's compliance with the commitments under para. PRs 8.15 and 10.9 of the 2014 ESP,

Recommendation 4	Timeframe
Bank Management should ensure that the Client:	
i. Updates the stakeholder map to include civil society organisations and individuals with relevant expertise in cultural heritage and tourism.	Immediately
ii. Updates the Stakeholder Engagement Plan and provides the opportunity for all stakeholders to participate in the Project in a systematic fashion	Immediately
iii. Submits these to Bank Management who shall ensure that the Plans comply with the relevant Performance Requirements	During non-objection process
iv. Discloses on the Project website	Immediately after the non-objection

In response to the findings of non-compliance, Bank Management prepared a Management Action Plan. The proposed Management Action Plan was sent to the Requesters by IPAM, who did not

comment on its content³. IPAM has also revised the proposed Management Action Plan and considers that it adequately addresses the findings and recommendations of the Compliance Review Report; and will be monitoring the implementation of the approved MAP.

As per the 2019 Project Accountability Policy, IPAM is submitting to the Board and the President the Compliance Review Package for Case 2020/01 North-South Corridor (Kvesheti-Kobi) Road Project (50271) where the Board will have to make a decision on the proposed Management Action Plan. The Compliance Review Report and the Requester's Comments are submitted for information.

As guidance to the Board, the Project Accountability Policy establishes that "it will be the Board's decision to accept or reject the Management Action Plan in its entirety, based on its determination as to whether the Management Action Plan,

- a) Adequately addresses the findings and recommendation of the Compliance Review Report and,
- b) Is capable of bringing the Project into compliance with the Environmental and Social Policy and Project-Specific provisions of the Access to Information Policy.

If the Board rejects the Management Action Plan, it will be returned to Bank Management for revision and will be resubmitted to the Board for approval".

Before initiating monitoring, IPAM will share the final Compliance Review documents with the Parties and publish them on the virtual case registry.

IPAM would like to thank all the Parties of the investigation for their availability and assistance.

³ The Compliance Review Package sent to the Board includes the Requesters' comments.

1. Introduction

The European Bank for Reconstruction and Development (EBRD) is a multilateral developmental investment bank founded in 1991 to foster transition to market economies in countries from Central and Eastern Europe to Central Asia and the Southern and Eastern Mediterranean. The Bank is committed to promoting environmentally and socially sound and sustainable development in the full range of its activities and seeks to ensure that all projects it finances are socially and environmentally sustainable, respect the rights of affected workers and communities and are designed and operated in compliance with applicable regulatory requirements and good international practices.

As part of its good governance structure and its commitment to sustainability, all Projects funded by the EBRD are to be structured in compliance with the Bank's Environmental and Social Policy (ESP) and the Access to Information Policy (AIP). For such situations in which Project-affected communities consider that they are being harmed by a project funded by the EBRD due to the non-compliance of the Bank in relation to the ESP and the AIP, the Bank established the Independent Project Accountability Mechanism (IPAM) which reviews those concerns through two functions: problem solving and compliance.

The objective of the Compliance function is to undertake a fact-finding investigation of the Project to determine whether the Bank, through its actions or inactions, has complied or not with the relevant ESP⁴ in relation to the allegations presented in the Request. The findings of the investigation are presented in a Compliance Review Report, such as this.

This Compliance Review Report was the product of a fact-finding investigation triggered by a Request submitted in early 2020 in relation to the [North-South Corridor \(Kvesheti-Kobi\) Road Project](#) (50271) (The Project) and registered as [Case 2020/01](#) in the IPAM virtual case registry.

The scope of the investigation undertaken by IPAM for Case 2020/01 was defined by the Terms of Reference proposed in the [Compliance Assessment Report for Case 2020/01](#) (see Annex 1). The investigation has focused on the allegations of potential Bank non-compliance with the **2014 ESP**, in particular reference to **Performance Requirement 1 (PR1) on Assessment and Management of Environmental and Social Impacts and Issues; Performance Requirement 8 (PR8) Cultural Heritage and; Performance Requirement 10 (PR10) Information Disclosure and Stakeholder Engagement**.

The investigative methodology used for this review included three fact-finding techniques: (1) desk review of documents, studies, communications and other relevant literature; (2) identification and interviewing of relevant stakeholders; and (3) touring the project site and its footprint. To assist in technical matters, IPAM hired experts in the relevant areas. Box 1 provides the detail on the activities undertaken.

⁴ For Case 2020/01, the relevant Environmental and Social Policy is the one approved in 2014.

Box 1. Investigative activities undertaken by the IPAM Compliance team

- **Document Review:** The Project document review covered the environmental and social impact assessment documentation available to the public, as well as internal documents from the Bank, the ADB and the Client (legal documents, minutes, reports and communications relevant to the period investigated) relating to the Project. The review of secondary sources included desktop research on relevant topics such as GIP relative to cultural heritage and alternative assessment analysis. A total of approx. 250 written sources were reviewed. Documents are referenced as appropriate throughout the Compliance Review Report, in line with the EBRD's 2019 AIP.
- **Virtual interviews:** The IPAM reviewers engaged with the Requesters; the EBRD Banking and ESD departments; ADB operations team and the ADB's CRP (a joint consultation with EBRD banking and ESD team), and the Client.
- **Engagement with the Third Parties:** the Compliance Review included numerous virtual interviews with third parties, including consultants working on the Project appraisal and EBRD-specific gap analysis, civil society organisations opposing the Project, and local and international experts.
- **Cooperation with Other Independent Accountability Mechanisms (IAMs):** IPAM cooperated with the Compliance Review Mechanism (CRP) of ADB because it received a partially similar Request submitted by affected communities with support of the civil society organisation Green Alternatives. The cooperation included joint interviews, joint hiring of a cultural heritage expert and a joint field mission.
- **Joint Field Visit:** An IPAM team comprised of the Chief Accountability Officer, the Compliance Associate and the cultural heritage expert made a six day field visit to Georgia in October 2021, with one of the Independent Panel Members of the ADB CRP. The field visit involved meetings with the Requesters, the representatives of the Roads Department, the National Agency for Cultural Heritage Preservation, the Lot1 and Lot 2 contractors (China Railway Tunnel Group Co., Ltd. (CRTG) and China Railway Tunnel Group Co., Ltd. (CRTG), respectively), the supervising company (UBM), affected households in the Khada Valley, ADB social specialist field team, and a wide range of civil society organisations and local experts.
- **External experts hiring:** IPAM engaged external experts to advise on technical aspects of the case, including cultural heritage and international practise in analysis of alternatives.
 - Joint IPAM-CRP Appointment of cultural heritage specialist: Luisa de Marco, a cultural heritage expert, was commissioned to provide technical inputs on the issues related to PR8. The specialist participated in the site visit and relevant meetings.
 - Appointment of technical experts on Alternative Analysis: A team of technical experts consisting of Prof. Harry T. Dimitriou, Dr. E. John Ward, Prof. Brian Field, and Keith Pery from the OMEGA Centre for Mega Infrastructure and Development from the University College London, was commissioned to provide technical expertise on alternative analysis.

Parallel to the processing of this case by IPAM, the accountability mechanism of ADB, the CRP, initiated a compliance review process related to the Project in April 2021. As the complaints included similar concerns on cultural heritage, the Mechanisms organised joint interviews with relevant stakeholders, shared non-confidential information, participated in the October 2021 project site visit to Georgia and shared the cost related to the hiring of a cultural heritage expert.

As required by the 2019 Project Accountability Policy, this Compliance Review Report presents the findings made by IPAM regarding the actions taken by the Bank in relation to the Project, and includes determinations on whether the Bank has complied with the case-relevant provisions as set out in the ESP. In addition, the report includes Project-level recommendations for those items where non-compliance has been found, which are to be addressed by the Bank through a Management Action Plan.

This Compliance Review Report will be submitted to the Board for information at the same time as the Management Action Plan which is submitted for approval of the Board.

2. The Request

On 27 September 2019 the National Trust of Georgia (NTG), a Georgian civil society organisation, represented by its co-chairs, Peter Nasmyth and Marine Mizandari (“the Requesters”) submitted a Request related to the **North-South (Kvesheti-Kobi) Road Project (50271)** to the Project Complaint Mechanism (PCM)⁵. The Requesters alleged that the alignment selected for the Project would permanently affect the cultural heritage of the Khada Valley and limit the development of the tourism sector in the area.

According to the Request, the Bank's due diligence had failed as the impact assessment studies on these concerns were inadequate. They considered that there were other alternative alignments with less adverse impact on the area which should have been selected instead.

The Request presented the following specific allegations in relation to the Project:

- i. **Project stakeholders were not appropriately consulted in the design of the Project**, citing that the concerns of stakeholder groups, including Georgia’s travel industry represented by the Georgian Incoming Tour Operators Association, were not considered. It asserted that responses to questions posed by the Requesters on the ESIA were not comprehensive or accurate;
- ii. **alternative routes were not suitably considered**, claiming that the Lakatkhevi Valley was never evaluated as a viable alternative route, which in their view, demonstrated a "marked lack of due diligence by the banks in this Project" and "reveal[ed] a lack of preliminary research and thus an inaccurate briefing of the Georgian Government’s Roads Departments, leading to a misguided choice of routes;"
- iii. **the ESIA did not adequately assess the Project’s impact on tourism and cultural heritage**, stating that tourism impacts of the Project were not considered at the outset of Project design, particularly in the Khada Valley. The Requesters further stated that the Project alignment does not adequately consider all cultural sites in its proximity, or mitigate against impacts to them; and
- iv. **the Project does not adhere to international conventions to which Georgia is a signatory**, stating that the Council of Europe Framework Convention on the Value of Cultural Heritage and the Council’s European Landscape Convention have been contravened by the Project.

The Requesters considered that these issues led to the selection of an inadequate route and asked for a re-routing of the road avoiding the Khada Valley as the only possible solution. They also asked for the suspension of the Project to allow for an independent due diligence assessment.

Simultaneously to the submission to PCM, the Requesters filed a similar complaint with the CRP on 12 November 2019 which was found ineligible for a compliance review as it failed to meet the eligibility criteria of the CRP⁶. In early 2021, CRP also received another Request in relation to the Project submitted by affected communities represented by Green Alternatives, a Georgian civil

⁵ The Project Complaint Mechanism was the accountability mechanism of the EBRD from — to June 2020. In July 2020 it was replaced by the Independent Project Accountability Mechanism. The existing active caseload of the PCM was transferred to IPAM under the transitional provisions established in the 2019 Project Accountability Policy which regulates the operation of IPAM

⁶ The CRP of the ADB does not accept complaints filed by non-affected organisations.

society organisation affiliated to Bankwatch. This Request which was found eligible⁷ for a compliance review and their investigation was approved by the ADB Board on 22 April 2021.

⁷ Details of the case are available in the [CRP website](#).

3. The Project

The North-South (Kvesheti-Kobi) Road Project ([50271](#)) is located along the existing North-South Corridor, in the Dusheti and Kazbegi municipalities, in the central northern portion of Georgia. This corridor is one of the most important transit corridors in the country, passing through Georgia between the country's borders with Russia and Armenia. For planning purposes, the Georgian Government split the road into three sections with the Kvesheti-Kobi section selected as the first to be upgraded as the existing 35-km road that goes through the Jvari Pass, 2,400 m above sea level, is unsafe, experiences heavy traffic, and is difficult to maintain in winter, resulting in lanes being closed frequently to trucks and occasionally in full closure of the road. The Project sought to ensure that more vehicles would be able to transit the area under safer conditions and continued operation during the winter months.

The figure below shows the location of the Project marked by the red circle.

Figure 1. Location of the Project



Key: Red circle – location of the Project

Source: EIA, Page 17: <https://kveshetikobiroad.ge/en/public-information/>

On 2 October 2019, the EBRD Board of Directors approved a sovereign loan of EUR 53.4 million granted to the Government of Georgia (GoG) to co-finance with the ADB the construction of the Kvesheti-Kobi road section (the Project), located on the Jinvali-Larsi Road (North-South Corridor). The Project has been split for financing and procurement purposes into two lots with Lot 1 covering the 9-km tunnel from Tskere to Kobi (co-financed by EBRD and ADB) and Lot 2 covering the remaining part of the Project (financed by ADB). The implementing agency is the Georgian Roads Department (RD) and the construction of the Project

Project Cost and Financing Sources

Total Project Cost: EUR 497,300,000 with financing as follows:

- EUR 53.4 million to be provided by the EBRD;
- EUR 370.2 million to be provided by the Asian Development Bank;
- EUR 73.7 million to be provided by Georgia

was awarded to the China Railway Tunnel Group Co., Ltd. (CRTG) for Lot 1 and to the China Railway 23rd Bureau Group Co (CR23) for Lot 2 in August and September 2019 respectively. UBM International United Consultants Inc. (UBM) was appointed in June 2019 as the supervising entity.⁸

The new bypass road is 23 km long and goes through the Khada Valley. The Project area is mountainous and characterized by a complex geographical structure mainly hilly, dissected by gorges/gullies and difficult to access. Elevation in the Project area ranges from 1,320m to 1,975m. The Project road broadly follows the alignment of two valleys, firstly along the Tetri Aragvi river valley, and secondly turning north along the Khada (Khadistskali River) valley before entering the main long tunnel.

Figure 2 marks the Khada Valley area with a yellow perimeter line with turquoise line representing Lot 1 and the dark blue line marking the Lot 2 section.

Figure 2. Overview of the Project footprint



Key: Blue Line: Lot 2 / Turquoise Line: Lot 1 / Yellow Area: Khada Valley
Source: EIA document, Page 173: [Project website](#)

The greenfield project, which is currently under construction, was categorised A under the EBRD's 2014 Environmental and Social Policy due to its potential to have significant environmental and social (E&S) impacts associated with the construction and operation of the new road in a pristine valley.

The key feature of the “Valley of the Sixty Towers” as the Khada Valley is known, is its tower system. The cultural landscape is the fabric that connects and ‘structure’ the remains of the different layers of human occupation and their vestiges, namely archaeological sites, defensive structures, which are the featuring elements of the valley, religious shrines, often superimposed to the remains of towers or fortified sites, churches, villages, orchards, pastureland and the communities that still live there. Mostly bare, the valley exhibits concentration of broadleaf woods in the gorge and on steeper slopes, whilst the vegetation of the plateaus and of gentler slopes have been shaped by grazing practices.

