



Project
Complaint
Mechanism

LUKOIL SHAH DENIZ STAGE II

REQUEST NUMBER: 2017/07

COMPLIANCE REVIEW REPORT – April 2019

The Project Complaint Mechanism (PCM) is the independent accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of complaints from one or more individual(s) or organisation(s) concerning an EBRD project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints 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 a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

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How to submit a complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

Table of Contents

Executive Summary.....	1
List of Acronyms	4
1. Introduction	5
a. Project Background and Context	5
b. Registered Complaint	5
c. Eligibility Assessment and Terms of Reference	7
2. Compliance Review Methodology	8
3. Review of the Complaint.....	8
1) Project Approval Process	9
2) Disclosure of Project-Related Information.....	13
3) Due Diligence and Monitoring Connected with Affected Communities.....	25
4. Compliance Review Conclusion	40
5. Recommended Monitoring Measures	41
6. Appendix – Documents Reviewed.....	42

NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Report refer to terms as defined in the PCM Rules of Procedure.

Executive Summary

The EBRD Project Complaint Mechanism (PCM) received a complaint from Crude Accountability and the Public Association for Assistance to Free Economy (PAAFE) on 5 September 2017 regarding the Lukoil Overseas Shah Deniz II Project in Azerbaijan. Shah Deniz II is an offshore gas exploration and production project in Azerbaijan (“the Project”). The Project is operated by BP plc. The European Bank for Reconstruction and Development provided an A/B loan to LUKOIL (“the Client”) to provide financing for LUKOIL’s share in Stage 2 development of the project. LUKOIL has a 10% interest in the Shah Deniz field.

The Complaint sought a Compliance Review. The Eligibility Assessment Report released on 7 December 2017 found the Complaint was eligible based on the PCM Rules of Procedure. The Complaint focuses on three main areas: Project approval process; disclosure of Project-related information; and due diligence towards affected communities.

Project Approval Process

The Complainants state they believe the project approval process violated the Public Information Policy (PIP), as the Project had already begun when EBRD disclosed its PSD in October 2014 to provide financing to the Client for its involvement. The Complainants further state that it appears that the Board approved the Project before the Independent Environmental and Social Consultant (IESC) Audit was finalized. The Compliance Review found that the Bank has not violated the PIP as there is no restriction within EBRD policy on providing finance to a project that has already entered construction nor is there any explicit requirement for the Bank to complete an audit or make it public. The Complainants are also concerned about the conclusion of the IESC that the Client has limited ability to influence project outcomes, including social and environmental performance. Based on the available information, the Compliance Review has found this to be true. As a result, the Bank is only partially compliant with the intent of paragraphs 14 and 15 of the 2008 Environmental and Social Policy which requires the Bank to consider the capacity and commitment of the client to address identified environmental and social impacts and issues. It needs to be noted that the Review found no evidence that the Client has been able or willing, to make efforts towards closer alignment of the Project with EBRD policies. Also, Lukoil was not willing to collaborate throughout this Compliance Review process.

Disclosure of Project-related Information

Secondly, the Complainants state they are concerned about compliance regarding the disclosure of project-related information in several areas: the disclosure of the Project ESIA, derogations made by the Bank, greenhouse gas emissions, environmental and social management plans (ESMPs), and baseline information for associated project facilities. Regarding the disclosure of the Project ESIA, the Compliance Review found that the ESIA was provided in the PSD within the appropriate timeframe. The lack of disclosure of the Project’s environmental and social management plans is non-compliant with Bank policy and as such, the Bank approved a derogation for this issue. The derogation has been disclosed in the Project Summary Document (PSD). However, the Compliance Review has found that in light of this lack of full disclosure of the ESMPs, there is insufficient evidence the Bank has fully satisfied its obligations under PR 10 to ensure that all community members impacted by the Project have been made aware of the Stakeholder Engagement Plan and Social and Environmental Management Plan. Lastly, regarding the disclosure of baseline information for associated project facilities within the Project ESIA, the Compliance Review has found that while the area of influence should be defined in the PSD and environmental monitoring results should be updated more frequently, the justification provided within the Project ESIA for scoping out associated facilities complies with the intent of PR1.6.

Due Diligence Towards Affected Communities

The Complainants raised several concerns relating to due diligence and monitoring with affected communities. First, the Complainants stated that there has been inadequate due diligence towards and consultation with affected communities. The Compliance Review has found that due diligence and consultation towards affected fishing communities has been adequate and is in compliance with PR5.12. However, the Compliance Review finds that the ability of the Client to demonstrate that sufficient information was provided to other affected communities falls short of the intent of EBRD PR 10.17 which requires meaningful dialogue with affected parties and their informed participation in the decision-making process. The Complainants further state that vulnerable groups have not been assessed and treated separately by the Project. The Compliance Review has found that there is no evidence of differentiated measures to ensure impacts do not fall disproportionately on vulnerable groups (except for fishermen, who were not identified during the impact assessment process as vulnerable) and as such the Bank is not compliant with PR1.14.

The Complainants state that community members are not aware of any grievance mechanism. The Compliance Review has determined that the Bank is compliant with the requirements to establish grievance mechanisms (PR10.24) but that there is limited information available regarding reporting back to communities about complaints received (type and nature) nor the effectiveness of the mechanism. In the country context where there are concerns about freedom of expression, the Bank is unable to demonstrate that it is fully compliant with PR10.25.

The Complainants highlight concerns from affected community members about Project impacts and the monitoring of these issues by the Bank. The Compliance Review has identified that the Bank is for the most part compliant with PR1.14 and 1.15 as monitoring plans are in place. However, the Compliance Review has identified that the Bank is not compliant with PR1.17 as information from the IESC shows there are community concerns about project impacts and that there is no evidence of community involvement in the development of mitigation or compensation options through informed participation as required by PR10.17. The Complainants also raise a concern about an alleged gas pipeline explosion in December 2016. The Compliance Review did not find any evidence that this incident was linked to the Shah Deniz Project.

The Compliance Review found that the Bank was not able to demonstrate compliance with certain aspects of the Public Information Policy and 2008 Environmental and Social Policy. The Compliance Review further notes that the Shah Deniz II project is by all accounts somewhat of an unusual project in the EBRD portfolio as it concerns a loan to a client (LUKOIL Overseas Shah Deniz - LOSD) who has a non-operating interest of 10% in the Project and has, thus, limited leverage over the Operator to ensure that EBRD requirements are followed. This has had a number of consequences. For example, the Operator to date has not been able or willing to fully disclose Project information to affected communities in a comprehensive manner that is accessible to them. Also, neither the EBRD nor the Independent Environmental and Social Consultant (IESC) have been in the position to have direct and unrestricted engagement with affected communities to verify community perspectives until April 2018, when an IESC monitoring visit took place. Particularly in light of concerns within the EBRD about civil liberties and the ability of the government of Azerbaijan to fulfill its duty to protect human rights, this is important to note. The Compliance Review has identified several opportunities for improvement by the Bank, particularly regarding increased monitoring measures related to the Project. The Review also seeks to provide more general recommendations to ensure that future projects are better able to demonstrate that they meet EBRD requirements prior to their approval, especially concerning projects that have had a long-term relationship with the EBRD.

