

Crude Accountability Response to the Final Draft of the Compliance Review and Management Action Plan: Shah Deniz II

April 4, 2019

Crude Accountability has reviewed the Management Action Plan, as well as the final draft of the Compliance Review for the Shah Deniz II Project Complaint. Overall, we find that the Compliance Review presented an impartial investigation of the complaint, and produced recommendations that, however limiting, were realistic to implement, and that would improve project outcomes. The Compliance Review should be considered an important resource for Management, a technical expertise with the objective of ensuring that the EBRD adds the value to the Shah Deniz II project that it claims to exercise--- the value of social participation and access to information, the value of environmental risk management, and of course the value of recourse and access to grievance. It is these requirements, hallmarks of the Environmental and Social Policy and Performance Requirements, Public Information Policy and the PCM, that distinguish IFIs like the EBRD from commercial banks.

As a civil society organization engaged in frequent interactions with the EBRD, we are repeatedly told that without EBRD money, the situation in a given country or related to a given project would be worse because of the strings attached to EBRD financing. And that it is these strings, i.e., the social and environmental management frameworks, which make the EBRD as an institution unique and valuable, in part because it promotes its Article 1 commitments – pluralism and democratic values, along with transparent and accountable market economics. Such a perspective within the Bank should place the importance of the Social and Environmental team in the very center of project design and implementation to add value and impact on the ground. Without Article 1 and without the social and environment team, the EBRD would be just like any other commercial financial institution with the prime objective of making money. With environmental and social commitments and Article 1 as a founding principle, the EBRD should work with civil society as an ally, and it should incentivize environmentally and socially sound investments. Crude Accountability continues to engage with the EBRD with the goal of working toward providing sustainable development,

Reading the Management Action Plan, it is disappointing to see so little enthusiasm for implementing the recommendations to improve the project outcomes. We invite the Social and Environmental Management and the PCM teams to partner with Crude Accountability and civil society organizations in Azerbaijan to effectively implement and monitor the progress of these recommendations. Our specific comments on the MAP are as follows.

G1.

The Management Comment to this General Recommendation sets a dangerous tone for project implementation. The Management states that Shah Deniz II is a “rare case” due to financing a

minority shareholder in a joint venture project. However, the very fact that it is a special case warrants special and acute attention in project design, implementation and monitoring. “Generally compliant” is not the objective of the Social and Environmental Policy or Performance Requirements, which are very specific in all aspects of social and environmental monitoring. “Generally” is just not good enough.

The note continues that “This process [Assurance Framework of the 2014 ESP] provides assurance that senior members of ESD review all projects before going to final review with a focus on those that are complex or have a unique aspect (such as this one), to assure compliance with the ESP.” With this in mind, it is important to note that the Extension to the Shah Deniz II project was approved without any additional due diligence or scrutiny of existing materials. Basically, this demonstrated that if the ESD team would have to do it all over again, they would do it the exact same way. And they did. The Extension project was later cancelled, but publically it was cancelled for different reasons.

The experience with the Extension for SD2 project demonstrated that the Assurance Framework did not work, and further specific action on this recommendation is needed.

G2.

Again, the Management refers to the Assurance Framework of the 2014 ESP to assure us that everything will be OK moving forward. The controls of this Framework include: “1) Lead Specialist must inform Assurance Manager of the conditions around the need for a derogation; 2) the Lead Specialist and Assurance Manager must include a written description outlining why a derogation is requested, and how this issue is being managed into the FRM and the PSD, 3) members of the Pre-Ops committee review the document containing the discussion of the derogation prior to the meeting, and 4) on a project in a high risk sector, such as the extractives sector the team will need to present and discuss the project at Pre-Ops to outline the need for the derogation for consideration, discussion and approval by the committee.”