⁸ Frequently Asked Questions, [Project website](#)



Tskere village. Source: IPAM

3.1 The Project Timeline

Date	Event
2017	
10 November	Final Pre-Feasibility Study
2018	
23 March	Final Feasibility Study
March	EBRD approached by the GoG
April	Start of the due diligence process on the Project
4 April	Start of the Environmental Impact Assessment consultation process
4 April	First round of one-on-one consultative meetings with Project-affected people
30 April – 4 May	EBRD-ADB site visit to Georgia
May	Inception Report is completed by Annas/GPI/IRD
12-13 May	Archaeological expert's walkover of Khada valley (Commissioned by the Client)
13 May	Archaeological examination report (Commissioned by the Client)
18 May	EBRD signed a contract with the Social Consultant

Date	Event
23 May	EBRD signed a contract with the Biodiversity Consultant
29 May	EBRD signed a contract with Golder Associates
4-6 June	EBRD site visit to Georgia
27 June	Cultural heritage sites' inspection report of Khada Valley (commissioned by Golder Associates)
29 June	EBRD Concept Review Meeting
1 August	ADB Project Concept Clearance
13 December	Collective letter from tourism sector organisations expressing the opposition to the Project
2019	
January	First Request to PCM submitted by interested individual (not registered)
15 February	Letter of NTG to EBRD Management expressing concerns about the Project
6 March	Public consultation meeting on EIA
March	Completion of the ESIA
25 April	EIA is approved by Ministry of Environmental Protection and Agriculture of Georgia
29 April – 3 May	ADB/EBRD site visit
April	Presentation by EBRD/ADB to the NTG
3 May	ESIA package is disclosed on Client and EBRD's websites
24 June	Roads Department signs contract with UBM Uluslararası Birleşmiş Müşavirler Müşavirlik Hizmetleri A.Ş. for Project Management and Contract Supervision
26 June	Consultation meeting with representatives of the tourism industry in ADB's Tbilisi office
27 June	Presentation by IDOM consultants on alternatives analysis for NTG at ADB's Tbilisi office
19 July	North-South Corridor (Kvesheti-Kobi) Road Project: Report and Recommendation of the President disclosed in ADB website
July	Second Request to PCM submitted by local resident (not registered)
1 August	ADB Board of Directors approves Project
1 August	The Client requests NACHP's clearance of the Project
2 August	NACHP grants clearance of the Project
August	Contract for Construction of the Road Section (Lot 2) awarded to China Railway 23rd Bureau Group Co. Ltd.
September	Contract for Construction of the Tunnel Section (Lot 1) awarded to China Railway Tunnel Group Cp. Ltd
September	Third Request to PCM submitted by local resident (not registered)
25 September	Letter of NGO Green Alternatives to the EBRD Management expressing concerns about the Project
27 September	PCM receives the fourth Request
24 September – 1 October	ADB's Loan Inception Mission
2 October	EBRD Board of Directors approves Project

Date	Event
11 October	Loan Agreement between the EBRD and GoG signed
29 October	Project Implementation Agreement between EBRD and ADB
6 November	Contract signed with UBM Uluslararası Birleşmiş Müşavirler Müşavirlik Hizmetleri A.Ş. for Project Management and Contract Supervision
6 November	Contract for Construction of the Tunnel Section (Lot 1) signed with China Railway Tunnel Group Cp. Ltd
6 November	Contract for Construction of the Road Section (Lot 2) signed with China Railway 23 rd Bureau Group Co. Ltd.
12 November	First Request to the Compliance Review Panel of the ADB
3 December	Specific Environmental Management Plan prepared by Lot 1 Contractor (1 st version)
13 December	Loan Agreement becomes effective
2020	
16 January	PCM registers Request 2020/01
19 June	EBRD signs contract with the Independent Environmental and Social Consultant (IESC) to conduct monitoring of the Project during construction
30 March	Letter of NGO Green Alternatives to the authorities of Georgia expressing concerns about the Project
1 July	IPAM starts operation and Project Accountability Policy supersedes the PCM Rules of Procedure
7 August	IPAM issues Compliance Assessment Report for case 2020/01; Compliance Review process starts
7 October	Specific Environmental Management Plan prepared by Lot 1 Contractor (Revised version E)
October	NACHP consultancy: Inception Report
October	NACHP consultancy: Interim report 1
2021	
January	Community Needs Assessment
June	NACHP consultancy: Interim report 2
July	NACHP consultancy: Cultural Heritage Action Plan
September	Contractor hired to prepare the Historic Heritage Reference Plan (HHRP)
October	Inception workshops with NACHP and RD on HHRP
November	Inception workshops with other stakeholders on HHRP
2022	
February	The draft report on HHRP submitted for review and comments

Source: IPAM

* Events marked in bold refer to the accountability mechanism process (PCM or IPAM). Events marked in blue refer to other complaints and concerns raised.

3.2 The Pre-feasibility and Feasibility stages

Increasing the connectivity of the country has been a priority for several Georgian governments. As a result, programmes to upgrade major roads have been in place for some time, aiming to improve the transportation and transit of goods in Georgia and to surrounding countries.⁹ One of the key strategic initiatives of the Georgian government has been the East-West Highway Project, which connects Azerbaijan with Georgia and its ports on the Black Sea and lies on the Silk Road.¹⁰

Prior to the EBRD's involvement with the Project, the World Bank (WB) played a major role in its financing, within the scope of the Fourth East-West Highway Improvement Project¹¹ (P130413 - approved for funding by the WB Board of Directors on 9 May 2013), which involved the development of pre-feasibility, feasibility and detailed engineering studies for the Jinvali - Larsi Road (110km) and Detailed Design for the Construction of Kvesheti -Kobi Road Section (30km).

Under the WB project, the international engineering consulting company IDOM¹² was selected for these studies conducted in 2017 and 2018, and was also responsible for the preparation of the detailed design and the Resettlement Action Plan (RAP)¹³ for the Project in collaboration with the Georgia-based Gamma Consulting.

The **Pre-feasibility** (Nov 2017) and **Feasibility** (March 2018) **Studies**,¹⁴ undertaken in close consultation with the RD, presented the viability of the investment, as well as defined the general lines of action.

The **Pre-Feasibility Study** developed and identified the viable options (which included upgrading and realignment) for the Jinvali-Larsi corridor dividing it into three sub-sections (one of them the Kvesheti-Kobi) providing a proposed "optimal option" that considered "alignment, capacity, costs estimation, environmental and social constraints, fulfilment of international standards and [justification] from an economic, environmental and technical point of view".¹⁵

The decision process made use of the multi criteria analysis (MCA) methodology¹⁶ (See Table 2 – for the criteria considered). For the Kvesheti-Kobi section, four alternatives were analysed: (1) Tetri Aragvi riverside; (2) through the Gudauri plateau; (3) through Tskere Valley Option 1 and (4) through Tskere Valley Option 2.

Neither the **Pre-Feasibility Study** nor the **Feasibility Study** considered the Lakatkhevi Valley (that was proposed by the Requesters) as an option. According to Project documentation, Management's and Client's responses to the Request, and information gathered during interviews, the analysis of alternative alignments was undertaken to address the GoG Project objectives for

⁹ The Roads Department (RD) of the Ministry of Regional Development and Infrastructure is responsible for their management and several international financial institutions have provided support to the RD in addition to the EBRD, such as the World Bank (WB), the European Investment Bank (EIB), the Asian Development Bank (ADB), and Japan International Cooperation Agency (JICA).

¹⁰ Fourth East West Highway Improvement Project. [World Bank website](#)

¹¹ Fourth East West Highway Improvement Project. [World Bank website](#)

¹² Stakeholder brief: Assessment of Alignment Alternatives. [Project website](#)

¹³ The detailed design and the RAP were in preparation when the EBRD was approached for funding in March 2018.

¹⁴ Prefeasibility studies are an early stage analysis of a potential project. Feasibility studies are more in-depth reports expanding on the information gathered during the pre-feasibility studies and looking more in detail into options provided by findings of pre-feasibility studies.

¹⁵ Pre-Feasibility Final Report – Activity 1, 10 November 2017, pp 1.

¹⁶ Multi-criteria analysis (MCA) provides a systematic approach for supporting complex decisions according to pre-determined criteria and objectives. MCA is particularly suitable for complex decision problems that involve multiple and conflicting objectives and criteria. It allows identifying a single preferred alternative, or to rank or short-list possible alternatives. MCA provides a framework to explore trade-offs between different options.

the corridor as a whole, with each section looking into alternative alignments compatible with the overall route alignment. Particularly Management’s Response¹⁷ stated that “comprehensive studies were conducted by international experts based on defined objectives set by the GoG to analyse alternatives”. Those objectives led to a selection of three possible section alignments (Tetri Aragvi River, Gudauri Valley and Khada Valley), which were later analysed in the pre-feasibility stage. In its February 2020 response to IPAM, the Roads Department further added that the Lakatkhevi valley had not been explored as a feasible route due to its geological conditions, natural hazards, orography and other technical factors.

Table 2. Multi-Criteria Analysis: selected criteria and indicators

1.	Functional Area
	Alignment features (Road width, radius, slopes etc.)
	Estimated traffic at opening (normal, generated, diverted)
	Travel time savings
2	Economic Criteria
	Total investment cost
	Total Operation & Maintenance cost
	Economic Benefits in terms of EIRR
3	Environmental and Social Criteria
	Biodiversity (pre-construction, construction and operation)
	Surface water (pre-construction, construction and operation)
	Ground water (construction and operation)
	Protected areas
	Soil (pre-construction, construction and operation)
	Landscape (pre-construction, construction and operation)
	Resettlement needs (physical, economical)
	Fatality rate

Source: Pre-feasibility Study

The analysis of alternatives employed variables on three sets of criteria: a) functional; b) economic; c) social and environmental, as shown by Table 2 above. The social and environmental criteria included the analysis of impacts on landscape as a separate category, but for cultural heritage, the study considered it as a part of the “the resettlement and other impacts on community” category. Furthermore, although a map identifying physical cultural heritage in the Khada Valley was presented (see figure 3), no information was provided on the extent the cultural heritage fed into the assessment nor on the weight given to it in comparison to other community impacts.

¹⁷ Management Response to Request, February 2020.

Figure 3. Map of Cultural Heritage in the Khada Valley



Source: Pre-feasibility Study

When analysing the overall weight for each of the four alternatives analysed, every option receives the same “grading”, which would suggest that no consideration has been given to the cultural heritage of the options through the Khada Valley.

The documents reviewed do not include information on how weights were allocated for the different criteria considered, nor how the impact on each criterion was determined (a scale of low, medium, and high assigned for each criterion)¹⁸. According to the technical experts supporting IPAM in this investigation, the lack of this information was contrary to GIP, as it made it difficult to understand the relevance of cultural heritage analysis. Nevertheless, based on the results obtained in the MCA, the **Pre-Feasibility Study** concluded that the preferred alternative for Section 2 Kvesheti–Kobi was Alternative 4: through the Tskere valley.

During Feasibility, the work focused on the selected alternative, analysing three alignments within the Khada Valley with the main difference being the length of the tunnels and structures.¹⁹

¹⁸ It would be logical to find that the impact on landscape in an area with a strong anthropomorphic footprint would be lower than in a pristine area like the Khada Valley. However, as an example, the study considers that impacts on landscape are the same for the Khada Valley and the Gudauri area but does not provide the rationale for such assessment.

¹⁹ Alternative 1 - 22.10 km long bypassing Kvesheti at the riverside and going up to the plateau crossing the existing road, the Aragvi River and the crest of the plateau by means of 3 long bridges, between 264 and 555 m. After that, it enters the Khada valley, changing from one side to another according to the geotechnical conditions, The highest bridge (169 m) is located on the Khada river to cross to the left bank and 4 more bridges are necessary up to reach the plateau of Begoni. After that another bridge is located to cross the river again changing to the right bank up to Tskere where it is placed the portal of an 8.1 km length tunnel.

Alternative 2 - 21.97 km long and it bypasses Kvesheti in the same way and goes up to the plateau crossing the existing road, the Aragvi river and the crest of the plateau by means of 3 long bridges, but reducing the length of the

As general conclusions, the **Feasibility Study** reported that the mountainous orography conditioned every solution for the Kobi-Kvesheti section; and set the most decisive constraints due to geological and geotechnical risks.

The **Feasibility Study** included a list of cultural heritage objects for the Dusheti and Kazbegi municipalities and brief considerations of tourism activities in the region. It also stated that once constructed, the new alignment would change the landscape substantially, with visual impacts related to bridges, tunnel portals and permanent sites for spoil disposal. However, it considered that the visual changes would diminish as the community accustomed to the new infrastructure, and therefore, the magnitude of the impact would become low to negligible.

In relation to cultural heritage, the impacts were considered medium to low, as the alignment bypassed the known cultural heritage sites as well as cemeteries and places of worship and relied on the clearance from cultural heritage protection authorities required for securing the construction permit as a measure of addressing the risks to the sites.

The **Feasibility Study** also included an initial draft of the Project's Environmental Management Plan (EMP) noting that it would be included in the bidding documents and an integral part of the contract for the provision of works, thus the contractor would be bound to implement it. This draft EMP considered the preparation of a chance find procedure (for the design phase); and permanent archaeological supervision during earthworks to address the possible loss of or damage to cultural resources,

Finally, the Study stated that the decision on alignment had included consultation with local communities and government bodies. Particularly, it referred to consulting with affected persons, their community, and local government officials to inform, educate and provide feedback in the project design, particularly in reference to the resettlement activities required by the Project.

3.3 The Bank's Involvement

In March 2018, the EBRD was approached by the GoG seeking funding²⁰, thus, initiating the appraisal process including the identification of environmental and social issues that would need to be addressed if it decided to provide funding.

At that time, IDOM had finalised the feasibility stage and was working, with the local consultancy firm Gamma, on the preparation of the detailed design and resettlement action plan (RAP). These activities were also covered by the WB.

Separately, the Environmental Impact Assessment (EIA) was being developed by a consortium of three international firms ANAS/IRD/GPI, supported by Gamma, to satisfy the national regulation

bridge at the crest from 430 m to 136 m, this is due to the displacement of the route towards the plateau increasing the high of the slopes. After that, it enters the Khada valley through the highest bridge (173 m) located on the Khada river to cross to the left bank and 3 more bridges and a tunnel are necessary up to reach the plateau of Begoni. Finally, another bridge is located to cross the river again changing to the right bank up to Tskere where it is placed the portal of an 8.1 km length tunnel.

□ Alternative 3 - 22.61 km long and it begins in the by-pass to Kvesheti as the previous alternatives and goes up to the plateau crossing the Aragvi River by one bridge 492 m long. Beyond the bridge there is a portal tunnel in the slope of the plateau that reach the top in a smoothly way, with a gradient of 4.5 %. Then, it enters the Khada valley through the highest bridge (164 m) located on the Khada river to cross to the left bank and 3 more bridges and 2 more tunnels are necessary on the lateral gorges up to reach the plateau of Begoni. From this point another bridge crosses over the river changing to the right bank up to Tskere where it is placed the portal of an 8.87 km length tunnel.