Based on the agreed Terms of Reference, the Compliance Review produced the following findings:

Legend: Green – Compliant; Yellow – Partial Compliance; Red – Not Compliant

PROJECT APPROVAL PROCESS		COMPLIANCE
1.1	Did the EBRD satisfy its obligations during the Project approval process in line with the 2008 ESP, more specifically PR 1.5 and the relevant provisions of the PIP for “Category A” Projects (para 3.4.1)?	PR 1.5 PIP 3.4.1 Para. 14 & 15
DISCLOSURE OF PROJECT-RELATED INFORMATION		
2.1	Did the EBRD satisfy its obligations in relation to information disclosure (including the amount and nature of EBRD’s investment), the consultation process and stakeholder engagement before, during and after the Project approval process, in line with the 2008 ESP and the relevant provisions of PIP for “Category A” Projects (paras 3.1.1 and 3.4.1)?	PIP 3.1.1 PIP 3.4.1
2.2	Did the EBRD ensure the adequate and timely disclosure of project-related information in the Project Summary Document and the Environmental and Social Impact Assessment on the EBRD website and on the Client website, in line with 2008 ESP, PR 10.13-14 and specific provisions of the PIP? Were the Greenhouse Gas emissions in relation to the Project adequately disclosed in line with the relevant provisions of the PIP for “Category A” projects (para 3.4.1)?	PR 10.13 PR 10.14 PIP 3.4.2
2.3	In light of the lack of Environmental and Social Management Plans available in the public domain, did the EBRD satisfy its obligations to ensure that the community members impacted by the Project have been made aware of the Stakeholder Engagement Plan and Social and Environmental Management Plan in relation to the Project as defined by the PIP, more specifically para 3.4.2?	PR 10.12 PR 10.13 PR 10.14 PR 10.15
2.4	Did the EBRD ensure that environmental and social impacts and issues were appraised in the context of Project’s area of influence? Was the impact assessment for associated facilities and their impacts on local communities in compliance with the 2008 ESP, para 32, PR 1.6?	Para. 32 PR 1.6
DUE DILLIGENCE AND MONITORING CONNECTED WITH AFFECTED COMMUNITIES		
3.1	Did the EBRD meet its obligations to conduct adequate due diligence towards affected communities? Have the potentially affected individuals and groups been identified, consulted and involved in the Project decision-making process, in line with the 2008 ESP, PR 5.12 and PR 7 and PR 10.8?	PR 5.12 PR 10.8 PR10.17
3.2	Did the EBRD meet its obligation to ascertain that the vulnerable groups were assessed and treated separately to ensure that impacts do not fall disproportionately on them as required in the 2008 ESP, more specifically para PR1.14, PR 1.19 and PR 10.8?	PR 1.14 PR 10.8 PR 10.9 PR 10.11
3.3	Did the EBRD take sufficient steps to ensure that community members were made aware of the availability of the Client grievance mechanism and how they can access it to submit complaints in relation to the EBRD funded Project in line with 2008 ESP, more specifically PR 5.13 and PR 10?	PR 5.13 PR 10.24 PR 10.25
3.4	Did the EBRD adequately monitor Client commitments as stated in the Stakeholder Engagement Plan and the Environmental and Social Management Plan? Do these plans contain the details and commitments to manage or mitigate potentially significant environmental and social impacts of the Project in line with 2008 ESP, more specifically PR 1.14-15 and PR 10.17?	PR 1.14 PR 1.15 PR 1.17
3.5	Did the EBRD satisfy its monitoring obligations, if any, in relation to the December 2016 incident affecting the Massiv III settlement?	Para. 34

List of Acronyms

ADB – Asian Development Bank

EAR – Eligibility Assessment Report

EBRD – European Bank for Reconstruction and Development

ESAP – Environmental and Social Action Plan

ESD – Environmental and Sustainability Department (EBRD)

ESIA – Environmental and Social Impact Assessment

ESMP – Environmental and Social Management Plan

ESR – Environmental and Social Review

GHG – Greenhouse Gas

IESC – Independent Environmental and Social Consultant

LOSD – Lukoil Overseas Shah Deniz Ltd

PAAFE – Public Association for Assistance to Free Economy

PCM – Project Complaint Mechanism

PIP – Public Information Policy

PSD – Project Summary Document

1. Introduction

a. Project Background and Context

Shah Deniz II is an offshore gas exploration and production project in Azerbaijan (“the project”). The project is managed by BP plc. The European Bank for Reconstruction and Development (“the Bank”) provided an A/B loan to LUKOIL (“the Client”) to provide financing for LUKOIL’s share in Stage 2 development of the project. LUKOIL has a 10% interest in the Shah Deniz field.

The project will include two additional bridge-linked offshore gas platforms, 26 subsea wells, 500km of subsea pipelines, and the expansion of the gas plant at Sangachal Terminal and the South Caucasus Gas Pipeline expansion.

The project was approved by the EBRD Board of Directors on 22 July 2015, as a Category A Project under the 2008 Environmental and Social Policy. The total loan amount is expected to be up to USD 1 billion, with both Mandated Lead Arrangers (EBRD and ADB) arranging USD 500 million each. Approximately a half of the total loan amount is expected to be syndicated under the A/B Loan programmes of both the EBRD and the ADB.¹

b. Registered Complaint

Crude Accountability, Public Association for Assistance to Free Economy (PAAFE), and a private citizen (“the Complainants”) submitted a Complaint regarding the Lukoil Overseas Shah Deniz II Project.² The Complaint was received by email on 5 September 2017 and registered by the PCM on 6 September 2017, with the relevant parties informed.³

With their Complaint, the Complainants also submitted a cover letter, an assessment of available project related information, and a community assessment analysis. These documents provided additional detail to their formal complaint form.

The Complaint focuses on three main areas: Project approval process; due diligence towards affected communities; and disclosure of project-related information. The Complainants requested a Compliance Review be undertaken by the PCM.

Issues presented in the Complaint:

1) Project Approval Process

The Complainants state that they believe the project approval process violated the Public Information Policy. In a cover letter provided with the Complaint they state:⁴

¹ Project Summary Document for Lukoil Shah Deniz Stage II Project, available at <http://www.ebrd.com/work-with-us/projects/psd/lukoil-shah-deniz-stage-ii.html> The Client is LUKOIL Overseas Shah Deniz Ltd, which is an SPV beneficially owned by LUKOIL Overseas Holding GmbH, a subsidiary of OAO LUKOIL in charge of the development of the Group’s non-Russian exploration and production activities.

² Complaint Number 2017/07, available at <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395262281747&d=&pagename=EBRD%2FContent%2FDownloadDocument>

³ PCM Register – Processing Steps Document, available at: <https://www.ebrd.com/cs/Satellite?c=Content&cid=1395281398905&d=&pagename=EBRD%2FContent%2FDownloadDocument>

⁴ Cover Letter: Complaint Submission for Shah Deniz II Project, available at <http://crudeaccountability.org/wp-content/uploads/COVER-LETTER-Complaint-submission-for-Shah-Deniz-II-Project-.pdf>

“An independent consultant, IESC, conducted an audit of the ESIA in accordance with EBRD’s policies, and found significant gaps in assessment and implementation. This audit was finalized only in September 2015, three months after the Shah Deniz II project had already been approved by the EBRD Board of Directors. Further, the independent consultant met with the project operator to discuss critical issues less than 30 days before the project Board date.”

The Complainants note that “one of the main conclusions of the audit” is that the Client had little ability to influence project outcomes, including social and environmental performance. They are “concerned with the implications of this conclusion.” The Complainants also question how the EBRD has ensured monitoring of project compliance if the IESC had limited access to project information because the project Operator is not the party seeking finance.⁵

2) Disclosure of Project-Related Information

In the Complaint, the Complainants state they are concerned about compliance regarding the disclosure of project-related information in five areas:

- i. **Disclosure of project ESIA:** The Complainants contend the Project Summary Document (PSD) does not include a link to the EBRD ESIA webpage and that the EBRD ESIA webpage has a link to the BP (Operator’s) webpage but a link to the Client’s project performance is broken.
- ii. **Disclosure of derogations:** The Complainants allege that “the 2015 list of project derogations does not list Shah Deniz II. Either the derogation was not disclosed accordingly, or it is not a derogation.”⁶
- iii. **Disclosure of Greenhouse Gas (GHG) emissions:** The Complainants state concern that expected GHG emissions are not disclosed according to the PIP.
- iv. **Disclosure of Environmental and Social Management Plans:** The Complainants state: “We are deeply concerned that the EBRD’s Social and Environmental Management plans have not been shared with the impacted communities and have not been disclosed to the public.”⁷
- v. **Assessment of associated and third-party facilities for the project:** The Complainants allege that “there are no baseline data for social and environmental impacts for associated facilities.”⁸

3) Due Diligence and Monitoring Connected with Affected Communities

The Complainants state: “We are concerned about the EBRD’s client’s and/or project operator’s lack of engagement and lack of disclosure of related project documents to project affected communities.”⁹ The Complaint asserts there are several related issues:¹⁰

- i. **Consultation of affected communities:** According to the Complainants: “None of the residents interviewed by a Crude Accountability consultant investigating knowledge in the

⁵ Assessment of Available Project-Related Information, Shah Deniz II, available at <http://crudeaccountability.org/wp-content/uploads/Assessment-of-available-project-related-information-Shah-Deniz-II-.pdf>

⁶ Cover Letter: Complaint Submission for Shah Deniz II Project

⁷ Ibid

⁸ Ibid

⁹ Cover Letter: Complaint Submission for Shah Deniz II Project

¹⁰ Ibid

communities about the EBRD's involvement in the project were aware of any consultation process before, during, or after project approval."

ii. **Awareness of grievance mechanisms:** According to Complainants: "Community members are not aware of any grievance mechanism, whether through the client or at the EBRD, and do not know how to submit complaints to the project officials."

iii. **Vulnerable groups:** The Complainants allege: "vulnerable groups have not been assessed and treated separately to ensure that impacts do not fall disproportionately on them."

iv. **Gas pipeline explosion incident:** The Complainants state; "In December 2016, a gas pipeline exploded in Massiv III settlement, causing a fire and damaging a number of private houses. None of the victims of the explosion have been compensated."