Was such an Assurance Framework carried out for the Shah Deniz II Extension project? From our observations of the process as civil society stakeholders, it appears that no additional steps were taken for the extension. The control systems in the 2014 ESP did not capture the issues identified with the Shah Deniz II project, including the process involving the derogation. Thus, further action is necessary, detailed and disclosed by Management.

G3.

The general recommendation points to the client’s lack of accountability in managing the social and environmental requirements of the project. The management notes that it reached out to the operator of the project in an effort to avoid the derogation, indicating that the client did not have the ability to implement the ESP by disclosing the ESMPs.

The Compliance Review states that the independent expert reached out to LOSD **five times** without any reply. This unacceptable behavior goes beyond the client’s inability to influence

project outcomes: it indicates a blatant disregard for the Bank's policies and social and environmental management in general. Management's response states, "In this unique situation where our client does not have full influence over this, they are required to use all efforts, including their voting rights within the joint venture, to ensure the operator complies with EBRD PRs." The client isn't even picking up the phone, never mind using voting rights. The statement that the client has commitment from the operator to be compliant with National requirements and international best practice is meaningless in this instance given the blatant disregard of EBRD requirements. The Operator has a legal obligation to the host country to comply with national laws, and is committed to international good practice as a signatory to the UN Global Compact, UN Guiding Principles on Business and Human Rights, and member of EITI. Further, the Operator has no contractual obligations to the EBRD.

Management should comply with the recommendation to publicly document (e.g. on its website) its efforts to ensure compliance with policy and performance requirements are maintained for the duration of the project.

G4.

Nothing on the website that has been disclosed after the original (2013!) ESIA is available in the Azeri language. All documents are only in English. The Management comment notes that project information is accessible and disclosure is culturally appropriate. English is not appropriate for these communities.

With regard to the new ESP, Crude Accountability looks forward to working with management to develop the new Guidance Note for PR 10.

PS1.

We commend Management for publishing additional information on the PSD, and for explaining some of the processes that are not disclosed to the public. An important component of our complaint focuses on diverse livelihoods in the impacted villages. Fishing is an economic activity done mainly in Sangachal, the largest and most affluent of the communities. The other three villages have relied primarily on subsistence agriculture and animal husbandry, both sheep and cattle. These people are much more vulnerable than the fishermen in Sangachal. There is nothing in the public domain about livelihood management for the animal farmers or agriculture farmers, including any documentation of compensation for customary land use and the processes to arrive at compensation.

Management should address all forms of livelihoods in their response to this recommendation, not just fishing in the largest, most accessible, and affluent of communities.

PS2.

The Management comment states that the independent consultant made a recommendation/request to the Operator to release the ESMPs. The Independent Consultant, IESC, has no authority and the Operator has no obligation with regard to the EBRD ESP. The requirement should come from the EBRD to LOSD, and that LOSD should use all options available,

including its voting rights, to release the ESMPs in an appropriate manner in line with the ESP and PRs. Our contacts in the villages, which are not from the main town of Sangachal, informed us that they were not consulted in any way by the Operator after 2011. Updating the public on this process by Q4 of 2019 is a really long time frame. The value of ESMPs is that they manage environmental and social risks during the lifetime of the project. Releasing them a full four years after the project approval does not do much for the affected people. We request that the Bank require its client to use its leverage, in addition to negotiating with the Operator, to disclose these plans immediately.

G5.

We look forward to working with the Bank to include a series of KPIs in a Guidance Note for PR 1 and 10.

G6.

We look forward to working with the Bank to include the minimum requirements of a Public Consultation and Disclosure Plan in restrictive political environments into Guidance Notes on PR1 and 10.

PS3.

The monitoring reports available on the EBRD PSD Webpage state the client as The Bank of China. The monitoring reports cite the 2014 ESP as an applicable project standard instead of the 2008 ESP. There is no mention of the Public Information Policy, whether 2014, 2008 or other. These monitoring reports are using the wrong ESP, and assessing the implementation of the project across a wide range of indicators and methodology, instead of the specific, explicit EBRD ESP, Performance Requirements and PIP. The results are not translated or posted in Azeri, so the local communities have no way of ascertaining what is in them.