²⁰ The Asian Development Bank had been approached as well around the same time.

requirements. In parallel, the consortium was also working on the Environmental and Social impact Assessment (ESIA), to meet international lenders requirements.

As a part of the Environmental and Social Due Diligence (ESDD) a joint site visit of the ADB and EBRD teams took place at the end of April 2018. The key potential E&S issues and risks identified at that stage included some common to the concerns raised:

- Both Lot-1 (9 km tunnel) and Lot-2 were **green field projects going through relatively undisturbed natural landscapes**;
- The **noise impact** from the new road on nearby villages, as there were no other sources of noise disturbance;
- The **vibration impact** during the construction and operation of the road and tunnel in Tskere village, as the village is located around 200 meters away from the beginning of 9 km tunnel;
- The **existence of multiple cultural heritage sites and objects along the road's right of way which could be affected by the vibration during construction** (e.g., blasting, compacting, etc.).
- As the project area was pristine, the new road was likely to have multiple indirect impacts on local communities;
- The **landscape and visual impact of the new road and bridges in undisturbed areas**.

Bank Management considered that the E&S risks could be effectively mitigated by the preparation of a detailed ESIA, extensive consultations with the communities and the inclusion of Environmental and Social Management Plans (ESMPs) into the tendering documents.

As the GoG intended to open the procurement bid in June 2018 and have a contractor in place by the end of that year, a series of quick decisions had to be made during the concept stage in agreement with the Client. Two challenges were identified at that point: the need to reconcile the E&S requirements of ADB and EBRD and making sure that the ESMP and a budget for mitigation were ready to include in the bidding documentation.

In May 2018, the Bank decided to engage two independent consultants (one focused on social issues and a second one on biodiversity) to work with the consortium so as to strengthen their capacity and accelerate the preparation of the ESIA.

Also at this stage, the EBRD agreed to have ADB acting as lead financier. The rationale for this was: ADB was providing a larger portion of the financing; it had already an established relationship with the Client; its involvement with the Project had started earlier and the RD had requested to deal with only one IFI. **In practical terms, the Lenders agreed to adopt a unified social and environmental assessment and planning process²¹, as well as having unified safeguard documentation, consultation and disclosure requirements to satisfy both ADB's Safeguard Policy Statement (2009) and EBRD 2014 ESP. Supervision of Lot 1 was to be undertaken jointly, while supervision of Lot 2 would be the responsibility of ADB with the commitment to keep EBRD informed. Additionally, the Bank envisioned an extensive public consultation process with local communities as essential to the success of the Project, including the preparation of a detailed Stakeholder Engagement Plan.**

²¹ It was agreed by the Lenders and the Client that there would be one EIA and two EMPs (one EMP per each Lot), considering that the Kvesheti-Kobi Road Section would be treated as one project, having two separate Lots mostly due to procurement and contract packaging reasons.

Also in May 2018, under commission by the consortium, Prof. Iulon Gagoshidze from the Georgian National Museum carried out a two-day archaeological survey along the construction corridor of the new road. The outcome was a brief report (dated 13 May 2018) which concluded that **further studies were necessary, particularly at specific locations, and that monitoring was needed throughout construction works.**

EBRD contracted Golder Associates to assess the E&S documentation available, identify gaps with the Bank requirements and prepare the disclosure pack²². In its report, Golder characterised as **significant the impact of the Project on the landscape, remarking that “artificial elements [would] be introduced in a context that is generally quite pristine in its overall aspect.”**

In relation to cultural heritage impacts, the CH Expert working with Golder carried out a field visit in the spring of 2018. **Her report flagged interferences of the new road with cultural heritage at multiple points and potential adverse impacts on cultural heritage that would require further investigation through archaeological survey. Given that the valley was rich in cultural heritage monuments, “it was hence absolutely necessary to fully assess the possible impact on monuments caused by the vibration originate from the construction works”²³.**

On 3 August 2018, the NACHP received from the Ministry of Environmental Protection and Agriculture of Georgia (MoEPA) the **Scoping Report**²⁴. In its response, the **NACHP, explained that the Khada Valley was unique in terms of cultural heritage and not sufficiently studied, hence requiring full assessment of the archaeological potential of the area carried out by qualified experts in order to appraise the negative impacts and indicate appropriate mitigation measures.**

The sequence of the events and logic suggest that based on the expert opinion of Prof. Gagoshidze, the Golder consultant and the NACHP, further work on cultural heritage resources was needed (and requested) in addition to the two field visits carried out during the spring of 2018. However, no further investigations on cultural heritage were undertaken at that stage.

3.4 The Environmental and Social Impact Assessment Study

By March 2019, the EIA had been finalised and approved by the MoEPA in April of 2019, following national regulations.

Regarding alternatives, the EIA document contained a section which presented an overview including the no action alternative (keeping the current road as was), a zero alternative (upgrading of the existing road), alternative road corridors and alignments considered, alternative transport modes, pavement types, construction camps and tunnelling techniques. The EIA described the scope and conclusions of both the Pre-Feasibility, and Feasibility Studies. It expanded on the impacts and results of the multi-criteria analysis conducted in the Pre-Feasibility Study, but only presented the routes considered and the choice of the alternative selected for detailed design for the Feasibility Study without providing detail on the MCA.

²² The Project Environmental and Social Impact Assessment (ESIA) disclosure package including the ESIA, Non-Technical Summary, Framework Environmental and Social Management Plan (ESMP) appended to the ESIA, the Stakeholder Engagement Plan (SEP) and the Land Acquisition and Resettlement Framework (LARF) have been completed and disclosed on the Roads Department and EBRD website on 3 May 2019. Hardcopies have been made available in local communities. The Biodiversity Action Plan (BAP) has been disclosed in August 2019. All these documents cover the full Project (Lot 1 and Lot 2).

²³ Due Diligence Report dated 27 June 2018

²⁴ The Ministry of Environmental Protection and Agriculture of Georgia is a governmental agency within the Cabinet of Georgia in charge of regulation of economic activity in the agricultural sector of the country and environment protection.

The EIA content described how further changes were made after feasibility in order to: a) reflect new environmental legislation; b) reduce risks and impacts, and c) improve the safety of the route. Most of the changes were made in the Kobi-Tskere section.

In relation to landscape, it was considered along other visual impacts in the section dedicated to environmental impacts and mitigation measures. **The EIA confirmed what had been identified during the feasibility stage, that the new alignment would alter the landscape substantially as it would be a new element in an area that had no asphalt roads before the Project.** However, it also underscored that the visual impact would be limited to the areas above ground, including spoil disposal sites as over 50% of the alignment would be go underground in tunnels. Furthermore, it indicated that in some sections, cut and cover technique would be adopted to improve visual impact²⁵.

The EIA stated that the activities during construction that would affect the aesthetics of the area included excavation and storing of material in stockpiles and dumping at the waste disposal areas. **During the operational phase, visual impacts were considered as degradation of the aesthetic value of the area due to the permanent change in visual character due to the proposed Project.**

However, overall, the EIA estimated that the impacts on landscape would be minor or moderate during the construction phase and low or medium during the operational phase, as long as the prescribed mitigation measures were applied²⁶.



Tskere Village. Source: IPAM

In relation to cultural heritage, the EIA stated that most of the cultural heritage objects identified in the Project area were towers, in addition to a few churches, some memorials, and three cemeteries. It further stated that nearly all the identified cultural heritage objects were away from the proposed alignment by more than 50 meters, which constituted a physical protection zone of

²⁵ [EIA. Project website](#). Page 382.

²⁶ Mitigation measures for visual impacts were described both for the construction phase and operational phase. According to the EIA, the visual impact following to completion of works would be mitigated by clean up and re-cultivation of all sites temporarily disturbed for the needs of the project and re-vegetation of spoil disposal areas. In the operational phase, tree re-planting would be used to partially restore the natural landscape of the area. However, it was assessed that these measures would not alleviate all of the visual impacts associated with the elevated bridges and cut slopes stabilized with anchored concrete, rock walls, other.

a cultural heritage monument.²⁷ “The exceptions were six objects: a religious cross located close to Kvesheti, the cemetery in Tskere, a cemetery in Kobi, a tower on the plateau close to Zakatkari, the remains of a tower close to the interchange on the Begoni plateau and a war memorial in Kobi.”²⁸ Notwithstanding this, **the EIA acknowledged that despite the Project area’s historical role and importance, there had been limited archaeological studies in the area and it was thus considered highly probable that chance finds would occur during excavation works.**



Bekot Kari Church in Khada Valley. Source: IPAM

The mitigation measures prescribed to identified cultural heritage sites included: “(i) fencing off monuments located in the proximity of the works, prior to the start of the construction; (ii) observing physical protection boundary measures (50m); (iii) monitoring vibration effects on cultural heritage objects; (iv) using the Chance Find Procedure described in Appendix E to the EIA; (v) ensuring the presence of a Cultural Heritage Monitor (CHM) if any excavation [was] planned; and (vi) ensuring that the Contractors’ staff [was] familiar with Chance Finds Procedure and monument protection requirements”²⁹. The EIA also recommended to move by 20 m the alignment of a connecting road on Begoni Plateau to avoid impacts on one cultural heritage site.

The ESIA package (containing the EIA, NTS, LARLP, SEP and ESAP) was disclosed on the EBRD website on 3 May 2019.

3.5 The Environmental and Social Management System and Plans

The Environmental and Social Action Plan (ESAP) included a requirement for the RD to maintain and update an Environmental Management Plan (EMP) to minimise the environmental and social impacts of the Project during construction. For compliance with the Performance Requirements, the ESAP cited two components: implement the mitigation measures planned for cultural heritage in the EMP, and adopt and fully implement a Chance Find Procedure as described in the EIA and the EMP.

²⁷ According to Art. 36 Par. 1 of Georgian Law on Cultural Heritage, the territory surrounding a cultural property is defined as a primary buffer zone of the cultural property which consists of perimeters of physical and visual security. The perimeter of physical security is defined by the following distance: the height of the cultural property multiplied by two, but with no less than 50 meter radius (Law on Cultural heritage of Georgia, Art. 36. Par. 2). The perimeter of visual security shall be defined for a cultural property within a radius of 300 meters (Law on Cultural heritage of Georgia, Art. 36. Par. 4).

²⁸ [Environmental Impact Assessment](#), page 28.

²⁹ Idem, page 479.

The EMP included surveys to assess vibration impacts and established that “the surveys [would have to] be conducted in the presence of and with the permission of the property owners (and with representatives of the Ministry of Culture and Sport for cultural heritage sites)”³⁰; and that CH sites would need to be fenced during the construction stage. A budget of USD 5,000³¹ was allocated for these purposes.

According to the Environmental and Social Management System (ESMS) both actions fell under the responsibility of the contractor, who would be tasked with developing Specific Environmental Management Plans (SEMPs)³², amongst them the CHMP.

The contractors had to develop and submit for approval these SEMPs within 30 days of the official commencement of works and prior to the start of actual construction. In relation to the CHMP, the ESMS stated that it “will be prepared to ensure that all of the mitigation measures for cultural heritage are implemented, including items such as vibration monitoring and roles of the Cultural Heritage Monitor.”³³

Construction works were initiated in October 2020³⁴ comprised of preparatory works and the start of the construction of temporary camps and facilities. The Contractor temporarily suspended works in December 2020 due to the Covid-19 pandemic, but recommenced on January 2021. By October 2021, structural works for the underpass at Km 0.7 near Kvesheti village had almost been completed while works in several fronts were ongoing as the IPAM team witnessed during its site visit to Kobi and the Khada Valley.

3.6 Cultural Heritage Plans and Studies

On 1 August 2019, in order to secure the Cultural Heritage clearance needed to obtain the construction permit, the RD submitted to the NACHP³⁵ the reports by Golder and Professor Gagoshidze. The following day, the NACHP granted clearance for the works subject to them being performed under the supervision of an archaeologist.

The first CHMP was a 12-page document dated 5 August 2020 including general information on the Project, the impacts, training required and responsibilities of each, with no clear focus on the CH inventory or mitigation measures. Around the same time, the Client appointed the NACHP to carry out a **Cultural Heritage Action Plan (CHAP)** and the review of the CHMPs prepared by the

³⁰ EMP, Appendix A to the EIA

³¹ In relation to the budget allocated, Bank Management informed IPAM that the amount was just indicative for tendering purposes and did not represent a precise estimation of the cost of mitigation measures. A precise budget would have to be developed once the contractor was selected, to address the permit conditions as well as the NACHP recommendations. If the required funds were to exceed the relevant budget line in the contractor’s contractual agreement, the contractor would submit a budget request to the Supervisory Engineer and the Client RD for consideration and approval.

³² SEMPs are an element of project management prepared at the contractual stage. They are live documents, which may be updated if needed.

³³ EMP, Appendix A to the EIA.

³⁴ The Covid -19 pandemic delayed the start of the construction works.

³⁵ The NACHP’s permit is a part of the approval process laid out in the Georgian legislation. According to Article 14. Par. 1 of Law on Cultural Heritage, which protects the cultural heritage of Georgia and regulates legal regulations originating in this field, decisions on construction of an object of special importance shall be made on the basis of the positive opinion of the Ministry of Culture, Sport and Youth of Georgia. On the basis of Article 5.3 of the Law and Order №108/Б, dated 18 June 2019, issued by the Minister of the Education, Science, Culture, and Sport of Georgia “on approving the regulation of the Legal Entity under the Public Law – National Agency for Cultural Heritage Preservation Georgia” (that was in force in the time of issuing the relevant opinion for the Project) this entitlement is fully delegated to the NACHP.

contractors. The contract required the following deliverables: one Inception Report (September 2020), two Interim Reports (October and November 2020) which after revision became the Interim Report dated June 2021, one version of the CHAP dated June 2021, and then updated in July 2021.

The work comprised an extensive and detailed survey and inventory of the cultural resources falling within a 600m buffer around the route of the road; and included systematic archaeological survey of areas allocated for soil disposal as well as trial trenches at several locations where earthworks are expected. The survey identified several archaeological sites and physical cultural heritage resources that were not detected during the ESIA and revealed that the Right of Way of the road would interfere physically with some important newly discovered archaeological sites and cultural heritage objects. 155 objects with no previous recognition were assessed as valuable cultural heritage resource and included on the list of objects of cultural heritage by order of the Director General of the NACHP issued on 7 December 2020.³⁶

The detailed survey revealed that the road's proposed route would interfere physically with some newly discovered archaeological sites and cultural heritage objects, such as two cyclopean dry-stone walled tower remains and an ancient structure identified as a lookout, on Beniani – Begoni Plateau, the remains of a watermill in the gorge downstream of Tskere, the remains of a tower now used as a religious shrine near Zakatkhari, an abandoned settlement on Didveli Plateau associated with a backed tower, and many others visually .