The Complainants state in the Complaint that they believe that EBRD failed to comply with its own policies, specifically: EBRD Social and Environmental Policy, EBRD Public Information Policy, and EBRD Performance Requirements 1, 2, 3, 4, 6, 10.¹¹

Prior to submitting the Complaint, the Complainants were in contact with the Bank during January – March 2017. The Complainants submitted this correspondence, a series of four letters and an email exchange, along with the Complaint.

Additionally, attached to the Complaint was a document titled, "Shah Deniz II Community Assessment Analysis," provided by Crude Accountability. The document is "an assessment of compliance with EBRD Environmental and Social Policy, Performance Standards, and Public Information Policy towards the four communities impacted by the Shah Deniz II project: Sengechal, Massive III, Ezimkend, and Umid settlements, Azerbaijan."¹² It includes testimony from 14 residents from those four towns who were willing to be interviewed.

Crude Accountability has made all of this information public on its website: www.crudeaccountability.org

c. Eligibility Assessment and Terms of Reference

An eligibility assessment of the complaint was completed in September-November 2017, with the Eligibility Assessment Report released publicly and posted on the PCM website on 7 December 2017.

A site visit was not conducted for the Eligibility Assessment as it was deemed unnecessary. The PCM had meetings and written communication with the Complainants, the Bank, and the Client since the Complaint was received in September 2017.

The Eligibility Assessment found that the Complaint satisfied the eligibility criteria for a Compliance Review.

¹¹ Complaint

¹² Shah Deniz II Community Assessment Analysis, available at <http://crudeaccountability.org/wp-content/uploads/Shah-Deniz-II-Community-Assessment-Analysis.pdf>

2. Compliance Review Methodology

The Eligibility Assessment provided Terms of Reference for the Compliance Review, based on the issues raised in the Complaint. This TOR guided the Compliance Review and provided questions for examining core compliance issues (such issues being limited to matters raised in the Complaint). These questions are used as a structure to examine the compliance issues, discussed in Section 5.

The Compliance Review included the following components:

1. Review of Documentation

Documents reviewed included:

- a. Publicly available project documents from the EBRD, BP, ADB, Crude Accountability and other websites;
- b. Correspondence between EBRD and the Complainants; and
- c. Internal EBRD documents.

For a list of reviewed documents see Annex A.

2. Discussions with the Relevant Parties

The Compliance Review Expert met, via conference calls, with:

- a. The Bank Environmental and Sustainability Department (ESD) on February 5, 2018
- b. The Bank Project Operations Lead on February 6, 2018
- c. The Bank's Regional Office on February 9, 2019
- d. The Complainant, Crude Accountability, on February 22, 2018
- e. The Bank Environmental and Sustainability Department (ESD) as well as the Independent Environmental and Social Consultant (IESC) on April 24, 2018
- f. The Complainant, Crude Accountability, on April 27, 2018
- g. The Bank Environmental and Sustainability Department (ESD) on October 4, 2018
- h. The Complainant, Crude Accountability, on October 9, 2018

Efforts to have phone interviews with the Client, Lukoil Overseas Shah Deniz Ltd, were not successful as the company did not respond to five invitations by the EBRD to have such a discussion.

A site visit was considered to complete this Compliance Review. The Complainants had expressed their view that it was important for the reviewer to meet with affected community members. Given that the Complainants had also asserted that community members had expressed fears of retaliation for raising concerns about the Project, the reviewer, as advised and supported by PCM staff, considered it essential to complete a local risk assessment prior to making any determination regarding undertaking a site visit. The reviewer and PCM staff were ultimately unable to speak with local community members to enable an informed decision to be made about holding in country meetings. Accordingly, and in consideration that Lukoil did not appear to be amenable to engaging with PCM, no site visit was conducted.

3. Review of the Complaint

The review follows the Terms of Reference described in the Eligibility Assessment of the Complaint. Each section starts with a description of the Complaint, followed by relevant EBRD

policy and performance requirements, responses to the Complaint (where applicable), observations and findings, and concludes with recommendations.

1) Project Approval Process

1.1 Did EBRD satisfy its obligations during the Project approval process in line with the 2008 Environmental and Social Policy, more specifically PR 1.5 and the relevant provisions of the Public Information Policy for “Category A” Projects (para 3.4.1)?

Complaint Description

The Complainants assert that based on the available information, the Project had already begun when EBRD disclosed its Project Summary Document (PSD) in October 2014 to provide financing to the Client for its involvement. The Complainants further state that it appears that the Board approved the Project before the IESC Audit was finalized. They state that the IESC Audit available on the project ESIA website is dated September 2015, after Board date for project approval of 22 July 2015. The Complainants also state that the IESC held a meeting with the Operator (BP plc) on critical project diligence less than 30 days before Board date.

The Complainants further state that “one of the main conclusions of the audit” is that the Client had little ability to influence project outcomes, including social and environmental performance. They are “concerned the implications of this conclusion.” The Complainants also question how EBRD ensured monitoring of project compliance if the IESC had limited access to project information because the project Operator is not the party seeking finance.¹³

Relevant EBRD Policy and Performance Requirements

2008 Environmental and Social Policy:

Paragraph 14: All EBRD-financed projects undergo environmental and social appraisal both to help the EBRD decide if an activity should be financed and, if so, the way in which environmental and social issues should be addressed in planning, financing, and implementation. The EBRD’s social and environmental appraisal is integrated into the EBRD’s overall project appraisal, including the assessment of financial and reputational risks and identification of potential environmental or social opportunities. This appraisal will be appropriate to the nature and scale of the project, and commensurate with the level of environmental and social risks and impacts. The appraisal will ascertain whether activities to be supported by EBRD finance are capable of being implemented in accordance with this Policy and its Performance Requirements (PRs). It is the responsibility of the client to ensure that the required due diligence studies, information disclosure and stakeholder engagement are carried out in accordance with PRs 1 through 10, and submitted to the EBRD for review as part of its own appraisal. The EBRD will review the information provided, and provide guidance to the client on how the project can meet the Bank’s requirements.

Paragraph 15: EBRD’s environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the proposed project; (ii) the capacity and commitment of the client to address these impacts and issues in accordance with this Policy; and (iii) the role of third parties in achieving compliance with this Policy.

¹³ Assessment of Available Project-Related Information, Shah Deniz II

PR 1.5: Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD's own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs. The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail. The appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law (for example commitments related to land use planning and protected area management).

EBRD Public Information Policy:

3.4.1: For "Category A" projects, in addition to the disclosure required of the clients under the Environmental and Social Policy, the Bank will make available Environmental and Social Impact Assessments on "Category A" on the EBRD website in its Headquarters in London and in the relevant EBRD Resident Office a minimum of 60 calendar days prior to consideration of the project by the Board of Directors for private sector projects and 120 calendar days prior to Board consideration for public sector projects.... ESIA's are made available in local language and may be available in whole or in part in other languages, where appropriate. Notification of the documents' availability will be posted on the EBRD website. A notification on the EBRD ESIA web page will also list locations of full availability of ESIA documents locally and link to the Client's website or other website as appropriate. Relevant documents for Category A Projects that are directly financed by the EBRD are found on the Environmental and Social Impact Assessment webpages. Relevant documents for Category A projects that are financed under special funds will be found on the relevant fund web pages."

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

"The Project has been structured to comply with the requirements of the 2008 Environmental and Social Policy applicable to an EBRD category A project and relevant EBRD Performance Requirements ("PRs"). The ESIA for the project was prepared for BP plc and is available on their web site. An Environmental and Social Due Diligence (ESDD) was undertaken by an independent consultant. The ESDD included a detailed review of the ESIA relative to the EBRD 2008 ES Policy and associated PRs. The main gap identified related to the lack of Environmental and Social Management Plans in the public domain. As part of the Bank's work with LOSD and BP, we leveraged disclosure of the Fishermen's Livelihood Restoration Program (FLRP); however the other management plans were not disclosed at that time (although recently they have been released). Based on this, a derogation was requested and granted by the EBRD's Board of Directors and disclosed in the Project Summary Document (PSD).