The latest Monitoring report states that *“The IESC is able to conclude that in relation to community level stakeholder engagement, there is generally good access to the Operator and its contractors and that regular community consultation and communication is conducted. It can further be confirmed that communities have access to timely, relevant, understandable and accessible information that is presented in a culturally appropriate manner, free of manipulation, interference, coercion and intimidation.”* This Monitoring report, however, does not include any information on the number of community members, the villages represented, the gender balance, and inclusion of vulnerable groups.

For the aforementioned reasons, these monitoring reports are invalid. The EBRD needs to contract an independent consultant to commission monitoring reports against its own set of policies. These monitoring reports must be translated into Azeri and released on the EBRD website in both languages, as well as be available at the project site in physical format in the Azeri language. Monitoring reports must capture data that would support the positions of the independent consultant.

PS4. As stated above, the IESC monitoring reports currently disclosed on the EBRD PSD webpage have The Bank of China as a client. It can only be incurred that IESC produced these monitoring

reports under contractual obligation from the Bank of China. The EBRD is not listed as a client in these reports.

When discussing the policies relevant to the project, these reports cite the 2014 ESP, which is wrong and is not applicable to this project. Thus, the monitoring reports for this project that have been disclosed to date are invalid.

We request that Management implement the recommendation to “provide the IESC with a clear mandate, and a formal commitment from the operator, to assess how community concerns and preferences are incorporated into the Project decision-making process and disclosed to communities. This information would be captured and documented in the IESC monitoring reports.”

G7.

We look forward to working with Management to develop guidance notes to PR1 and PR10 to provide evidence based assessment and monitoring to ensure that impacts do not fall disproportionately on the vulnerable groups.

G8.

We look forward to working with Management to develop guidance notes to PR1 and PR10 on using Good International Industry Practice (GIIP) principles to development and implement effective, indicator based stakeholder engagement plans.

PS5.

Again, the IESC cites the wrong ESP in assessing implementation, and openly documents its contractual obligations in the monitoring reports only to the Bank of China. Further, there is no mention of vulnerable groups in these reports. It is important to re-state that the only ESMPs that are in the public domain target the fishermen. Fishing activities are done primarily in the largest and most affluent of the four settlements, Sangachal. The most vulnerable groups are found in the other three villages, about which we have absolutely no impact management related information.

We request that Management implement this recommendation as a matter of priority, and provide and disclose the mandate to IESC to monitor project related impacts on vulnerable groups, and report them accurately in upcoming reports based on 2008 ESP.

PS6.

The original ESIA states that there is a substantial population of IDPs from the Nagorno Karabakh conflict living in these four settlements. These people are the most vulnerable, yet they are not addressed in the management response, or in any of the monitoring reports to date. It is also unclear why the EBRD places the burden and responsibility on IESC, when the recommendation, supporting the directives of the ESP, clearly requests Management to take action. We request that Management follow this recommendation and disclose its requests to LOSD to work with the Operator to demonstrate how impacts on vulnerable groups, including IDPs, are measured, mitigated and assessed on their effectiveness.

G9.

We recognize and applaud that BP has in fact a Human Rights Policy in which it recognizes its responsibility to respect human rights as enshrined in the UN Guiding Principles on Business and Human Rights. With this in mind, we can only hope that the project level grievance mechanism is in line with international standards of the Guiding Principles. However, regardless of its quality if a grievance mechanism is not known widely by the affected communities, it does not serve its purpose well.

BP's 2017 Sustainability Report does not capture any quantitative data about grievances from the communities impacted by the Shah Deniz II project, although 132 request letters were received from communities along the BTC pipeline route. The Sustainability Report continues to discuss community relations along the SCPX route, within the project area of influence of Shah Deniz II, but still does not quantify the numbers of grievances, nor the issues raised. Based on this information from BP's Sustainability Report, one can conclude that the grievance mechanism may be working for BTC, but certainly it is not working for Shah Deniz II.