In June 2021, the NACHP issued the **2nd Interim Report**, with conclusions of the archaeological studies undertaken and recommendations on mitigation measures. According to the document the Khada Valley had evolved as a cultural landscape, displaying unique characteristics thanks to a combination of residential settlements and the natural environment. In NACHP's opinion, the large-scale construction works and subsequent operation of the transport network, would have an impact on the historically established cultural landscape. The CHMP was updated then to include the findings of the NACHP **2nd Interim Report**, with more detailed information about specific sites, consideration of sites within a 300 m buffer zone and others related to visual impacts and photographic evidence. However, the mitigation measures continued to be described in general, not object specific and lacked the indication of specific measures, responsibilities, timelines and funding.

The final CHAP established that 213 monuments/objects had been identified in the Khada Valley and Kobi area, 104 of which were located within the visual security protection zone of 300 metres distance³⁷.

³⁶ Georgian legislation establishes rules how the cultural property (discovered monuments/objects) are granted status of cultural heritage. According to Art. 15 of the of Georgian Law on Cultural Heritage, the basis for granting cultural heritage status to a property is its historical or cultural value, related to its antiquity, uniqueness or authenticity. The Law states that if the essence of a property cannot be defined, or if data related to its historical or cultural value needs to be verified or additionally investigated, the Minister is entitled to include the object in the temporary list of objects of cultural property. The property may be included in the temporary List of cultural heritage for a period of 6 months. In case of newly discovered objects in Khada Valley, NACHP director issued the Order №02/80 "on the inclusion of an object of cultural heritage value in the list of cultural heritage sites" dated 7 December 2020, which included some of the objects in the temporary list of cultural heritage objects. By the time of writing the report, those objects were not granted status of cultural heritage monuments.

³⁷ According to Art. 36 Par. 1 of Georgian Law on Cultural Heritage, the territory surrounding a cultural property is defined as a primary buffer zone of the cultural property which consists of perimeters of physical and visual security. The perimeter of physical security is defined by the following distance: the height of the cultural property multiplied by two, but with no less than 50 meter radius (Law on Cultural heritage of Georgia, Art. 36. Par. 2). The perimeter of visual security shall be defined for a cultural property within a radius of 300 meters (Law on Cultural heritage of Georgia, Art. 36. Par. 4).

From the NACHP perspective, there was a major risk of damaging the cultural landscape if the construction process lacked proper regulations. Therefore, they prescribed a number of measures to address this risk:

- To develop a historical and cultural master plan of the area in accordance with the provisions of the Law on Cultural Heritage of Georgia; Development of spatial-territorial planning of Kvesheti-Kobi highway project area and urban-planning regulation of historical settlements;
- The preparation of a rehabilitation/recultivation project and implementation of works for landscape restoration in Kvesheti-Kobi highway project area;
- A thorough study of the valley's intangible cultural heritage.

Following these recommendations, in September 2021, the RD commissioned the consultancy firm Geographic to produce the **Historic Heritage Reference Plan (HHRP)**, including as a separate component, the study on intangible cultural heritage and a series of consultation meetings with key stakeholders, to be supervised by a senior international cultural heritage expert.

During IPAM's visit to the Project site, the consultants also visiting the area, and Management has informed that a draft HHRP was submitted for review and comments in February 2022.

3.7 Stakeholder Engagement and Consultation

Based on project documents and interviews, IPAM found that the Bank had prioritised stakeholder engagement from the onset. Both Golder Associates and the Social Consultant hired by EBRD were tasked with ensuring that any gaps identified should be addressed during the EIA process. Furthermore, the Social Consultant was closely involved in the design stage of the Stakeholder Engagement Plan (SEP) disclosed in May 2019.

According to the SEP, between April 2018 and March 2019, over 40 stakeholder engagement events of different formats covering three topics: EIA process, the Livelihood Restoration Plan and a proposed eco-tourism component of the Project³⁸. Table 3 provides an extract of the information disclosed in the EIA.

Table 3. Extract of consultation meetings held – May 2018 to March 2019 ³⁹

Date	Type of Meeting	Stakeholders engaged	Issues discussed
12 May 2018	One-on-one meetings (6)	Residents of settlements along Kvesheti-Kobi alignment	To gather information about cultural heritage
10 July 2018	Public meetings (2)	Affected communities and interested stakeholders including residents of Kvesheti, Arakhveti, and Khada, CSO representatives	Project impacts on building and cultural heritage among others Stakeholder engagement in project design and decision-making process
13 August 2018	Meeting	CSOs, residents, government representatives	Information on alternatives analysis and Project impacts on current eco-tourism activities in the Khada valley. Also,

³⁸ SEP, page 17.

³⁹ Based on Appendix S to the EIA: Summary of Consultations. The table only includes those meetings relevant to the issues investigated by IPAM.

Date	Type of Meeting	Stakeholders engaged	Issues discussed
			information on public consultation during scoping and participation
31 August 2018	Focus group	Focus group discussion with Residents of Kobi, Almasiani villages	Impact on St George Cross and the church above it; Discussion about the Soldiers Monument
31 August 2018	Focus group	Residents of Arakhveti, Begoni, and Kvesheti villages	Impact on tourism
4 September 2018	Meeting	CSOs, businesses, government representatives	Project impacts on accessibility to cemeteries and cultural monuments as well as Impacts on archaeological heritage. Impacts on current tourism activities and expectations on possible development opportunities
4 September 2018	Meeting	CSOs, residents, government representatives	Information on the alternative analysis performed. Adequacy of information/details in the EIA Scoping Report and participation challenges raised
7 September 2018	Public meeting	Residents of Kvesheti, Arakhveti, Benian-Begoni, Kobi, Tskere, and Zaqatkari villages, CSO representatives and government	Disclosure of project alignment and alternatives considered, questions on the alternative analysis performed and the reasons behind the chosen road alignment
15 September 2018	Public meeting	Residents of Kvesheti	Some residents commented the road should be built on the other side of the river; More information on project design alternatives required
28 September 2018	Meeting	Caucasus Nature Fund (CNF)	Provided information on CNF work and issues relevant to Kazbegi National Park such as poaching, land use zoning, and tourism and diverse environmental impacts
10 December 2018	Public meeting	Residents of Kobi village, representatives of SABUKO, Green Alternative, Mountain Development Centre	The potential impact of construction to nearby shrines and higher involvement of communities in the assessment phase, for cultural heritage sites in the area. Also, alternative options
30 January 2019	Meeting	Georgian Eco-Tourism Association	Ecotourism potential of the Khada valley and the need to assess socio-economic and cultural heritage aspects to plan appropriate and sustainable tourism activities
1 February 2019	Meeting	CENN / Sabuko / WWF	Potential eco-tourism component of project:
4 February 2019	Meeting	Mayor of Dusheti	Potential eco-tourism component of project for the Khada valley tourism development and the opportunity brought by the proposed Gudauri access road initiative of the project and the potential of a tourist visitor centre supported by the project
4 February 2019	Meeting	Mayor of Kazbegi	Potential eco-tourism component of project and development of tourism in Kobi area
6 March 2019	Public meeting	Residents of Zakatkari, Kaishaurebi and Jaghmiani villages	Information on a tourist hub facility to support local livelihoods

Source: EIA

As general takeaways of the early engagement activities related to the issues raised in the Request, the SEP includes views from stakeholders regarding the lack of timely information regarding the project design alternatives which limited participation at that. The document states that the “RD

agreed that there should have been a round of public consultations during feasibility and design stages”⁴⁰.

Among others, six tourism consultation events were held with the Georgian Eco-Tourism Association, national NGOs: CENN, SABUKO, WWF and the mayors of Dusheti and Kazbegi. Main issues raised by residents from Kvesheti, Kobi, Almasiani and the Georgia Tourism Association had to do with the impact of the Project on both the cultural monuments and the natural landscape of the impacted area. Those consulted shared the view that the Khada valley had significant eco-tourism development opportunities that the Project could potentially support.⁴¹

In response, the RD stated that cultural monuments would not be damaged during construction and, further reassured that the NACHP was collaborating with the Project to ensure this. **The RD also underscored the need for further research into the cultural heritage assets of the Khada Valley as the area had not been investigated in depth.**

Broad consensus was that the Khada valley had significant eco-tourism development opportunities that the Project could potentially support. As a result, an eco-tourism component of the Project is being planned and consultations for this are ongoing.⁴² Initially a tourism study had been proposed to further explore the potential of the area, but no progress had been made by the time of completion of the IPAM investigation. According to information gathered during the IPAM interviews, it had been decided that the tourism and eco-tourism potential of the Valley was to be considered within the Khada Valley Masterplan, which was launched as an initiative of the Georgian government to address some of the NACHP recommendations.

The SEP confirmed the information that IPAM received from cultural heritage organisations and experts during its visit to Georgia, i.e., that no cultural heritage organisations had been included in the early consultations. The first contacts happened in February 2019 when the Requesters had requested a meeting with the EBRD. During that session, the Requesters were provided with information about the Project and invited to additional meetings with the Bank, including one with the consultancy firm IDOM on 26-27 June 2019 in Tbilisi. Other organisations, including ICOMOS⁴³ commented that they had only been contacted in 2021 to participate in a meeting organised by the Lenders. All cultural heritage organisations and experts interviewed by IPAM agreed that the impacts on the tangible and intangible CH of the Khada Valley would be irreversible and that the only way to address them would be to change the alignment. Furthermore, they insisted in their engagement with the Lenders that the absence of baseline studies on CH and landscape during the scoping and ESIA stages led to a wrong choice of alignment and requested reconsidering it to no avail.

In the same tenor, between 2018 and 2021, the Bank received several complaints by different actors including residents, CSOs⁴⁴ and other interested parties. The complaints raised several issues, concentrating on location of the road and alternatives analysed, public participation and information disclosure, potential impacts on cultural heritage and other Project impacts, such as

⁴⁰ SEP, page 25

⁴¹ As a product of those engagements, an eco-tourism component was specifically included in the Project in addition to a commitment to undertake further consultations on this topic.

⁴² Idem, page 26.

⁴³ ICOMOS is a global non-government organisation dedicated to promoting the application of theory, methodology, and scientific techniques to the conservation of the architectural and archaeological heritage. It is a network of experts that benefits from the interdisciplinary exchange of its members, among which are architects, historians, archaeologists, art historians, geographers, anthropologists, engineers and town planners.

⁴⁴ Requests were submitted by Green Alternative, SABUKO, National Trust of Georgia, coalition of civil society organisation led by the Society and Cultural Heritage Association (including ICOMOS Georgia, National Trust of Georgia, Blue Shield and Tour Operator Association).

resettlement. Four Requests were submitted to the PCM while in operation, starting in January 2019, but only the one sent by NTG in September 2019 was registered.

Regarding the disclosure of documents, outreach materials on the Project were produced to respond to the questions and comments received from the public. A Project website was developed and continuously updated during the IPAM investigation.⁴⁵ It includes maps of the Project, FAQ, explanations on cultural heritage and alternative analysis, among other items. During the 2021 site visit, IPAM saw information boards along the main road in the Khada valley with information about the Project and the Grievance Mechanism. However, local residents claimed they had been set up only a few weeks before the IPAM visit. IPAM also visited the *Project Information Centre* which had just been opened in Kvesheti and operated by two community liaisons under ADB contracts. Operating hours at that time were limited but there were plans to extend opening hours in the coming months. The centre had a sitting area to watch an informational video and Project maps, and printed materials in Georgian and English available for visitors. In addition to this, the liaison officers informed IPAM that they undertook visits to the villages along the alignment regularly to discuss issues and take note of grievances, if any.



Khada Valley – Information bulletin. Source: IPAM



Project Information Centre, Kvesheti. Source : IPAM

⁴⁵The website url is: <https://kveshetikobiroad.ge/en/public-information/>

4. Investigation Findings and Compliance Analysis

This section focuses on presenting IPAM's determinations of the Bank's compliance or non-compliance with the provisions of the 2014 ESP and the related Performance Requirements that are relevant to the allegations raised in the Request as described in section 2.1 of this report within the scope set by these three considerations:

4.1. Compliance Review Framework

The findings and determinations made by IPAM for this case are to be read as applying to the **full road alignment comprised of Lot 1 and Lot 2 of the Project from the moment the Bank initiated its involvement with the Project.**

The Project initial stages, Pre-feasibility and Feasibility where the decision on the alignment was made, were undertaken before the Bank's involvement with funding support from the World Bank. Therefore, the analysis of compliance regarding the alignment decision is restricted to obligations that the Bank had at the time it became involved with the project related to identification and addressing of gaps with the 2014 ESP provisions.

The EBRD approved funding for Lot 1, while ADB is funding Lot 2 and partially funding Lot 1. It is Management's argument that the EBRD is only responsible for assessing, addressing the impacts and undertaking monitoring of mitigation measures in Lot 1. However, this view is not shared by IPAM so this compliance review has considered both Lots 1 and 2 of the Project (Lot 1 and Lot 2) for the following reasons:

- The EBRD and the ADB decided at the start of the appraisal stage to undertake the assessment of the environmental and social impacts of the Project as a unit which resulted in one ESIA package.
- Lot 1 and Lot 2 are interdependent of each other, with the latter considered an associated facility as established by the 2014 ESP para. C30, even if is not financed by the EBRD.
- During appraisal, the EBRD has provided expertise and inputs for Lot 2 to address the requirements of the 2014 ESP and is currently monitoring implementation through ADB.

The compliance review undertaken by IPAM is focused on addressing the allegations raised in the Request and does not go beyond these issues. Any concerns or observations outside the scope of this compliance review gathered by IPAM during its site visit and considered relevant to the sustainability of the Project have been shared with Bank Management.

As stated in earlier sections, the Request focused on the adverse impacts of the Project on the tangible and intangible cultural heritage of the Khada Valley (and eco-tourism) arguing that the selection of the road alignment was done without due consideration of the cultural heritage and pristine nature of the Khada Valley, breaching international conventions. The Request alleged that the Project appraisal was weak from the start, characterised by an inadequate process of identification of cultural heritage sites and its use by the population, lack of robust baseline studies, the exclusion of cultural heritage experts and organisations. Furthermore, it stated that the process has lacked transparency from the very early stages of the Project and by the time the

Requesters knew about it, the location had already been decided, although there were other alternative alignments that would be preferable.

The 2014 ESP establishes obligations for the Bank and the Client related to the identification and addressing of environmental and social impacts generated by a Project so as to ensure that these impacts are avoided or if not possible to avoid, mitigated or compensated. It also includes provisions regarding engagement with relevant stakeholders and disclosure of information. All determinations made by IPAM refer to the actions or omissions of the Bank, not the Client.