Management are confident that this project was completed in compliance with the Environmental and Social Policy, 2008. There is no prohibition in either the 2008

Environmental or Social Policy nor in the 2014 Environmental and Social Policy in regards to financing projects where construction has started. Further, paragraph 33 of the 2014 ES Policy clearly anticipates this situation.”¹⁴

EBRD stated in correspondence to the Complainants dated March 27, 2017:

“The original report prepared by the Independent Environmental and Social Consultant (“IESC”) for the Project was released on the EBRD website on 21 May 2015, along with the links to the Project Environmental and Social Impact Assessment (“ESIA”). EBRD discussed this report with LUKOIL Overseas Shah Deniz Ltd (“LOSD”) and BP and based on these discussions LOSD facilitated an additional meeting with BP, who provided further information (such as the Fishing Livelihoods Management Plan (FLMP)) to address some of the gaps identified in the original report. As presented in the IESC report, there were follow-on meetings held with the Project design team on 25 June 2015 where additional information was provided to address gaps identified in the IESC report. The IESC report was later updated slightly to reflect this additional information (mainly review of various management plans and in terms of management of and outcomes achieved related to third party facilities) and to reflect the fact that the additional meeting was held. The updated report was loaded onto the EBRD ESIA web site in September 2015 (after Board approval of the Project). It should also be noted that the FLMP was disclosed in July 2015, prior to EBRD Board consideration of the Project.”¹⁵

b. Client Response
None was provided.

Observations and Findings

Review against PR1.5 and PIP 3.4.1

- There is no restriction within EBRD policy on providing finance to a project that has already entered construction.
- PR1.5 requires that the Client consider potential environmental and social issues and impacts through activities such as an audit. This requirement is of the Client, not the Bank, and there is no explicit requirement to complete an audit.
- There is no requirement in EBRD policy for the IESC ESR and Audit Report to be made public and Bank management chose to make this report public. The IESC ESR and Audit Report was completed in time for the Board meeting held on 22 July 2015 where approval was given. The report itself states that it provides a “snapshot” in time of the Project’s level of compliance against Lenders’ requirements as of June 2015 when the latest documents were provided to the IESC by LOSD and the BP SD2 Project team.”¹⁶ Furthermore, in the correspondence between the Bank and the Complainants, the Bank clarifies that the September 2015 date on the report reflected when the report was updated based on the June 2015 information that had already been provided to Bank management and the Board.

¹⁴ Bank Management Response, included in Eligibility Assessment Report, available from <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395268518872&d=&pagename=EBRD%2FContent%2FDownloadDocument>

¹⁵ Correspondence 27 March 2017; as included by Complainants as annexes to Complaint submission.

¹⁶ IESC ESR and Audit Report (September 2015), p.4. Available from <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395246196192&d=&pagename=EBRD%2FContent%2FDownloadDocument>

- **The Compliance Review finds the Bank compliant with PR1.5 and PIP 3.4.1 as related to the issues raised in the Complaint.**

Review against Paragraphs 14 and 15

- The issue raised in the Complaint about the ability of the Client to influence project outcomes relates to EBRD E&S Policy paragraphs 14 and 15.
- The IESC noted this issue upfront in the IESC ESR and Audit Report, stating: “some deficiencies identified through the ESR and audit may have resulted from limited access provided to the IESC to Project information. It is recognised that LOSD, as the party seeking finance from the Lender Group, is not the operator of the SD Project and has both limited ability to influence the environmental and social performance and limited ability to demonstrate the Project’s environmental and social compliance with Lender Group policies and standards.”¹⁷
- A derogation was obtained for the disclosure of the Project Environmental and Social Management Plans. In an interview, Bank ESD staff noted that because the management plans were not public, this was a non-compliance with EBRD policy. As the Bank staff themselves had personally reviewed the plans during a visit to the BP corporate office and felt comfortable with the content of the plans, they asked for a derogation to this requirement.
- The Bank states that the derogation is “not captured in the list of derogations in the EBRD Annual Sustainability report (2016), [but] this is clearly set forth in the PSD and the Board document.” The derogation is included in the Board minutes from the 22 July 2015 meeting when the project approval occurred.
- The 2016 and 2017 Monitoring Reports from the IESC highlight that the Client and the Bank continue to experience challenges with exerting influence over the Operator to provide access to information to be able to verify compliance with EBRD policies. For example, the IESC notes it was unable to verify the effectiveness of engagement with local stakeholders during the 2016 and 2017 monitoring visits because it did not have access to sufficiently detailed information, nor was it able to speak with any affected community members.¹⁸ This issue will be further discussed in Section 3.4.
- EBRD determined its own due diligence efforts and the use of the derogation were sufficient to meet E&S Policy appraisal requirements (Paragraphs 14 and 15, PR1.5) for the Bank’s Project approval process. The Bank states that although LOSD is the Client, their capacity to address impacts in accordance with the EBRD policy include the resources and the commitment of the Operator. This interpretation of Paragraph 15 was an integral element of the review of the Project during the appraisal.
- Although the capacity of the joint venture (JV) partnership (including the Client and Operator) to address project impacts may have been in place, at the time of the appraisal there was insufficient evidence of commitment amongst these same JV partners to address impacts and issues in accordance with the EBRD policy. For example, the IESC

¹⁷ IESC ESR and Audit Report, p.iv

¹⁸ Environmental & Social Monitoring Review, Shah Deniz II – Gas Field Expansion Project, Azerbaijan August 2016, p.18, p.22; Available from <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395257980882&d=&pagename=EBRD%2FContent%2FDownloadDocument>
Independent Environmental and Social Consultant’s Monitoring Report for the Shah Deniz II – Gas Field Expansion Project, July 2017, p.9; Available from <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395256525175&d=&pagename=EBRD%2FContent%2FDownloadDocument>

was not able to directly verify the effectiveness of the Operator’s approach through discussions with impacted stakeholders (this was achieved through a visit in April 2018, almost three years after project approval). As well, the Client was, and has been, unable or unwilling to exert any leverage over the operator to meet Bank requirements either directly or through third parties.

- There is no evidence that the Bank has provided guidance to the Client on how the Project can meet the Bank’s requirements.

➤ **The Compliance Review finds the Bank partially non-compliant with the intent of paragraphs 14 and 15 of the 2008 Environmental and Social Policy.**

Complaint Recommendations

General

1. The EBRD should consider issuing guidance with regard to the types of assurances that need to be in place to ensure policy compliance when providing financing to non-operating joint venture partners that have a minority stake in a project (and thus have limited influence over the operator to comply with EBRD policies).
2. The EBRD should consider providing guidance on the minimum criteria that need to be fulfilled to be able to request a derogation. Client access to project information, (or lack thereof), IESC access to project information, independent IESC access to community stakeholders, as well as public availability of key management plans would be important criteria to assess if minimal thresholds are met.
3. In the event that the Bank positions itself between the Client and the Operator because of prior relationships, effectively reducing the Client’s level of accountability to meet policy and performance requirements, the Bank should document (e.g. on its website) how it will make sure that compliance with policy and performance requirements are maintained for the duration of the project.

2) Disclosure of Project-Related Information

2.1. Did EBRD satisfy its obligations in relation to information disclosure (including the amount and nature of EBRD’s investment), the consultation process and stakeholder engagement before, during and after the Project approval process, in line with the 2008 Environmental and Social Policy and the relevant provisions of Public Information Policy for “Category A” Projects (paras 3.1.1 and 3.4.1)?

Complaint Description

The Complainants state: “We are concerned about the EBRD’s client’s and/or project operator’s lack of engagement and lack of disclosure of related project documents to project affected communities. There are four settlements that are impacted by the Shah Deniz 2 project: Sangachal, Masiv III, Ezimkend, and Umid. None of the residents interviewed by a Crude Accountability consultant investigating knowledge in the communities about the EBRD’s involvement in the project were aware of any consultation process before, during, or after project approval.”¹⁹

¹⁹ Cover Letter: Complaint Submission for Shah Deniz II Project

Relevant EBRD Policy and Performance Requirements

EBRD Public Information Policy:

3.1.1 A Project Summary Document (PSD) will be prepared for each private and public sector project where approval is sought from the Board of Directors. PSDs provide a factual summary of the main elements of a given project and potential investment which includes the following information: (i) the identity of the project company; (ii) total project cost (where applicable); (iii) the project location; (iv) a brief description of the project and its objective; (v) the amount and nature of EBRD's investment; (vi) the target date for a decision on the project by the Board of Directors; (vii) the anticipated transition impact, and for public sector projects, expected transition impact rating; (viii) a summary of environmental and social impacts associated with the project and agreed mitigation measures; (ix) if applicable, details of project related technical cooperation funding and grant financing; and (x) guidance on how and where information about the project can be obtained, including contact points for the project sponsor and the EBRD Operation Leader.