We request that Management request LOSD to work with the Operator to conduct, document and disclose community outreach on both the project level and the EBRD grievance mechanisms. Guidance on grievance mechanism advertising in the impacted settlements, and outreach with affected communities should be captured in the Rules of Procedures for the new EBRD Accountability Mechanism.

Further, we strongly urge the EBRD, as a multilateral institution, to rise to the bar presented by BP and develop its own human rights policy.

PS7.

It is concerning that Management does not wish to adopt a recommendation of the Compliance Review that would strengthen the outcomes of the project.

The 2018 Monitoring Report, conducted by IESC for The Bank of China states: "IESC unable to verify that the grievance mechanism is operational and effective for affected communities.... Project summary data has been provided on grievances however the IESC has been unable to verify this issue adequately. This includes whether issues that have been raised are being further considered and incorporated in planning and operations, whether grievances are being managed/resolved within the timeframes provided in the grievance mechanism, to the acknowledgement / satisfaction of both parties, and whether grievance summary feedback is being effectively reported to affected communities." Further, it is important to reiterate that no grievances from Shah Deniz II affected communities have been captured in BP's 2017 Sustainability Report. Clearly, more needs to be done.

We request that the Bank require LOSD to work with the Operator to disclose, in a way that does not harm the complainants, quantitative data on grievances filed from the communities impacted

by Shah Deniz II, summaries of the grievances, and measures take to address them in a time-bound manner.

PS8.

IESC is unable to verify that the entire project level grievance mechanism is operational and effective, not that “a few items associated with the system need to be verified” as stated in the Management Comment.

The Compliance Review states that an independent appeal mechanism should be developed in the context of human rights risks and restrictions on civil liberties. We applaud BP for having a Human Rights Policy, and urge EBRD to develop the same, in order to respond to such grave concerns with outmost sensitivity and diligence. Principle 31g of the UN Guiding Principles on Business and Human Rights states that a grievance mechanism should be “A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms...”

Considering the outstanding concerns and issues with the project level grievance mechanism, we request Management to work with LOSD and the project Operator to develop an appeals mechanism that would not only align with the UN Guiding Principles, but also with the severely restrictive human rights situation in the country.

PS9.

The 2018 Monitoring Report states that the effectiveness of the grievance mechanism remains unclear. The 2017 BP Sustainability Report does not mention any grievances arising from this project. EBRD approved Shah Deniz II in 2015. Almost four years later, we still don't know whether the grievance mechanism is working, and yet the Management response is “The IESC assessed and has reported on this item routinely since September 2015. This will continue.” We request Management to immediately, thoroughly, and transparently implementation of this recommendation and address of any shortcomings of the grievance mechanism. Continuing the status quo is unacceptable.

PS10.

The fact that local community members communicate a low level of trust in relation to the information provided by the Operator / contractors on environmental emissions, particularly regarding the health impacts thereof, is a stark warning sign. This indicates that something is wrong in the communities, and they don't trust those in charge telling them it is right. If nothing was wrong, there would not be a low level of trust from community members on environmental monitoring and health related issues.

We request the Management to immediately disclose the minutes and documentation of the meetings in order that the public can understand what the concerns exist from the local communities, which environmental monitoring issues are discussed, and how the Operator/Client have been addressing them.

Further, we request that Management follow the recommendation, and disclose ways in which community participation in environmental monitoring is conducted, and of course the results thereof. If community participation in environmental monitoring, a requirement of PR 10.17 requirement and a mainstream practice in the extractive industries, is lacking, Management needs to urgently detail and disclose how it will close this gap.

This is a significant issue that may have serious health implications for the community members, and must be addressed urgently. The fact that it was raised in the Monitoring Reports should have been enough of a red flag for action, irrespective of a Compliance Review.

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