For purposes of this compliance review, IPAM has identified its findings against obligations enunciated in the ESP under general provisions and performance requirements 1, 8 and 10 only. As Performance Requirements are interdependent, the rationale for a determination may be common to more than one requirement. In the spirit of succinctness, when the same rationale for establishing non-compliance is applicable to more than one provision, IPAM will only present its arguments once.

4.2. Regarding Performance Requirement 1 on Assessment and Management of Environmental and Social Impacts and Issues

Performance Requirement 1 outlines the responsibilities of the client in the process of assessing the potential environmental and social impacts and issues associated with the project and developing and implementing procedures for managing and monitoring these impacts and issues. Amongst its objectives are to: (1) identify and evaluate environmental and social impacts; (2) adopt a mitigation hierarchy approach to address the impacts and (3) develop an Environmental and Social Management System tailored to the nature of the project, for assessing and managing the impacts in consistency with the provisions of the ESP.

The Request alleged that the Bank had failed to properly assess the impacts and in consequence an alignment was chosen that would negatively impact the Khada Valley cultural heritage and landscape. As relevant provisions, IPAM analysed compliance with B6, PR1.7 and PR1.10.

Relevant language is shown in Box 2.

Box 2. Performance Requirement 1 – Relevant provisions

B.6. The EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented and operated in compliance with applicable regulatory requirements and good international practice (GIP). Central to this approach is the application of the mitigation hierarchy

PR1.7 The environmental and social assessment process will be based on recent information, including an accurate description and delineation of the project and the client's associated activities, and social environmental baseline data at an appropriate level of detail. The assessment process should also identify: (i) applicable environmental and social laws and regulatory requirements of the jurisdictions in which the project operates, including those laws implementing host country obligations under international law; and (ii) applicable requirements under the PRs. Central to this approach is the application of the mitigation hierarchy and GIP. For projects that could have adverse environmental and social impacts, the client will, as an integral part of the assessment process, identify the project's stakeholders and design a plan for engaging with the stakeholders in a meaningful manner to take their views and concerns into consideration in planning, implementing and operating the project in accordance with PR 10.

PR1.10 Category A projects could result in potentially significant adverse future environmental and/or social impacts which cannot readily be identified or assessed and will require the client to carry out a comprehensive Environmental and Social Impact Assessment (ESIA). The ESIA process will include a scoping stage to identify the potential future environmental and social impacts associated with the project. The ESIA will include an examination of technically and financially feasible alternatives to the source of such impacts, including the non-project alternative, and document the rationale for selecting the particular course of action proposed. It will also identify potential improvement opportunities and recommend any measures needed to avoid, or where avoidance is not possible, minimise and mitigate adverse impacts.⁶ The ESIA may need to be carried out or verified by independent experts. The ESIA process will also include a public disclosure and consultation process as specified in PR 10.

4.2.1. IPAM findings and compliance determination

Did the Bank seek within its mandate to ensure, through its environmental and social appraisal and monitoring processes, that the EBRD Project was designed in compliance with the provisions in paragraphs B.6 and PR 1.7?

It is IPAM's consideration, based on its findings that the **Bank failed to comply with its commitment to ensure that the Project would be designed in line with Good International Practice (GIP) as provided by B.6 and PR 1.7 because:**

It did not require the Client to undertake the archaeological studies recommended by Golder, Professor Gagoshidze and the NACHP at the appraisal stage. This omission goes against "the exercise of professional skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced professionals"⁴⁶, which is the basis of GIP.

The cultural heritage baseline used during the early stages of the Project and for the determination of impacts and mitigation measures in the ESIA process was only a partial record of the richness of the Khada Valley. Several experts, including the consultant commissioned by the Bank, underscored the need for further studies, and, although these studies were eventually undertaken, they were not done in a timely fashion as guided by GIP.

⁴⁶ 2014 Environmental and Social Policy, footnote 3.

By this omission, the Bank limited its capacity to apply the mitigation hierarchy effectively, as the information at that point in time was insufficient for an adequate application of the mitigation hierarchy⁴⁷.

Bank Management argued that the adoption of chance finds approach and the 5-stage strategy allowed for any re-alignment if needed. IPAM agrees with Management on the need for a chance finds procedure when tangible cultural heritage is involved, but this measure does not substitute the need for early identification of impacts during the design stage as the ESP includes provisions for both. Having an updated baseline assists the decision-making process on a Project; for determining the optimal alignment where avoiding impacts can be considered; and if not possible to avoid, then crafting mitigating measures and allocating resources to cover their cost.

However, IPAM notes that such an approach is not aligned with PR 1.7 or GIP, which requires “an accurate description and delineation of the project and the client’s associated activities, and social and environmental baseline data at an appropriate level of detail”. This point will be further discussed when analysing compliance with PR 8, but it should be noted that the Chance Finds Procedure, as important as it is in the Cultural Heritage protection process, cannot replace the requirement for recent information during the assessment stage.

Furthermore, PR1.7 allows the Bank to be assisted in its appraisal by specialist third parties, which it did through the hiring of Golder Associates, but whose recommendations of further studies were not considered until after the ESIA process had been concluded. Considering that all the experts consulted made this recommendation, it is IPAM’s opinion that the Bank should not have allowed the Project to advance to the construction stage without an accurate CH (both tangible and intangible) baseline and in so doing has failed to comply with the provisions of the 2014 ESP.

Additionally, PR1.7 establishes provisions on the identification of stakeholders and meaningful engagement with them. As alleged by the Requesters and confirmed by IPAM, there was no engagement with cultural heritage organisations or experts during the scoping and appraisal stage of the process. This, added to the lack of timely studies on CH, has prevented the robust assessment of impacts and establishment of mitigation measures. More on this will be developed in relation to compliance with PR 10.

As regards impacts on tourism, IPAM notes that the pristine nature of the Khada Valley and the lack of accessibility to it has generated a niche of small-scale tourist activity that currently includes hiking, biking, horse-riding, bird watching, historical site visiting, spring water and herb collecting. As indicated by the ESIA and other Project documents, the new road will open up tourism opportunities in the area of potentially a larger-scale and might reduce the interest in the valley for those stakeholders that appreciate the current isolation.

Management affirmed that both tourism and cultural heritage were considered during the EIA process, and that consultations had been undertaken on these topics. On the tourism side, they commented that studies led to conclusion that no major tourist activity was ongoing in the Khada Valley and the selected alignment would assist in the development of this sector. They acknowledged the cultural heritage richness of the valley and stated that the mitigation measures considered would serve to preserve the identified sites.

⁴⁷ 2014 Environmental and Social Policy, footnote 4: “the mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible to implement additional measures that would minimise, mitigate and, as a last resort, offset and /or compensate any potential residual adverse impacts”

IPAM understands that the Requesters' and the Project proponents' views differ on what type of tourism development would be desirable for the area. However, this is not a matter of compliance with the EBRD's ESP, so IPAM cannot make any determination on the suitability of any of the alternatives. It can, however, remark that the appraisal stage did not include considerations of the impacts on the current tourism activities, and this appears as an omission in the ESIA process and links to consideration of the landscape value of the area.

With respect to the selection of the Project location, did the Bank confirm that the environmental and social assessment process included an examination of technically and financially feasible alternatives, and did it document the rationale for selecting the particular course of action proposed, in line with PR 1.10?

IPAM finds that the Bank complied with some of the requirements of PR1.10, however it failed in verifying if the Project had undertaken a robust process of identification of “potential future environmental and social impacts associated with the project”. Furthermore, it has been confirmed that the alternatives selection process was undertaken without disclosure to relevant stakeholders which goes against GIP in terms of stakeholder engagement. Therefore, IPAM finds that the Bank only partially complied with the provisions of PR1.10.

In relation to the obligations set in PR1.10 of the 2014 ESP, the IPAM determination has taken into account that the EBRD was approached by the Client in March 2018, when the decision of the alignment had already been presented in the **Pre-Feasibility** and **Feasibility Studies**. These studies and the alternatives analysis was undertaken by the Client as part of an earlier operation funded by the World Bank as indicated in section IV.A of this report.

The ESIA and dedicated materials explain why the alignment through the Khada Valley was selected and the Requesters have been informed that geologically the alternative proposed by the Requester (Lakatkhevi Valley) was not viable. However, this compliance review process has found that the pre-feasibility and feasibility stages of the Project did not consider cultural heritage impacts as stand-alone criterion in the MCA, grouping it within the social criteria, and the studies do not provide information on the weights assigned to these impacts. In this same vein, the NACHP remarked in its Inception Report that the “cultural heritage criterion required more in-depth and wider-scale revision in the process of research of an alternative route of the alignment. Notably, the criterion of the factor of cultural heritage as the assessment criterion is not used in the analysis of an alternative direction in the environmental document”⁴⁸.

NOTE. IPAM wishes to acknowledge that Bank Management has recently prepared a detailed guidance note on alternative analysis, which will better assist Bank Management and its Clients in the process of assessment of alternatives.

In addition to this, the baseline of physical cultural heritage used was not up to date as this weakness was afterwards flagged by experts during the appraisal stage. EBRD had an obligation to verify that the earlier stages of the Project were in line with the ESP. If that verification had taken place, it would have shown that the baseline did not fully characterise the inventory of tangible cultural heritage, that no characterisation of intangible cultural heritage was available, and that no engagement had taken place. The alignment decision might have remained the same, considering the objectives of the Project, but failing to identify these weaknesses during the early appraisal

⁴⁸ NACHP Inception Report. Page 11

stage meant that the Bank missed the opportunity to suggest improvements and recommend any measure needed to avoid, minimise and mitigate the full impacts.

4.3. Regarding Performance Requirement 8 in relation to Cultural Heritage

This PR recognises the importance of cultural heritage⁴⁹ for present and future generations. The aim is to protect cultural heritage and to guide clients in avoiding or mitigating adverse impacts on cultural heritage during their business operations. The clients are expected to be precautionary in their approach to the management and sustainable use of cultural heritage, which includes both tangible and intangible cultural heritage. Furthermore, PR 8 is guided by applicable international conventions and other instruments, recognising the need for all parties to respect the laws and regulations related to cultural heritage and the obligations under relevant international treaties and agreements.

Amongst the objectives of this PR are to: (1) support the protection and conservation of cultural heritage and (2) adopt the mitigation hierarchy approach to protecting cultural heritage from adverse impacts arising from the project. The Request alleged that by not ensuring a robust impact assessment process, the Project would permanently harm the Khada Valley, its pristine nature and cultural heritage. Furthermore, they claimed that the Bank had failed to ensure compliance with relevant cultural heritage and landscape conventions. As relevant provisions, IPAM analysed compliance with B8, C.29, PR8.8, PR8.9, PR8.10, PR8.11, PR 8.12 and PR8.15. Relevant language is shown in Box 3

⁴⁹ For the purposes of this PR, the term cultural heritage is defined as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their evolving values, beliefs, knowledge and traditions. It encompasses tangible (physical) and intangible cultural heritage, which is recognised at the local, regional or national level, or within the international community. (2014 ESP paragraph 6)

Box 3. Performance Requirement 8. Relevant provisions.

B.8. The EBRD recognises the ratification of international environmental and social agreements, treaties and conventions by its countries of operations. Within its mandate, the EBRD will seek to structure the projects it finances so that they are guided by the relevant principles and substantive requirements of international law. The EBRD will not knowingly finance project that would contravene country obligations under relevant international treaties and agreements, as identified during project appraisal.

C.29. All projects undergo environmental and social appraisal both to help the EBRD decide if the project should be financed and, if so, the way in which environmental and social issues should be addressed in its planning, implementation and operation. The appraisal will be appropriate to the nature and scale of the project, commensurate with the level of environmental and social impacts and issues, and with due regard to the mitigation hierarchy. The appraisal will assess whether the project is capable of being implemented in accordance with this Policy and its PRs and include the assessment of the potential financial, legal and reputational risks as well as identify potential environmental or social opportunities. The social and environmental appraisals is integrated into the EBRDs overall project appraisal. The EBRD may retain specialist third party advice to assist in the assessment of specialised or technical issues.

PR8.8. Assessment process. Screening for impacts on cultural heritage. At an early stage of the environmental and social assessment, the client will identify if any cultural heritage is likely to be adversely affected by the project, and assess the likelihood of any chance finds. In doing so, the client will consult with relevant authorities, experts, local communities and other stakeholders as appropriate. The intensity of the study of cultural resources should be adequate for characterising the potential impacts and issues of the project and reflecting the concerns of the relevant stakeholders.

PR8.9. Avoiding impacts. The client, based on the outcomes of the screening process, will select the location for and design the project so as to avoid significant impacts on cultural heritage. Where the client's screening process identifies potential adverse impacts at the early stages of project development, preference should be given to avoiding adverse impacts during the design and site selection phases.

PR8.10. Assessing impacts that cannot be avoided. Where impacts cannot be avoided, the client will, on the basis of the results of the preliminary screening, undertake studies and consultation to assess potential impacts and, if necessary, the required changes in design. The scope of these studies and consultation will be determined on a case-by-case basis in consultation with the national or local regulatory authorities entrusted with protection of cultural heritage. The studies will be conducted by qualified and experienced cultural heritage specialists, either as part of the overall environmental and social assessment process, or separately.

PR8.11. Assessing impacts that cannot be avoided. The assessment and mitigation of impacts on cultural heritage will be conducted in accordance with relevant provisions of national and/or local laws, protected area management plans and regulations, national obligations under international laws and GIP.

PR8.12. Managing impacts on cultural heritage. The client will be required to develop appropriate measures for minimising and mitigating adverse impacts on the cultural heritage. The mitigations measures will address the results of the field surveys, expert assessment of the significance of cultural heritage, national legislations and relevant international conventions, and the results of consultations with affected communities and other relevant stakeholders. Such mitigation measures will be included in the client's overall ESMS and project-specific ESMP, or in a specific Cultural Heritage Management Plan that will also include an implementation timeline and a resource need estimate for each of the mitigation measures. The client will also ensure that trained and qualified personnel are available to oversee the implementation of mitigation measures, and that any third parties, such as contractors, working on the project have the necessary skills and expertise and are managed and monitored in accordance with PR1.

PR8.15 Consultation with affected communities and other stakeholders. Where a project may affect cultural heritage, the client will consult with affected communities within the host country who use or have used the cultural heritage within living memory for longstanding cultural purposes to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage. The client will provide information to affected communities in a transparent and appropriate language on the scope, location and duration of a project, and any activities that might involve impacts on cultural heritage. Such consultation must follow the requirements of PR 10 and could be part of a wider consultation process on the project's environmental and social impacts. Consultation will also involve other relevant stakeholders such as national or local authorities entrusted with protection of cultural heritage, cultural heritage experts and non-governmental and civil society organisations. Impacts on cultural heritage will be appropriately mitigated with the free prior and informed participation of the affected communities.