3.4.1 For "Category A" projects, in addition to the disclosure required of the clients under the Environmental and Social Policy, the Bank will make available Environmental and Social Impact Assessments on "Category A" on the EBRD website in its Headquarters in London and in the relevant EBRD Resident Office a minimum of 60 calendar days prior to consideration of the project by the Board of Directors for private sector projects and 120 calendar days prior to Board consideration for public sector projects.... ESIA's are made available in local language and may be available in whole or in part in other languages, where appropriate. Notification of the documents' availability will be posted on the EBRD website. A notification on the EBRD ESIA web page will also list locations of full availability of ESIA documents locally and link to the Client's website or other website as appropriate. Relevant documents for Category A Projects that are directly financed by the EBRD are found on the Environmental and Social Impact Assessment webpages.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

"Management believes this project is also compliant with the Public Information Policy (PIP). All requirements of the PIP were satisfied (and in fact were exceeded) by disclosure of the documents (including all required documents plus the due diligence report and monitoring reports of the Independent Consultant) on the Project Summary Document and Environmental and Social Impact Assessment web pages."²⁰

b. Client Response

None was provided.

Observations and Findings

Review against PIP 3.1.1 and 3.4.1

²⁰ Bank Management Response, included in Eligibility Assessment Report

- The PSD provides the information required by PIP 3.1.1 except for the fact that the EBRD Operations Leader is not disclosed and, instead, only generic contact information for the EBRD is provided. However, the intent of the Policy has still been achieved by making the Bank accessible through providing this contact information.
- The PSD does not provide a summary of the environmental and social impacts associated with the Project in a format that is easy to read and understand. Detailed information on impacts and mitigation measures is included in documents attached to the PSD, specifically links to the ESIA in English and Azeri, and a Summary of Environmental and Social Management, which is in English only and should be translated. The only specific information that is provided in the narrative of the PSD on environmental and social impacts relates to economic displacement of fishermen.
- Based on the information provided in the PSD, the ESIA was made available in accordance with the timeline required by PIP 3.4.1. The ESIA was also included in the EBRD's ESIA webpage with the date 21 May 2015 which is less than 60 days prior to the Board's consideration. However, at that point the ESIA was available through the PSD.
- The EBRD webpages do not include links to the ESIA located on the Client's website; the only link to the ESIA is to the Operator's website. This is not strictly required by EBRD PIP 3.4.1.

➤ The Compliance Review finds that although several opportunities for improvement are identified, the Bank generally meets the requirements of PIP 3.1.1. and 3.4.1.

2.2. Did the Bank ensure the adequate and timely disclosure of project-related information in the Project Summary Document and the Environmental and Social Impact Assessment on the EBRD website and on the Client website, in line with 2008 Environmental and Social Policy, PR 10.13-14 and specific provisions of the Public Information Policy? Were the Greenhouse Gas emissions in relation to the Project adequately disclosed in line with the relevant provisions of the Public Information Policy for "Category A" projects (para 3.4.2)?

Complaint Description

The "Assessment of Available Project-related Information" provided by the Complainants states: "MPs [Management Plans] (including the SEP) do not appear to have been disclosed with the ESIA, which is a non-compliance with the performance requirements and the intent for disclosure to communities of the activities to be undertaken to mitigate and manage those potential impacts that will affect them."²¹

Furthermore, the Complainants assert that "the 2015 list of project derogations does not list Shah Deniz II. Either the derogation was not disclosed accordingly, or it is not a derogation."²²

Regarding the disclosure of expected GHG emissions, the Complainants state: "We are also concerned that Greenhouse Gas (GHG) emissions are not disclosed for this project per Public Information Policy requirements."²³

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

²¹ Assessment of Available Project-Related Information, Shah Deniz II

²² Cover Letter: Complaint Submission for Shah Deniz II Project

²³ Ibid

PR.10.13: "The Information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any vulnerable people (for example ethnic groups or displaced persons). For projects with potentially significant adverse social or environmental impacts, disclosure should occur early in the environmental and social appraisal process."

PR.10.14: "If an Environmental and Social Action Plan ("ESAP") has been agreed, the client will disclose the ESAP for a Category A project to the affected parties. The ESAP/summary will be disclosed in accordance with paragraph 13, and also on the client's web site, if any. Additional information may need to be disclosed on an ongoing basis, as the project progresses, in case of any material changes in the nature of the project or its impacts, or if material new risks and impacts arise."

Relevant sections of the EBRD Public Information Policy are PIP 3.1.1, 3.4.1, 3.4.2. For discussion of compliance with 3.1.1 and 3.4.1, see above Section 2.1.

EBRD Public Information Policy:

PIP 3.4.2 The Project Summary Document will summarise: i) the rationale for categorisation of a project; ii) a description of the main environmental and social issues associated with the project; iii) key measures agreed to mitigate the risks and impacts; iv) where greater than 25,000t CO2 equivalent/year, the expected GHG emissions of the project; v) a summary of any disclosure or consultation activities, and vi) a link to the ESIA page for Category A projects.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

"The main gap identified related to the lack of Environmental and Social Management Plans in the public domain. As part of the Bank's work with LOSD and BP, we leveraged disclosure of the Fishermen's Livelihood Restoration Program (FLRP); however, the other management plans were not disclosed at that time (they have been released in September 2017). Based on this, a derogation was requested and granted by the EBRD's Board of Directors and disclosed in the Project Summary Document (PSD)."

"In terms of the lack of disclosed Environmental and Social Management Plans, the PSD and the Board documents for this project clearly outline the request for derogation to the ES Policy, specifically paragraphs 14 and 15 of PR 1 due to the lack of disclosure of Environmental and Social Management Plans. While it is true that this derogation is not captured in the list of derogation in the EBRD Annual Sustainability report (2016), this is clearly set forth in the PSD and the Board document. It should be noted that a summary of these plans has recently been disclosed by BP and can be found at the following https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html."

Additionally: "Management believes this project is also compliant with the Public Information Policy (PIP). All requirements of the PIP were satisfied (and in fact were exceeded) by disclosure of the documents (including all required documents plus the due diligence report and

monitoring reports of the Independent Consultant) on the Project Summary Document and Environmental and Social Impact Assessment web pages.”²⁴

b. Client Response

None was provided.

Observations and Findings

Review against E&S Policy 10.13

- A translated version of the PSD is available on the EBRD website.
 - The PSD does not include a summary of the environmental and social impacts associated with the Project. It does provide links to the ESIA (in both English and Azeri) which describe impacts in more detail, but this document is more difficult for local community members to access.
 - A summary plan of the ESMPs has been disclosed on the EBRD website and the Operator’s website. It has not been disclosed on the Client website. It has only been disclosed in English which makes it difficult to access for local stakeholders. In addition, the summary plan was made available in September 2017, more than two years after the project approval.
 - There is no evidence available that the summary or the more extended management plans have been discussed or provided in hard copy to affected communities or is explained to, and understood by, communities.
 - One management plan has been disclosed, the Fishermen Livelihood Management Plan (FLMP). The FLMP has been disclosed on the Asian Development Bank (ADB) website and within the PSD via a link to the ADB website. It has not been disclosed on the Client or the Operator’s website. Overall, the FLMP is not very accessible to local stakeholders.
 - Whilst the derogation applied to the disclosure of management plans, PR10.13 discusses the need for disclosure of issues specified in PR10.12 in local languages and in a manner that is accessible and culturally appropriate. Most of the documents in local languages available to the assessor are via websites, which are hardly accessible to local stakeholders.
- **The Compliance Review finds that the EDRD is partly non-compliant with the intent of PR 10.13. The April 2019 visit by the IESC consultant was able to confirm that information materials provided are in non-technical language and therefore appropriate, understandable and accessible to local people. However, at the time of the appraisal, the IESC was not able to verify with local communities, in particular vulnerable people, if they had access to project information (management plans exempted) in a culturally appropriate manner.**

Review against E&S Policy 10.14

- The Bank states that an Environmental and Social Action Plan (ESAP) has not been agreed on this project and therefore this requirement does not apply. Furthermore, the Bank provided evidence of how the intent of PR10.14 is met through other measures, including monitoring and evaluation by the IESC. As part of annual monitoring visits, the IESC completes a gap analysis (similar to the intent of an ESAP) and progress against closure of these gaps is detailed in publicly available monitoring reports.

²⁴ Bank Management Response, included in Eligibility Assessment Report

➤ **The Compliance Review finds the Bank compliant with the intent of PR 10.14.**

Review against PIP 3.4.2

- Although Project related GHG emissions were initially not listed on the PSD they currently are, as required by PIP 3.4.2.

➤ **The Compliance Review finds the Bank compliant with PIP 3.4.2.**

Complaint Recommendations

General

1. The EBRD should consider issuing guidance with regard to the types of assurances that need to be in place to ensure that project information is disclosed in an accessible and culturally appropriate manner.

Project Specific

1. The Bank should amend the PSD to include additional disclosure on: i) why the derogation is required, ii) based on what evidence it was approved, and iii) how the Client will demonstrate that the intent of the policy will be met.
2. The EBRD should ensure full disclosure of Environmental and Social Management Plans for the Operations phase and in a manner that is easily accessible to local communities. If the EBRD is not able to ensure full disclosure it should require the Client to explain how such plans will be disseminated amongst local communities and how the Client will verify, and demonstrate that implications are understood by local communities, for example by sharing presentations, minutes or video recordings of public meetings where such implications are explicitly presented, discussed and agreed upon. This information should be added as supplementary links to the PSD.

2.3. Disclosure of Environmental and Social Management Plans: *In light of the lack of Environmental and Social Management Plans available in the public domain, did the Bank satisfy its obligations to ensure that the community members impacted by the Project have been made aware of the Stakeholder Engagement Plan and Social and Environmental Management Plan in relation to the Project as defined by the Public Information Policy, more specifically para 3.4.2?*

Complaint Description

The Complainants state: “We are deeply concerned that the EBRD’s Social and Environmental Management plans have not been shared with the impacted communities and have not been disclosed to the public.”²⁵ They further state that “Public consultation and disclosure plans were unable to be verified by IESC.”²⁶

The “Community Assessment Analysis” provided by the Complainants states: “None of the respondents [those interviewed as part of the assessment] have seen the Social and Environmental Management Plans or Stakeholder Engagement Plans. Respondents say that

²⁵ Cover Letter: Complaint Submission for Shah Deniz II Project

²⁶ Assessment of Available Project-Related Information, Shah Deniz II

nothing has changed with regard to environmental and social performance since the EBRD approved the project, or even since the Shah Deniz expansion started.”²⁷

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

PR10.12: 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 disclose to them the following information (“the Information”): the purpose nature and scale of the project; the duration of proposed project activities; any risks to and potential impacts with regard to environment, worker health and safety, public health and safety and other social impacts on communities, and proposed mitigation plans; the envisaged consultation process, if any, and opportunities and ways in which the public can participate time/venue of any envisaged public meetings, and the process by which meetings are notified, summarised, and reported.

PR10.13: The Information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any vulnerable people (for example ethnic groups or displaced persons). For projects with potentially significant adverse social or environmental impacts, disclosure should occur early in the environmental and social appraisal process.

PR10.14: If an Environmental and Social Action Plan (“ESAP”) has been agreed, the client will disclose the ESAP for a Category A project to the affected parties. The ESAP/summary will be disclosed in accordance with paragraph 13, and also on the client’s web site, if any. Additional information may need to be disclosed on an ongoing basis, as the project progresses, in case of any material changes in the nature of the project or its impacts, or if material new risks and impacts arise.

PR10.15: The need for and nature of any specific consultation will be agreed with the EBRD based on the stakeholder identification, analysis and detailed project description, and depending on the nature and magnitude of current and potential adverse impacts on workers and affected communities. Where workers and/or affected communities are, or may be, subject to significant risks or adverse impacts from a project, the client will undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them.

Meaningful consultation: should be based on the disclosure of relevant and adequate information including, where appropriate and relevant, draft documents and plans, prior to decisions being taken when options are still open; should begin early in the environmental and social appraisal process; will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; will be carried out on an ongoing basis as the nature of issues, impacts and opportunities evolves.

The Terms of Reference refers to PIP 3.4.2, but the Assessor finds PR 10.12-10.15 to be the meaningful and appropriate requirements relating to the issue raised.

²⁷ Shah Deniz II Community Assessment Analysis

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

“The IESC states in Table 9.1 that records of consultation meetings were reviewed from the SD2 project engagement log from December 2010 through to March 2015 in the communities of Umid, Sangachal and Azim Kend covering numerous topics. Further, the IESC states that although the actual ESMPs have not been disclosed, there is sufficient evidence to suggest that the ongoing community engagement process in place for SD2 includes a structured and systematic engagement process with local communities that the process communicates potential impacts to communities and addresses how the project proposed to manage and mitigate these impacts. Further, this report states that meetings continued through the period April 2016 to March 2017 with records of two meetings with local communities over this time period.”

b. Client Response

None was provided.

Observations and Findings

Review against PR10.12, 10.13, 10.14, and 10.15

- In the ESR and Audit Report, the IESC concluded, from its review of publicly available information (Project ESIA) and information provided by the Operator which was not in the public domain, that there is “evidence of engagement with potentially impacted communities, ... that demonstrates that there has been effective disclosure of environmental and social management and mitigation measures,... through public meetings and targeted stakeholder meetings.”²⁸
- The IESC states: “The intent of Lender standards in regards to the disclosure of environmental and social management plans can therefore be partially demonstrated through the record of engagement with affected communities in regard to these management and mitigation measures.”²⁹ However, there is no additional evidence available to confirm that the ESMPs and Stakeholder Engagement Plan have been communicated to affected communities as the IESC has not been able to directly engage with community members. The ESIA does not include any information on the disclosure of a Stakeholder Engagement Plan with affected communities. Furthermore, the IESC states: “The documentation associated with records of public meetings is not consistently strong and further measures to improve these records are warranted. The SEP presents a strong focus of engagement with and reporting to Government rather than community and community representatives.”³⁰
- The Public Consultation and Disclosure Plan (PCDP) that is part of the ESIA is limited in scope and level of detail. The IESC notes “The PCDP would be expected to define the Project Area of Influence, consultation to meet local legal requirements, stakeholder analysis and mapping (including a summary of each stakeholder group/location), identification of vulnerable people, and mechanisms for communications with each stakeholder group, including identification and engagement methods and tools for

²⁸ IESC ESR and Audit Report, p. viii

²⁹ Ibid.

³⁰ IESC ESR and Audit Report, p.35

engaging with local influencers and stakeholder group representatives according to their areas of interest.”³¹ The PCDP does not contain any of these details.

- In discussions with Bank representatives, they point out that the PCDP was not the only means of communicating impacts with local communities as many of these plans would also have been discussed during ongoing engagement efforts and project updates in the years leading up to the project expansion. Community stakeholders would also have had access to the Project’s community offices as well as to Community Liaison Officers (CLOs).
- There is evidence that affected fishermen have been made aware of the FLMP as noted by the IESC: “The FLMP has been communicated to the potentially affected fishing community through targeted stakeholder group meetings, meetings with individual fishermen and two household surveys with eligible fishermen... The grievance records associated with the FLMP process suggest that here is a high level of awareness and engagement within the community of the Plan.”³²
- Discussions with the IESC in May 2018 confirm that community consultation is effective and that communities have good access to the Operators and community contractors. This observation is based on an IESC meeting with community representatives in April 2018.

➤ **The Compliance Review finds the Bank is partially non-compliant with its obligations under PR 10 to ensure that all community members impacted by the Project (notably those beyond the affected fishing community) have been made aware, through meaningful engagement, of the Stakeholder Engagement Plan and Environmental and Social Management Plan. The findings of the IESC in April 2018 that engagement currently is effective comes almost three years after project approval by the Bank. In a context where there are concerns about free speech, at the time of the appraisal the Bank should have insisted on verification that meaningful engagement was taking place.**

Complaint Recommendations

General

1. The Bank should consider issuing guidance on how clients can demonstrate that the intent of ‘meaningful engagement’ is achieved. For example, the Bank could issue a series of indicators (KPIs) related to meaningful engagement.
2. The Bank should consider issuing guidance to clients with regard to the minimum requirements of a Public Consultation and Disclosure Plan, especially in contexts where public consultation is challenging due to logistical, political or other constraints. In particular, the guidance needs to include minimal reporting requirements for public consultation and disclosure with impacted communities.