4.3.1. IPAM findings and compliance determination

In recognition of Georgia's ratification of Council of Europe conventions on cultural heritage and landscape, did the Bank seek, within its mandate, to structure the Project during Project appraisal so that it was guided by the relevant principles and substantive requirements set out in the Council of Europe Framework Convention on the Value of Cultural Heritage for Society⁵⁰ and the Council of Europe European Landscape Convention⁵¹, in line with para. B.8?

IPAM finds the Bank **non-compliant with para. B.8 of the 2014 ESP** concluding that the Bank failed in ensuring that the Project was guided by the relevant principles and substantive requirements set out in the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and the Council of Europe European Landscape Convention.

Bank Management responded to allegations about the Project not adhering to international conventions, by stating that the Bank relied on local bodies, including the NACHP and MoEPA, responsible for issuing the permits, for certifying the compliance with all local laws, and the country's obligations vis-à-vis international conventions.

The Client stated that the EIA had been reviewed by the MoEPA on the matter of compliance with the applicable national laws/regulations and international obligations and had concluded that the EIA complied with all. Moreover, the Client emphasised that Georgia is a party to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society since 2011 and the Convention gives the Parties the right to establish its own regulations based on the principles of the Convention, which translates in Georgia's cultural heritage protection legislation.

However, IPAM found that it was not until 2020, when the NACHP was commissioned to undertake an in-depth survey of cultural heritage in the Project area that the reference to ensuring compliance with the two conventions was included. At the time, the Project was already in the implementation phase, so the finding underscores an untimely consideration of legal and policy provisions regarding cultural heritage.

Management argued that both the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and the Council of Europe European Landscape Convention are framework/programmatic/soft law conventions and do not contain sufficiently precise obligations on the parties they apply to. The key objectives of these two conventions are to set a new agenda, or broaden the existing agenda, in the field of cultural heritage. In order to constitute specific obligations to non-parties, these conventions need to be transposed into national legislation.

IPAM agrees with Management on the above, however, despite not providing binding legal requirements, both conventions outline the principles regarding their respective topics, which are to guide the Bank in structuring the Projects as stated in B.8 which reads as follows: "within its mandate, the EBRD will seek to structure the projects it finances **so that they are guided by the relevant principles and substantive requirements** of international law".

⁵⁰ The Faro Convention emphasizes the important aspects of heritage as they relate to human rights and democracy. It promotes a wider understanding of heritage and its relationship to communities and society. The Convention encourages us to recognize that objects and places are not, in themselves, what is important about cultural heritage. Source: [Faro Convention](#)

⁵¹The European Landscape Convention (ELC) promotes the protection, management, planning of landscapes as an integral component of the natural and cultural heritage of European peoples contributing to local culture formation, identity consolidation, human well-being and life quality.

IPAM found that the Bank did not seek to assess whether the Project met the relevant principles in these conventions and relied on the Client to do so.

In relation to landscape, according to the European Landscape Convention, a landscape is defined as “area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors”: the landscape therefore emerges from the physical interactions and psychological transactions of humans, as individuals and communities, with their environment. In the opinion of the cultural heritage expert, the importance that landscapes and places each community may acknowledge in the formation of their identity may vary but does not depend on formally recognised qualities of the landscape, e.g., through designations. Notably, in its 2021 report the NACHP also concluded that the Khada Valley should be considered as a cultural landscape, despite the lack of an official designation in Georgia.

Bank Management asserted that although the findings of the analysis carried out within the EIA/ESIA process indicated many cultural heritage sites exist in the valley, the Khada Valley itself had not been designated for cultural heritage protection at a landscape level nationally or internationally. It also added that the Project had obtained a positive conclusion from the NACHP, allowing Management to conclude that this Convention had been complied with. Understanding the reliance of the Bank on the Client for purposes of compliance with local legislation, it does not replace the obligation of the Bank as set in B.8.⁵²

In addition, the 2014 ESP does not require an official designation for the landscape to be treated in its cultural dimension, in line with the principles of the European Landscape Convention.

The importance of landscape in its cultural dimension was reflected in the later study of the NACHP, which established in the Interim Report 1 that “the cultural landscape along the route of the project road is distinguished by its uniqueness and can be assessed as having an appropriate potential to gain the World Heritage status.”⁵³ However, it was not analysed from this perspective in the ESIA.

Did the Bank satisfy itself that the Client’s assessment of cultural heritage was commensurate with the nature and scale of the Project, having due regard to the mitigation hierarchy,⁵⁴ in line with C.29 and the relevant requirements of PRs 8.8, 8.9 8.10 and 8.11? In particular, was the mitigation hierarchy appropriately considered with respect to cultural heritage monuments and sites?

The Request alleges that the ESIA did not adequately assess the Project’s impact on cultural heritage by failing to identify early on the catalogue of relevant sites. Furthermore, it states that the selected alignment adversely impacts a number of sites nearby and cuts through the cemetery used by the Bekot Kari Church in Khada Valley.

Regarding the early phases of the Project, the Client stressed that cultural heritage was considered at the stage of the feasibility study in the multi-criteria analysis, as well as in the EIA stage. It also asserted that Georgian Law on Cultural Heritage, adopted in 2007 and amended in 2013, had been complied with. IPAM has confirmed that a limited number of sites were considered at that stage and that consideration was marginally made in the MCA but no studies were undertaken at

⁵² Documents show that the Bank was concerned with the disruption to a pristine landscape among many things because Georgia had ratified the ELC and article 3 of the convention requires its members to promote landscape protection.

⁵³ NACHP Interim Report 1. Page 12.

⁵⁴ The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate and, as a last resort, offset and/or compensate any potential residual adverse impacts.

that stage to update the baseline and it is not clear what weights were assigned to cultural heritage within the decision-making tool utilised.

Management commented that as part of the ESIA process, experts from the Georgia National Museum conducted field surveys and analysed national database records of protected cultural monuments and archaeological sites to identify cultural heritage sites that could potentially be affected by the Project.

Agreeing with Management on the initial study undertaken by the Georgian National Museum and its results, it needs to be added that the study also indicated that further research was needed as the valley had not been sufficiently studied. The same recommendation was made by Golder. Eventually, when the additional studies were undertaken, the inventory of cultural heritage sites increased substantially.

So, despite two expert reports provided in 2018 as a part of the EIA process, which established the presence of important cultural properties in the area and the risk of impact of road construction on them, and called for continuing research and carrying out more in-depth investigation of the situation, no actions were taken until 2020, when the Project construction was initiating⁵⁵.

A comprehensive study of tangible heritage with a new inventory of Khada Valley's cultural heritage objects was eventually conducted as a part of the CHAP contract with NACHP in 2020 and 2021 and the final CHAP was issued in July 2021.

Management further stated that the road alignment had been routed to bypass the 34 cultural heritage sites and objects identified during the ESIA process, as well as cemeteries, houses, and settlements, and that the 104 objects further discovered in the NACHP study did not require road re-alignment, reconfirming that the alignment had been adequately chosen to avoid the cultural heritage sites and objects.

On the alleged impacts to the Bekot Kari church, Management responded that the church complex is positioned 127 m from the planned road, with the closest graves located 75 m and 82 m away from the alignment. In addition, there is a natural drop which allows the road alignment to fall below the level of the plateau where the cemetery's territory is located, In Management's view, the cemetery was unlikely to be affected by the road as this drop would serve as a natural barrier for construction related impacts such as noise, vibration, and will act as buffer against other nuisances during the operation of the road. Management provided to IPAM situational and topographical maps to reference the locations and distances and informed that enhancements to the church itself were to be further discussed with the church representatives and implemented as part of the CHAP.

IPAM notes that Management has sought proactively to ensure that further study plans are developed, requested the engagement of a cultural heritage monitor and established the Chance Find Procedure.

We also note that the Project delays due to Covid restrictions have allowed for studies to be undertaken before actual construction started in the area. However, this was not how the Project had originally planned the implementation and the terms of reference to identify contractors were

⁵⁵ On October 2020 the Notice to Commence works was issued initiating preparatory works and, according to the Client, actual tunnelling had not started by September 2021.

drafted based on the initial baseline. Furthermore PR8.8 clearly underscores the need for early identification which allows an effective application of the mitigation hierarchy.

IPAM notes that although such risk-based approach may appear sufficient, the EBRD standards require clients to use a precautionary approach (para 8.1). Despite clear recommendations from the local experts and the international consultants commissioned during the appraisal that further studies were required to determine the full scope of impacts, a decision was made to proceed without them and essential archaeological studies and conducting them in the implementation phase (even if prior to the start of works by the contractor) when the pressure to start construction increases does not meet the standards of the precautionary approach.

IPAM's view is supported by the cultural heritage expert's opinion that the 5-phase strategy envisaging additional studies in the post-ESIA phase is contrary to established GIP in the sector since the entry into force of the Valletta Convention on the Protection of the Archaeological Heritage (1992). "The ratification of the Convention by many states, including Georgia, has favoured the development of common approaches to, and practices for, the protection of archaeological heritage and to the assessment of impacts deriving from projects and plans. The underlying principle is that archaeological research and investigations should be carried out as early as possible in the process so as their outcomes can inform the definition of the project and all necessary modifications to avoid or reduce impacts".

According to GIP, the best way to assess impacts on archaeological heritage is achieved through a multi-phased approach. The number of the phases may be different but generally include between three to five phases. Some of these phases need to be carried out during planning and design and not at the execution phase, as outlined by the 5-phase strategy, as during execution only a limited room for design modification is possible, particularly in the case of transport infrastructure, where the siting and design features of one stretch will determine the parameters also for the subsequent siting and design of further sections. Accordingly, three of the five phases described in the 5-phase archaeological strategy should have been carried out much earlier in the process and that ideally, only the chance find procedure and the reporting would be fit for the construction phase, including rescue excavations that the chance find procedure might trigger.

Consequently, the postponement of the archaeological and cultural heritage survey does not align with the principle of 'avoid first' that is inherent to impact assessment mitigation and the Bank's mitigation hierarchy.

The postponement also affected the development of mitigation measures and their inclusion in the relevant management plans, such as EMP and CHMPs that are prepared by contractors and serve as the basic tools to ensure that all required mitigation measures are followed through. Management informed IPAM that the CHMPs were being updated to reflect the mitigation measures established by the NACHP in the CHAP. Conducting this exercise while the construction is ongoing in some parts of the Project and while the CHAP requires protective measures to be taken prior to the construction in the area, evidences a weakness in the process in comparison to what is required by PR 8.

In a related matter, nowhere in the ESIA process, was sufficient focus paid to intangible heritage of the Khada Valley, which leads to non-compliance of the Bank with the above-mentioned PRs. Intangible cultural heritage is particularly important in Georgia, where small and relatively isolated communities live in mountainous regions and have developed specific cultural traditions and preserved elements of ancient beliefs, practices, forms of knowledge and special relations to places. Considering that the Project affects a pristine and quite remote mountainous region,

intangible heritage should have constituted one of the priorities for studies and mitigation. However, it appears that the Bank failed in ensuring adequate addressing of potential impacts. Bank Management stated during interviews that consultations with Project-affected People revealed that they were using local cultural heritage objects such as towers for worship, however, that did not trigger further studies of the customs or beliefs of the local population and their relationship with the cultural heritage sites in the Project area. The issue of intangible cultural heritage has only become a subject of the HHRP, which is currently in preparation, which was one of the recommendations of the NACHP following its CHAP study.

IPAM recognises the Bank's efforts to close the gap and conduct the study, however, points out that the ESP treats both tangible and intangible heritage as equal elements of the Bank's PR 8 commitments and its absence from the ESIA process is an omission on the part of the Bank.

Based on the findings IPAM makes the following determinations in relation to Performance Requirement 8:

IPAM finds the Bank has not complied with para. C.29. after concluding that the appraisal of cultural heritage issues was not appropriate to the nature and scale of the project, nor commensurate with the level of environmental and social impacts and issues, or with due regard to the mitigation hierarchy. (See rationale for non-compliance in PR 1)

IPAM finds the Bank non-compliant with para. PR 8.8 and PR 8.10., as the identification of impacts to cultural heritage was limited to a small inventory of physical sites, no identification of impacts on intangible cultural heritage was made at that stage and consultation with relevant stakeholders failed to include cultural experts and organisations. Furthermore, no studies were undertaken at the early stages although it was known that there had been limited research in that area until then.

Under the same rationale, **IPAM finds the Bank only partially complied with PR 8.9.,** as the location of the Project was made with limited information on the impacts on tangible cultural heritage and no information on intangible cultural heritage. The determination by IPAM takes into consideration that the Bank entered the Project once the location had been decided and therefore could not influence the earlier period.

IPAM finds the Bank non-compliant with PR 8.11., as the assessment and mitigation of impacts on cultural heritage was not conducted in line with GIP. However, it must be acknowledged that the conventions were considered later in the process.

IPAM finds the Bank non-compliant with PR 8.12 as the lack of timeliness and adequate characterisation of impacts in the early stages generated a mitigation plan that appears to be insufficient to the now revised inventory of physical cultural heritage and does not include to date mitigation measures on intangible cultural heritage. Furthermore, the current management plans only partially cover the requirements set in PR 8.12. As a practical example, IPAM notes that the CHMP for Lot 1 reviewed does not include an implementation timeline nor the resources to fund the mitigation measures. The document was general and lacked specific actions, which runs contrary to the provisions of PR 8.12.

During the environmental and social assessment process, did the Bank ensure that the Client incorporated relevant cultural heritage requirements into its Environmental and Social Management System (ESMS) and/or the Project's Environmental and Social Management Plan (ESMP), in line with PR 8.5?

IPAM finds the **Bank non-compliant with para. PR 8.5.**, due to the omission of intangible cultural heritage from the ESMPs. Although the Client identified the relevant PRs as applicable to the Project and included relevant measures in the overall ESMS, intangible heritage was not sufficiently studied during the ESIA process. Furthermore, the latest version of the CHMP for Lot 1 reviewed by IPAM lacks specific mitigation measures, timelines and budget allocations.

4.4 Regarding Performance Requirement 10 in relation to Information Disclosure and Stakeholder Engagement

This PR recognises the importance of an open and transparent engagement between the Client, its workers, local communities directly affected by the project and, where appropriate, other stakeholders as an essential element of GIP and corporate citizenship. Such engagement is also a way of improving the environmental and social sustainability of projects. Effective community engagement, appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social and environmental outcomes, together with enhanced community benefits. Stakeholder engagement is central to building strong, constructive and responsive relationships which are essential for the successful management of a project's environmental and social impacts and issues. To be effective, stakeholder engagement should be initiated at an early stage of the project cycle

This PR identifies GIP relating to ongoing stakeholder engagement as an ongoing process which involves: (i) public disclosure of appropriate information; (ii) meaningful consultation with stakeholders; and (iii) an effective procedure or mechanism by which people can make comments or raise grievances. The process of stakeholder engagement should begin at the earliest stage of project planning and continue throughout the life of the project. It is an integral part of the assessment, management and monitoring of environmental and social impacts and issues of the project and should be read in conjunction with the provisions in other PRs.

The Requester alleged that there was no stakeholder engagement during the early stages of the Project when the decision on alignment was taken and it was only afterwards that the Requesters learnt about the location of the road. It also claims that cultural heritage experts and organisations were excluded from the consultation process. As relevant provisions, IPAM analysed compliance with B.15, PR10.9, PR10.15, and PR10.16, Relevant language is shown in Box 4.

Box 4. Performance Requirement 10 – Relevant Provisions

B.15. The EBRD is committed to the principles of transparency, accountability and stakeholder engagement. It will disclose, on an ongoing basis, summary information about the Bank's performance on environmental and social issues and will engage in meaningful dialogue with the Bank's stakeholders, in accordance with the EBRD Public Information Policy (PIP). The Bank will promote similar good practices amongst its clients.

Engagement during project preparation

PR10.9 Stakeholder identification. The client will identify and document the various individuals or groups who (i) are affected or likely to be affected (directly or indirectly) by the project (affected parties); or (ii) may have an interest in the project (other interested parties).

PR10.16.Information Disclosure. Disclosure of relevant project information helps stakeholders understand the risks, impacts and opportunities of the project. If communities may be affected by adverse environmental or social impacts from the project, the client will provide them with access to the following information (the Information):

- the purpose, nature, scale and duration of the project activities;
- risks to, and potential impacts on, stakeholders and proposed mitigation plans;
- the envisaged stakeholder engagement process, if any, and opportunities and ways in which the public can participate;
- the time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarised and reported;
- the process by which any grievances will be managed.

PR10.18 Meaningful consultation. Meaningful consultation is a two-way process. The consultation process with affected parties will be undertaken in a manner that is inclusive and culturally appropriate, and which represents the views and specific needs of various groups as identified in the SEP or made aware to the client during the implementation of the SEP. The consultation will also include, beyond the affected parties, any groups or individuals who have been identified as other interested parties. The client will take into consideration the main language preferences of the affected parties, their decision-making process, and the needs of disadvantaged or vulnerable groups. The client will ensure that the consultation will be free of external manipulation, interference, coercion or intimidation.

PR10.21 Disclosure and consultation on Category A projects. Category A projects could result in potentially significant adverse future environmental and/or social impacts which cannot readily be identified and will require the client to carry out a formalised, participatory ESIA process. Disclosure and consultation requirements will be built into each stage of the ESIA process on a case-by-case basis. Informed participation involves organised and iterative consultation, leading to the client's incorporating into its decision-making process the views of the affected parties on matters that affect them directly, such as proposed mitigation measures, the equitable sharing of benefits and opportunities from projects, and implementation issues.

PR8.24. In addition, the consultation process must meet any applicable requirements under national environmental impact assessment laws and other relevant laws. The client must keep the ESIA in the public domain throughout the life of the project, but it may be amended, from time to time, with additional information, or archived following project completion, as long as it is available on request in a timely manner.

4.4.1 IPAM findings and compliance determination

Did the Bank engage in meaningful and effective dialogue with the Bank's stakeholders during the ESIA process, as outlined in paragraph B.15 of the ESP?

IPAM finds **the Bank compliant with para. B.15 of the 2014 ESP**, as through its actions, the Bank was open and actively engaged when approached during the ESIA process in alignment with the principles of transparency, accountability and stakeholder engagement. It also actively sought to promote best practices in relation to disclosure and engagement.

Bank Management response comments that EBRD adopted a systematic approach to stakeholder engagement from the beginning of its E&S Appraisal process through the preparation and implementation of the SEP, which identified, mapped and assessed stakeholder concerns throughout the Project development. Management pointed out that extensive and meaningful consultations were undertaken with project beneficiaries, directly affected persons and communities, representatives of civil society, business community, sector experts, members of the academia, as well as local and national authorities. Community inputs obtained through the consultation process were carefully considered and many led to key road design enhancements such as extension of tunnel portals, inclusion of additional underpasses, village access roads, as well as safe crossing points for pedestrians and livestock.

As already mentioned in other sections, the Bank was not involved in the early stages of the Project and therefore the requirements of the ESP and PR10 could not be applied beyond identifying the gaps that would need to be addressed from then onwards.

IPAM confirms that from March 2018, the Bank pressed for extensive public consultations with local communities. Furthermore, since that date, the Bank has been engaging with the Requesters and other civil society actors in writing and in-person meetings, trying to address points raised in the communication and providing materials, to the level allowed by confidentiality.

The Bank also quickly reacted to the identification of gaps in stakeholder engagement by bringing in an experienced Social Consultant to assist the ESIA process.

Did the Bank make reasonable efforts to identify gaps (if any) in the Client's national-level ESIA consultation process to ensure the joint ESIA conducted by ADB and EBRD met the applicable requirements regarding: appropriate stakeholder identification in line with PR 10.9; meaningful consultation in line with PR 10.18; and relevant aspects of information disclosure in line with PR 10.16? Did the Bank promote good practice in stakeholder engagement and consultation to its Client, in relation to disclosure and stakeholder engagement opportunities for both the national and international level ESIA processes, in accordance with ESP B.15?

IPAM finds the **Bank non-compliant with PR 10.9 on stakeholder identification**. Although it applied effort to consider the Project stakeholders and reflected it in the SEP, the process lacked focus on cultural heritage, as is required by PR 8.15, stating "Consultation will also involve other relevant stakeholders such as national or local authorities entrusted with protection of cultural heritage, cultural heritage experts and non-governmental and civil society organisations. Impacts on cultural heritage will be appropriately mitigated with the free prior and informed participation of the affected communities".

IPAM's investigation showed that no cultural heritage experts or civil society organisations were included for purposes of engagement during project preparation. Inclusion of topic-relevant

organisations would have strengthened the appraisal phase both as regards identification of impacts and mitigation measures.

IPAM finds the Bank not compliant with PR 10.18 on meaningful consultation process as it failed to ensure that the consultation processes included, beyond the affected parties, other groups or individuals who had an interest in the Project.

IPAM finds the Bank compliant with PR. 10.16. on disclosure of relevant information during the ESIA process. Management has effectively paid close attention that the Project provides adequate access to information.

IPAM has accessed the Project website and during its site visit, also confirmed that by October 2021 an information centre was in operation and different materials were available in both languages. The materials available include a project factsheet, frequently asked questions, maps and videos, all of which were made available in English and Georgian.

During the visit to the Khada Valley, several signposts were visible with information on how to access the grievance mechanism and two consultants visit the area continuously to identify concerns and provide information.

Did the Bank make reasonable efforts to ensure that the Client disclosed the examination of technically and financially feasible project alternatives to stakeholders in the course of the ESIA process, in line with PR 10.18, PR 10.21, and PR 10.24?

IPAM finds the Bank partially compliant with PR 10.18, PR 10.21, and PR 10.24 regarding the efforts to ensure that the Client disclosed the examination of technically and financially feasible project alternatives to stakeholders, based on the actions and inactions of the Bank regarding these provisions and in general on PR 10.

As expressed in previous sections, the Bank was not involved in the early stages of the Project when the alignment was decided. IPAM has also verified that at that stage, the disclosure of information and engagement of stakeholders appeared to be limited and did not include engagement with cultural heritage experts and/or civil society organisations in that area of expertise. Once involved, the Bank did not ensure that relevant interested parties were included by the Client in its stakeholder engagement in such a way as to enrich the assessment process and provide adequate mitigation measures.

The ESIA documents include information on the technically and financially feasible alternatives studied but its disclosure could not be used to engage in a two-way process so as to ensure that they could express their views on project risks, impacts and mitigation measures prior to a decision be taken. IPAM appreciates the effort of the Bank in providing information about the process and engaging with the Requesters and other stakeholders to clarify the information. However, IPAM notes that meaningful consultations include not only providing the information but engaging in a communication process where concerns and feedback from stakeholders are addressed and inform decisions regarding the Project. The fact that the road alignment in the Khada Valley was already selected prevented civil society from raising their concerns about the untouched character of the valley and cultural heritage. From the perspective of the Requesters, who oppose Khada Valley being the site of the Project, the lack of consultations during the pre-feasibility stage is the most important factor, as in their view, by the time they were allowed to raise concerns, the decision had already been made. The minor changes in the final design, although compliant with the provision of addressing feedback into the alternative alignment process, were not sufficient to address the weaknesses at earlier stages of the process.

IPAM found that significant progress was made in strengthening the Project's stakeholder engagement thanks to Bank Management. These efforts should continue through implementation to ensure continuous disclosure and engagement with relevant stakeholders, particularly considering the risk-based approach in addressing impacts on cultural heritage.

Table 4. Summary of Compliance Review Findings

PR	Findings
<p>PR 1 on Assessment and Management of Environmental and Social Impacts and Issues</p>	<p>IPAM found the Bank non-compliant with the 2014 ESP provisions on the assessment of impacts as they relate to cultural heritage as the archaeological baseline studies recommended by experts and consultants were not undertaken in a timely fashion. This lack of timeliness meant that the EIA did not include the full impact on tangible cultural heritage, did not consider intangible cultural heritage, and, in consequence, lacked mitigation measures commensurate to the unidentified impacts (mainly in relation to a deficient survey of existing tangible cultural heritage). In addition, relevant stakeholders were not included in the consultation process.</p>
<p>PR 8 on Cultural Heritage</p>	<p>IPAM found the Bank non-compliant with provisions on international conventions, as the Bank failed to structure the Project during the appraisal stage under the guidance of the relevant principles and substantive requirements set out in the <i>Council of Europe Framework Convention on the Value of Cultural Heritage for Society and the Council of Europe European Landscape Convention</i> as required by the ESP.</p> <p>IPAM found the Bank non-compliant with the 2014 ESP provisions on assessment, development of mitigation measures and their inclusion in Environmental and Social Management Plans (ESMPs), as the Bank failed to ensure that the Client conducted the assessment of cultural heritage in a manner commensurate with the nature and scale of the Project. Due to the lack of an updated baseline, the ESMPs only reflected a partial stock of affected tangible cultural heritage. At that stage, the Bank also failed to require the assessment of impacts on intangible heritage. Furthermore, the approved Cultural Heritage Action Plans lacked specific mitigation measures, designation of responsible actors, timelines, and estimated costs as is required in the 2014 ESP, but were, nevertheless, considered adequate by the Bank.</p>
<p>PR 10 on Information Disclosure and Stakeholder Engagement</p>	<p>IPAM found the Bank compliant with provisions on disclosure of relevant information as the information prescribed by the Policy has been disclosed, and the Bank promoted good practice in stakeholder engagement and consultation with the Client.</p> <p>IPAM finds the Bank partially compliant regarding the efforts to ensure that the Client disclosed the examination of technically and financially feasible project alternatives to stakeholders, based on the actions and inactions of the Bank regarding these provisions and in general on PR 10.</p> <p>IPAM found the Bank non-compliant with provisions on appropriate stakeholder identification, as the Bank did not ensure that the Client included experts and civil society organisations in the field of cultural heritage, as required by the relevant provisions in PR 8.</p> <p>IPAM found the Bank non-compliant in requiring a meaningful consultation process as it failed to ensure that the consultation processes included, beyond the affected parties, any groups or individuals who had an interest in the Project.</p>

5. Conclusions

Sections 3 and 4 of this report presented a detailed analysis of the findings made during the investigative process and the determinations by IPAM on compliance or non-compliance with the 2014 Environmental and Social Policy provisions and Performance Requirements 1, 8 and 10.

Based on the findings, IPAM determined that **the Bank failed to follow GIP as regards the timely commissioning of studies to update the cultural heritage baseline**. The ESP and GIP require that at the very early stages of the environmental and social assessment, the client identifies if any cultural heritage is likely to be adversely affected. At this stage, the client is to engage with all relevant stakeholders to gather information that will assist the decision-making process.

It is based on the screening outcomes that the client can select the location and design the project with the objective of avoiding significant impacts. Therefore, **timing is of the essence and in this case, this did not happen**. One cannot fault the Bank regarding the early stages of the Project as it became involved after the location had been decided. However, the Bank did fail to comply with the ESP and GIP as it did not require the Client to undertake the recommended studies before finalising the ESIA process. The studies were undertaken later and have revealed that the inventory of cultural heritage is substantially larger than the baseline used to decide on location and the establishment of mitigation measures. It is now required that ESMPs are updated to reflect the revised baseline.

Furthermore, although PR 8 considers both tangible and intangible heritage, the Bank did not seek to ensure that the latter be considered during the ESIA process. Once again, a study has now been undertaken and its results need to be disclosed and any recommendations implemented to minimise the impact on the cultural heritage of the valley.

The Bank also failed to ensure that the ESIA process included cultural heritage experts and organisations with expertise in the topic and the area, even though it was cognisant of the cultural heritage richness of Georgia and the Khada Valley. This has at a minimum generated a loss of credibility amongst some of the stakeholders, as shown by the complaint in this case and the rejection of cultural heritage organisations of the Project.

Undoubtedly, the Bank has sought to improve the stakeholder engagement practices within the Project and the required studies for both tangible and intangible cultural heritage have been undertaken. IPAM commends the Bank for not delaying these actions further. It is now required that the Bank makes sure that the Client updates all relevant mitigation plans ensure that all relevant mitigation measures are effectively adopted by the Client and the contractors; ensuring that information disclosure and engagement with stakeholder continues and close monitoring of the construction phase takes place to immediately address the risks of affecting the cultural heritage of the valley.

The Bank needs to ensure that proper mitigation measures are implemented not only during construction but also during operation. IPAM has not found any references to this and therefore shall include amongst its recommendations.

6. Recommendations

The Compliance Review Report has identified that Bank Management is non-compliant with the 2014 ESP in relation to:

- PR 1 - Assessment and Management of Environmental and Social Impacts and Issues (with respect to cultural heritage assessment);
- PR 8 - Cultural Heritage; and
- PR 10 - Information Disclosure and Stakeholder Engagement.

Where IPAM finds that the Bank has not complied with the Environmental and Social Policy, paragraph 2.7 (d) of the 2019 PAP requires that the Compliance Review Report:

- i. identifies the specific actions (or inactions) of the Bank that have led to the finding of non-compliance; and
- ii. provides Bank Management with specific recommendations to address the findings of non-compliance;
 - a. at the Project level, identifying Project-specific actions to bring the Bank into compliance and address the harm or potential harm associated with the findings of non-compliance; and
 - b. at the procedural and systemic levels, identifying changes to EBRD practices, procedures, guidance or systems to bring the Bank into compliance and to avoid recurrence of such or similar situations on the Project at issue in the Request as well as in other Projects.