Project-Specific

3. As a matter of priority, the EBRD should ensure the Client continues to provide the IESC monitoring visits independent access to directly impacted communities and beyond Sangachal (organized in such a manner that no retribution occurs) to verify:
 - a. Local awareness, and degree of acceptance, of Social and Environmental Management Plans;

³¹ IESC ESR and Audit Report, p.36

³² IESC 2016 Monitoring Report, p.11

- b. The degree by which local community members perceive engagement as meaningful (e.g. based on two-way engagement working towards a trust relationship or, alternatively, simple based on the provision of information);
- c. Perceptions of women and youth;
- d. The degree to which project impacts are identified, discussed and addressed; and
- e. Awareness, access and effectiveness of the grievance mechanism.

2.4. Assessment of associated and third-party facilities for the project: *Did the Bank ensure that environmental and social impacts and issues were appraised in the context of the Project's area of influence? Was the impact assessment for associated facilities and their impacts on local communities in compliance with the 2008 Environmental and Social Policy, para 32, PR 1.6?*

Complaint Description

The Complainants allege that “there are no baseline data for social and environmental impacts for associated facilities.”³³ They further allege “the Project Area of Influence is not fully defined or mapped in the ESIA.”³⁴ The Complaint materials quote directly from the IESC ESR and Audit Report on this issue.

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

Paragraph 32: At times, the client’s ability to achieve social or environmental outcomes consistent with the PRs will be dependent on third party activities. A third party may be, inter alia, a government agency, a contractor, a supplier with whom the project/client has a substantial involvement, or an operator of an associated facility. The EBRD seeks to ensure that projects it finances achieve outcomes consistent with the PRs even if the outcomes are dependent upon the performance of third parties. When the third party risk is high and the client has control or influence over the actions and behaviour of the third party, the EBRD will require the client to collaborate with the third party to achieve outcomes consistent with the PRs. Specific requirements and actions will be determined on a case-by-case basis.

PR1.6: Environmental and social impacts and issues will be appraised in the context of the project’s area of influence. This area of influence may include one or more of the following, as appropriate:

(i) The assets and facilities directly owned or managed by the client that relate to the project activities to be financed (such as production plant, power transmission corridors, pipelines, canals, ports, access roads and construction camps).

(ii) Supporting/enabling activities, assets and facilities owned or under the control of parties contracted for the operation of the clients business or for the completion of the project (such as contractors).

(iii) Associated facilities or businesses that are not funded by the EBRD as part of the project and may be separate legal entities yet whose viability and existence depend exclusively on the project and whose goods and services are essential for the successful operation of the project.

³³ Cover Letter: Complaint Submission for Shah Deniz II Project

³⁴ Assessment of Available Project-Related Information, Shah Deniz II

(iv) Facilities, operations, and services owned or managed by the client which are part of the security package committed to the EBRD as collateral.

(v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken.

(vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.

Based on the above, the EBRD and the client will agree on the area of influence for each project.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

“As shown on Table 6.2 the IESC indicates that the project documents demonstrate PR compliance, although only partial compliance relating to a few items. The partial conformances relate to lack of disclosure of the ESMPs (as mentioned in the request for derogation noted in the PSD), consultation by third party operators of associated facilities, external communication methods and grievance mechanisms.”

Correspondence from EBRD to Complainants, dated 27 March 2017:

“[We] believe the relevant aspect here is Contractor Management. As presented in the IESC report, Contractor Management is detailed in the Construction Phase Health, Safety and Environmental Management Plan (“HSE MP”) and the Contractor Management Plans. While these plans have not been disclosed, these were reviewed by the IESC and as stated in their report “The IESC has also reviewed all of the Environmental and Social Management Plans (“ESMPs”) and these are consistent with Good International Industry Practice (“GIIP”).

[We] note that the main facilities to be considered here include

- a) The downstream facilities of TANAP and TAP, for which detailed ESIA are available in the public domain which assess their possible environmental and social impacts, and
- b) Residential areas around the Sangachal Terminal and construction yards and fabrication yards (specifically the Amec-Tekfen-Azfen (“ATA”) and Baku Deep Water Jacket Factory (“BDJF”) yards). IESC Report states the following in this regard: “The SD2 construction phase contractor management processes, including the requirement for contractor-specific environmental and social management plans and grievance management processes, are considered to be sufficient to identify any unforeseen impacts to nearby communities from the third party operated construction yards.”

Our view is that this illustrates that the ESIA achieves outcomes consistent with the PRs, in particular in this instance PR1 since these elements are not directly “Project” facilities.”

b. Client Response

None was provided.

Observations and Findings

- The issue raised by the Complainant is about the inclusion of associated facilities in the Project's environmental and social appraisal in relation to the ESIA³⁵, not management of impacts. As indicated in the EBRD Bank Management Response, the Project's contractor management system in place is believed by the IESC to be sufficient and in practice that unforeseen impacts from associated facilities are able to be managed. However, this Compliance Review focuses on the issue raised in the Complaint, specifically the inclusion of associated facilities in the Project's environmental and social appraisal process (i.e. the Project ESIA) as required by PR1.6, not contractor management.

Review against Para.32 and PR1.6

- The IESC ESR and Audit Report found that the “the SD2 ESIA does not present a full description of all Project related facilities,” and furthermore that “the Project Area of Influence is not clearly defined within the received documentation, either described or mapped in detail. This includes 'associated facilities', and all construction camps, which are somewhat addressed (specifically, construction yard sites which are described as potential sites for use within the ESIA). While during the site visit it was clear that those yards have now been selected and are in operation (the ATA and BDJF yards), the IESC notes that risk and impacts identification is not based on sufficient baseline environmental and social data for those facilities in conducting the risk assessment.”³⁶
- The IESC further states: “It is not evident that efforts were made to consult with those communities who may be impacted by associated facilities (construction yards, waste facility), or whether third parties in cooperation with BP to achieve this purpose carried out any consultation.”³⁷ An interview with the IESC clarifies that the April 2018 visit by the IESC found that engagement with communities, including communities in the areas of associated facilities, is effective.
- ESIA Chapter 10.2 presents the associated facilities that were considered as part of the scoping process of the ESIA and were scoped out because of “their limited potential to result in discernable environmental impacts” and on human receptors.³⁸ This assessment also provided justification for “scoping out” of Contractors HSE procedures being in place. The scoping out of community disturbance from construction yards due to limited socio-economic impacts is also noted in Chapter 12.2 of the ESIA.
- Despite these associated facilities being scoped out, the ESIA has assessed potential impacts associated with the construction yards, including emissions, noise, and water-related impacts (ESIA Chapter 10). For communities located near the construction yards, the main potential social impacts would be linked to environmental impacts. The determination in the ESIA was that these risks are not high considering that any residential dwellings are not located close enough to be negatively affected by any possible worst-case exceedances.

³⁵ See PR1.5: “Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project.” (EBRD 2008 Environmental and Social Policy)

³⁶ IESC ESR and Audit Report, p.137, p.20

³⁷ IESC ESR and Audit Report, p.37

³⁸ Shah Deniz Stage 2 Project, Environmental and Socio-Economic Impact Assessment, Ch. 10: Construction, Installation and HUC Environmental Impact Assessment, Mitigation and Monitoring, p.4

- In addition, the Project conducts environmental monitoring at these locations on an ongoing basis. The results posted online from 2013 indicate no exceedances above standards, but the results have not been posted online since.³⁹ The Bank also provided more recent sample project monitoring updates provided to communities in Azerbaijani and non-technical language which discuss monitoring results and impacts.

➤ The Compliance Review finds the Bank mostly compliant with PR1.6. Although the area of influence should be defined in the PSD and environmental monitoring results should be updated more frequently, the justification in the ESIA for scoping out associated facilities meets the intent of PR 1.6.