Following careful consideration, IPAM makes the following Project-specific recommendations, and Procedural-Systemic recommendations to Bank Management to resolve the different instances of non-compliance identified in this case:

6.1. Project-specific recommendations

Recommendation 1: Ensure that the Project develops mitigation measures commensurate to the newly identified stock of physical cultural heritage in the area of influence

Purpose: to address EBRD's non-compliance with commitments under paras. C.29 and the relevant requirements of PR1 and PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

The Khada Valley was identified from the initial scoping stage of the Project as unique in terms of cultural heritage. Furthermore, it was recognized that it had not been sufficiently studied so a full assessment of the archaeological potential of the area was required to avoid adverse impacts and establish adequate mitigation measures. However, as confirmed by the IPAM findings, no archaeological studies were undertaken during the impact assessment stage to determine the stock of physical cultural heritage in the area that would be impacted by the Project. As a result, only a few monuments were identified, and current mitigation measures and resources are limited to this stock.

At a later stage, the Client was asked to undertake in-depth archaeological studies, which resulted in the identification of over 70 additional monuments. However, no update to the Cultural Heritage

Management Plans (CHMPs) has taken place nor the resource implications to ensure adequate protection and conservation.

Therefore, IPAM considers that the following actions by Bank Management are required to address the current non-compliance:

Recommendation 1	Timeframe
i. Require the Client to ensure updates to the Cultural Heritage Management Plans to cover specific recommendations made by the NACHP ⁵⁶ in its Interim Reports and Cultural Heritage Action Plan and verify that the updated CHMPs include who is responsible, an implementation timeline and an estimation of resources needed to implement each of the mitigation measures	Immediately
ii. Require the Client to disclose the updated CHMPs on the Project website	As soon as updated plans receive the Lenders' non-objection
iii. Require the Client to develop a CH monitoring plan for the operation phase	By end of construction phase at the latest
iv. Require the Client to update the baseline of existing CH in the area and document the condition of each one of the objects and publically disclose this information in the Project Website	By end of construction phase
v. Require the Client to undertake an external expert audit of CH condition within 300 m on each side of the Right of Way after one year of operation (noise, vibration, air pollution impacts) and ensure that there are conservation resources to address potential impacts. A potential expert audit could be carried out by the NACHP as a follow up to the 2020-2021 inventory and CHAP. Management to include the planning for any additional resources in the MAP.	One year into the operation of the road

Recommendation 2: Ensure robust and effective avoidance and/or mitigation measures for the protection of intangible cultural heritage in the area

Purpose: to address EBRD's non-compliance with commitments under paras. C.29 and the relevant requirements of PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

As per the IPAM findings, the Bank did not require the Client to undertake studies on the intangible cultural heritage in the Project area, which led to the determination of non-compliance with PRs 8.8, 8.9, 8.11 and 8.12 of the 2014 ESP.

In order to address this issue, the Client commissioned the preparation of a Historic Heritage Reference Plan (HHRP), which would include a component on intangible heritage. According to Bank Management, the final document was due by end of March 2022.

For the Project to be compliant with 2014 ESP, the Bank must ensure that the Client and contractors gathered baseline data and developed – in consultations with Project-affected people and relevant third Parties – mitigation measures that reflect the mitigation hierarchy.

⁵⁶ The National Agency for Cultural Heritage Preservation of Georgia (est. 2008) is the Georgian regulatory authority responsible for preservation, protection, research and promotion of the cultural heritage of the country. It brings under its umbrella several major heritage monument complexes of national and global significance in Georgia.

Therefore, IPAM considers that the following actions by Bank Management are required to address the current non-compliance:

Recommendation 2	Timeframe
i. Ensure that the Cultural Heritage Management Plans are updated to reflect the findings of the Historic Heritage Reference Plan (HHRP) and any related mitigation plans.	As soon as the HHRP receives the non-objection from the Lenders.
ii. Verify that the HHRP is disclosed on the Project website	Immediately after the non-objection

Recommendation 3: Ensure robust and effective mitigation measures for landscape

Purpose: to address EBRD's non-compliance with commitments under para. PR 8.6 of the 2014 ESP with respect to PR 8 on Cultural Heritage.

According to PR 8.6, landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance are a part of tangible cultural heritage. Therefore, the landscapes of Khada Valley are to be regarded as part of the tangible cultural heritage of the area. However, IPAM found in its assessment that the landscape had not been considered in such a manner during the impact assessment process.

At a later stage, the Client commissioned the additional HHRP referred to in Recommendation 2.

Moving forward, in order to ensure the Bank's compliance with the commitments under para. PRs 8.6 of the 2014 ESP, IPAM recommends the following actions:

Recommendation 3	Timeframe
Bank Management should ensure that the Client:	
i. Undertakes consultations with cultural heritage and tourism experts as well as civil society organisations (including the Requesters of this Compliance Review and their affiliated experts and organisations) on the Khada Valley landscape and its cultural dimension. Their views should be considered and included in the Historic Heritage Reference Plan (HHRP).	Prior to finalising the HHRP.
ii. Submits the HHRP to Bank Management who shall ensure that it complies with the relevant Performance Requirements	During non-objection process
iii. Disclose on the Project website	Immediately after the non-objection
iv. Ensures that Cultural Heritage Management Plans for Lot 1 and 2 and the Land Restoration Plan (as relevant) are updated to include the findings of the studies and avoidance/mitigation measures in relation to the cultural character of the landscape. Mitigation measures should include responsible parties, timelines and estimated costs and reflect the mitigation hierarchy, clearly stating if they aim to avoid or mitigate the impacts.	As soon as non-objection from Lenders is obtained.

Recommendation 4: Strengthen the Stakeholder Engagement process through the inclusion of relevant expert organizations and individuals

Purpose: to address EBRD's non-compliance with commitments under para. PR 8.15 of the 2014 ESP with respect to PR 8 on Cultural Heritage and para. PR 10.9 with respect to PR 10 on Stakeholder Identification.

IPAM recognised the Bank's efforts in conducting stakeholder engagement in line with ESP 2014 but found one weakness relating to the inclusion of all relevant stakeholders, namely the civil society organisations focused on cultural heritage. As prescribed in PR 8.15., "Where a project may affect cultural heritage, (...) Consultation will also involve other relevant stakeholders such as national or local authorities entrusted with protection of cultural heritage, cultural heritage experts and non-governmental and civil society organisations".

Moving forward, in order to ensure the Bank's compliance with the commitments under para. PRs 8.15 and 10.9 of the 2014 ESP,

Recommendation 4	Timeframe
Bank Management should ensure that the Client:	
i. Updates the stakeholder map to include civil society organisations and individuals with relevant expertise in cultural heritage and tourism.	Immediately
ii. Updates the Stakeholder Engagement Plan and provides the opportunity for all stakeholders to participate in the Project in a systematic fashion	Immediately
iii. Submits these to Bank Management who shall ensure that the Plans comply with the relevant Performance Requirements	During non-objection process
iv. Discloses on the Project website	Immediately after the non-objection

7. Next Steps

The investigation undertaken by IPAM in relation to the North-South (Kvesheti-Kobi) Road Project (50271) has found that the Bank did not comply with some of the provisions of the 2014 ESP and failed to ensure compliance by the Client with several provisions related to Performance Requirements 1, 8 and 10.

Following careful consideration, IPAM has made four Project-level recommendations to Bank Management to address these instances of non-compliance, set out in the previous section. In response to these findings of non-compliance, Bank Management has prepared a Management Action Plan which has been seen by both the Requesters and IPAM. The Requesters chose not to comment on its content⁵⁷ while IPAM considers that it adequately addresses the findings and recommendations of the Compliance Review Report. As per the 2019 Project Accountability Policy, IPAM is submitting to the Board and the President the Compliance Review Package for Case 2020/01 North-South Corridor (Kvesheti-Kobi) Road Project (50271) where the Board will make a decision on the proposed Management Action Plan.⁵⁸

Once the Board approves the Management Action Plan, IPAM shares the final Compliance Review documents with the Parties and publishes them on the virtual case registry. IPAM then monitors the implementation of the approved Management Action Plan that will be published on IPAM case registry shortly after the publication of Compliance Review documents.

⁵⁷ The Compliance Review Package sent to the Board includes the Requesters' comments.

⁵⁸ The Compliance Review Report and the Requester's Comments are only submitted for information.

Annex 1 – Terms of Reference of the Compliance Review

The Compliance Review scope followed the investigative questions outlined in the Terms of Reference and included the consideration of potential inter-linkages between the different PRs.

PR 1: Assessment and Management of Environmental and Social Impacts and Issues

- Did the Bank seek within its mandate to ensure, through its environmental and social appraisal and monitoring processes, that the EBRD Project has been designed to be in compliance with applicable regulatory requirements (as these relate to cultural heritage), in line with para. B.6 and PR 1.7?
- With respect to the selection of the Project location, did the Bank confirm that the environmental and social assessment process included an examination of technically and financially feasible alternatives, and did it document the rationale for selecting the particular course of action proposed, in line with PR 1.10?
- In recognition of Georgia's ratification of Council of Europe conventions on cultural heritage and landscape, did the Bank seek, within its mandate, to structure the Project during Project appraisal so that it was guided by the relevant principles and substantive requirements set out in the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and the Council of Europe European Landscape Convention, in line with para. B.8?

PR 8 – Cultural Heritage

- Did the Bank satisfy itself that the Client's assessment of cultural heritage was commensurate with the nature and scale of the Project, having due regard to the mitigation hierarchy, in line with C.29 and the relevant requirements of PRs 8.8, 8.9 and 8.11? In particular, was the mitigation hierarchy appropriately considered with respect to cultural heritage monuments and sites?
- During the environmental and social assessment process, did the Bank ensure that the Client incorporated relevant cultural heritage requirements into its Environmental and Social Management System (ESMS) and/or the Project's Environmental and Social Management Plan (ESMP), in line with PR 8.5?

PR 10 - Information Disclosure and Stakeholder Engagement

- Did the Bank engage in meaningful and effective dialogue with the Bank's stakeholders during the ESIA process, as outlined in paragraph B.15 of the ESP?
- Did the Bank make reasonable efforts to identify gaps (if any) in the Client's national-level ESIA consultation process to ensure the joint ESIA conducted by ADB and EBRD met the applicable requirements regarding: appropriate stakeholder identification in line with PR 10.9; meaningful consultation in line with PR 10.18; and relevant aspects of information disclosure in line with PR 10.16? Did the Bank promote good practice in stakeholder engagement and consultation to its Client, in relation to disclosure and stakeholder engagement opportunities for both the national and international level ESIA processes, in accordance with ESP B.15 (and PR 10.1;10.2; and 10.16)?

- Did the Bank make reasonable efforts to ensure that the Client disclosed the examination of technically and financially feasible project alternatives to stakeholders in the course of the ESIA process, in line with PR 1.10, PR 10.18, PR 10.21, and PR 10.24?

3.1.2. The Bank's Obligations as per the 2014 ESP and relevant PRs

The allegations submitted in the Request related to specific obligations of the Bank regarding the 2013 ESP and its Performance Requirements. The table below presents the paragraphs of the ESP and the PRs which have been triggered for purposes of the investigation. The full language of the provisions mentioned here is available in Annex 1 of this report and are a verbatim copy of the 2014 ESP.

Table 1. 2014 ESP Provisions and Performance Requirements relevant to the review.

Paragraph	Subject
Para. 3 to 6 of the ESP	Application of environmental standards and PRs
Para. 8	International conventions
Para. 15	Principles of transparency, accountability and stakeholder engagement
Para. 12 and 18	Commitment of support to the Clients
Para. 29	Environmental and social appraisal
PR 1.7	Environmental and social assessment's requirements
PR 1.8	Environmental and social assessment's requirements
PR 1.9	Associated facilities
PR 1.10	Category A projects requirements; examination of alternatives
PR 8.1.	Avoiding and mitigating of impact on cultural heritage
PR 8.2	Tangible and intangible cultural heritage
PR 8.5	Environmental and Social Management System
PR 8.11.	Assessment of impacts on cultural heritage
PR 8.8 – 8.10	Requirements during the environmental and social assessment process
PR 8.12	Minimising and mitigating impact on cultural heritage
PR 10.1 – 10.2.	GIP in stakeholder engagement
PR 10.5, 10.7, 10.8	General requirements
PR 10.9 – 10.12, 10.16, 10.18 – 10.21, 10.24	Requirements during Project preparation
PR 10.26, 10.28	Requirements during Project implementation and external reporting

Source: 2014 Environmental and Social Policy, EBRD

Annex 2 - List of Interviews held by IPAM

No.	Interviewees	Place
1.	Georgian National Museum	In-person, Tbilisi
2.	Roads Department	In-person, Tbilisi
3.	Local community representative National Trust of Georgia Association Society and Cultural Heritage ICOMOS Georgia Blue Shield Georgia Green Alternative	In-person session with civil society organisations on Cultural Heritage, Tbilisi
4.	Association Society and Cultural Heritage Institute of Archeology of Georgian National Museum Public Art Platform Independent experts G. Chubinashvili National Research Centre for Georgian Art History and Heritage Preservation	In-person session with civil society organisations and independent experts on Cultural Heritage, Tbilisi
5.	National Agency for Cultural Heritage Preservation	In-person, Tbilisi
6.	National Trust of Georgia Georgia Ecotourism Association Caucasus Nature Fund CENN SABUKO	In-person session with civil society organisations and industry association representatives on Tourism, Tbilisi.
7.	UBM Supervision company	In-person meeting with representatives, Kobi
8.	China Railway Tunnel Group Co., Ltd. (CRTG)	In person meeting with representatives, Kobi
9.	China Railway 23rd Bureau Group Co (CR23)	In person meeting with representatives, Kobi
11.	National Trust of Georgia and group of experts Local residents	Touring of Khada Valley – Tskere, Beniani-Begoni, Sviana-Rostiani
12.	National Agency for Cultural Heritage Preservation and Roads Department	Touring of Khada Valley project area including Zakhatkari, Tskere
13.	Project information centre	Interview to information centre staff, Kvesheti
Virtual		
14.	EBRD Environmental and Social Department	Virtual sessions
15.	National Trust of Georgia	Virtual sessions
16.	EBRD Social Consultant	Virtual interview
17.	SRL Consulting	Virtual interview
18.	Roads Department	Virtual interview
19.	Gamma Consulting	Virtual interview
20.	Ministry of Environment	Virtual interview
21.	National Agency for Cultural Heritage Preservation	Virtual interview
22.	Golder Associates	Virtual interview
23.	Biodiversity Consultant)	Virtual interview
24.	Environmental Consultant	Virtual interview
25.	Cultural Heritage Consultant	Virtual interview
26.	EBRD project team	Virtual interview