3) Due Diligence and Monitoring Connected with Affected Communities

3.1. Consultation with affected communities: *Did EBRD meet its obligations to conduct adequate due diligence towards affected communities? Have the potentially affected individuals and groups been identified, consulted and involved in the Project decision-making process, in line with the 2008 Environmental and Social Policy, PR 5.12 and PR 7 and PR 10.8?*

Complaint Description

According to the Complainants: “None of the residents interviewed by a Crude Accountability consultant investigating knowledge in the communities about the EBRD’s involvement in the project were aware of any consultation process before, during, or after project approval.”⁴⁰

The “Community Assessment Analysis” provided by the Complainants states: “None of the local villagers interviewed were aware that the EBRD or other IFIs were involved in this project. None of the respondents have seen the Social and Environmental Management Plans or Stakeholder Engagement Plans. Respondents say that nothing has changed with regard to environmental and social performance since the EBRD approved the project, or even since the Shah Deniz expansion started.”⁴¹

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

PR5.12: Following disclosure of all relevant information, the client will consult with affected persons and communities, including host communities, and facilitate their early and informed participation in decision-making processes related to resettlement, in accordance with PR 10: Affected persons shall be given the opportunity to participate in the negotiation of the compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing. Special provisions shall apply to consultations which involve Indigenous Peoples (See PR 7) as well as individuals belonging to vulnerable groups. Consultation will continue during the implementation, monitoring, and evaluation of compensation payment and resettlement so as to achieve outcomes that are consistent with the objectives of this PR.

PR10.8: The first step in successful stakeholder engagement is for the client to identify 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

³⁹ https://www.bp.com/en_az/caspian/sustainability/environment.html

⁴⁰ Cover Letter: Complaint Submission for Shah Deniz II Project

⁴¹ Shah Deniz II Community Assessment Analysis

("other interested parties"). Resources for public information and consultation should focus on affected parties, in the first instance.

PR10.17: Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Vulnerable people may need special attention and could require resources to understand the impacts and to allow meaningful input.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

"Management review of this project indicated that all local communities were in fact consulted as part of the disclosure and consultation process completed for the project. Section 8 and Appendix 8B of the disclosed BP Environmental and Social Impact Assessment presents the details of public consultation and presentations conducted prior to start of construction for Shah Deniz 2. As shown here extensive public consultation has been ongoing for this project dating back to 2008. This consultation included meetings in the villages of Shangachal and Umid, and household surveys of 200 people from Sangachal, Umid, Azim Kend and Masiv III.

Under the project Community Liaison Officers (CLOs) have been appointed and are known to the local communities. These CLOs are conduits for any questions or concerns raised by the local communities to be provided to BP. The engagement did not stop at ESIA approval stage; it continues through construction and will continue during operations."⁴²

b. Client Response

None was provided.

Observations and Findings

Review against PR5.12:

- The Fishermen Livelihood Management Plan (FLMP), which has been publicly disclosed, describes the consultation activities that have been undertaken with affected members of the fishing community. The FLMP provides evidence that consultation took place regarding "data validation, asset inventory and SD2 project implementation and schedule and explore potential effects, compensation requirements and opportunities for impact

⁴² Bank Management Response, included in Eligibility Assessment Report

management.”⁴³ Further meetings were held to provide fishermen with opportunities to provide feedback on income validation and assets inventory and to “discuss and agree on compensation packages.”⁴⁴ There is also evidence that feedback was used in Project decision-making as monetary compensation was “amended as an outcome of the engagement process with the affected fisherman” as stated by the IESC.⁴⁵

- There is evidence that consultation has continued during the implementation, monitoring, and evaluation of compensation payments. The IESC indicates in its annual monitoring reports (2016 and 2017) that quarterly monitoring and ongoing consultation with affected fishermen took place. The IESC also stated that the FLMP was “revised and updated based on ongoing monitoring of the compensated fishermen as reported in the Household Survey Reports.”⁴⁶

➤ **The Compliance Review finds the Bank compliant with PR5.12.**

Review against PR10.8

- The Project ESIA identifies four communities in the vicinity of Sangachal Terminal: Sangachal Town, Umid, Azim Kend, and Masiv III.
- The IESC notes that the Project Stakeholder Engagement Plan documents stakeholder identification.

➤ **The Compliance Review finds the Bank compliant with PR10.8.**

Review against PR10.17

- The Bank obtained a derogation for PR10.17 relating to the disclosure of information, but not the actual practices and procedures on site at the Project. Therefore, while the Project Stakeholder Engagement Plan is not disclosed, the Project still must conduct activities in line with PR10.17.
- There is some evidence of consultation during ESIA preparation. A Stakeholder and Socio-economic Survey (SSES) was completed which included 12 community focus groups were held with 141 people (58% of whom were female).⁴⁷ The SSES also included 200 household surveys involving people from Sangachal, Umid, Azim Kend and Masiv III. Household surveys, as they involve the delivery of a questionnaire and not ‘meaningful dialogue’ (as specified in PR10.17), do not typically, in good international industry practice, constitute meaningful consultation, although community focus group discussions do.
- There is some evidence of limited disclosure of the draft ESIA to local stakeholders. The ESIA states public meetings were held in Baku, Sangachal Town and Umid.⁴⁸ Records

⁴³ SD2 Fishing Livelihoods Management Plan, p.26, Available from

https://www.adb.org/sites/default/files/project-document/161502/48330-001-rp-01_0.pdf

⁴⁴ SD2 Fishing Livelihoods Management Plan, p.26

⁴⁵ IESC ESR and Audit Report, p. vii

⁴⁶ IESC 2017 Monitoring Report, p. v

⁴⁷ Shah Deniz Stage 2 Project, Environmental and Socio-Economic Impact Assessment, Ch. 7: Socio-Economic Description, Available from

https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html

⁴⁸ Shah Deniz Stage 2 Project, Environmental and Socio-Economic Impact Assessment, Ch. 8: Consultation and Disclosure, p.7, Available from

https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html

provided in ESIA Appendix 8B indicate that these public meetings had limited participation. The meeting in Sangachal had 20 members of the local community in attendance, all male. The meeting in Umid had 15 members of the local community in attendance, 12 men and 3 women.⁴⁹ The ESIA discloses no additional meetings during this stage of consultation with affected communities, including with the other communities visited (Masiv III and Azim Kend) during the SSES. The IESC also notes that “records of engagement with communities surrounding the terminal also included presentation of findings of ESIA reports for SD2, early infrastructure works and a Health Impact Assessment.”⁵⁰

- Regarding the requirement in PR10.17 for iterative consultation, the IESC notes in its 2016 and 2017 Monitoring Reports: “the summary of two meetings provided as evidence on stakeholder engagement in the project impacted communities for the period April 2016 – March 2017 is insufficient to ascertain whether engagement conducted in this period was adequate. [...] Evidence in the form of current stakeholder engagement action plans, engagement logs, and meeting minutes is strongly requested to be provided to the IESC at the next monitoring event, to allow a full assessment to be made.”⁵¹ Furthermore, the IESC states: “in line with stakeholder engagement and grievance management requirements, responses to affected communities, summary feedback and adjustment to management plans as a result of consultations and grievances received are recommended to be communicated back to interested stakeholders and affected communities.”⁵²
- In its response to the Complaint, the Bank states: “Under the project Community Liaison Officers (CLOs) have been appointed and are known to the local communities.” The Bank states that engagement activities have been ongoing by the Project for many years and that community members know how to access the Project. This is disputed by Complainants who state that community members do not know how to access the Project and have not engaged directly with any BP staff for many years (since 2011).
- The involvement of economically displaced fishermen in project decision-making is discussed above as related to PR5.12.

➤ **The Compliance Review finds that the ability of the Bank to demonstrate that enough information was provided during the ESIA process falls short of the intent of EBRD PR10.17 which requires meaningful dialogue with affected parties and their informed participation in the decision-making process. Although discussions with the IESC confirm that stakeholder consultation has been effective, the IESC also notes that it still cannot establish if, and how, concerns or issues are incorporated in planning and operations. There is no evidence of informed participation in the decision-making process other than linked to the FLMP.**

Complaint Recommendations

Project Specific

1. For all monitoring activities by the IESC, the EBRD should 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

⁴⁹ Data collated from ESIA Appendix 8B: Public Consultation and Disclosure Presentations and Meeting Minutes, Available from https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html

⁵⁰ IESC ESR and Audit, p.35

⁵¹ 2017 Monitoring Report, p.18.

⁵² IESC 2016 Monitoring Report, p.8; IESC 2017 Monitoring Report, p.9

disclosed to communities. This information would be captured and documented in the IESC monitoring reports.

3.2. Vulnerable Groups: *Whether the Bank met its obligation to ascertain that the vulnerable groups were assessed and treated separately to ensure that impacts do not fall disproportionately on them as required in the 2008 Environmental and Social Policy, more specifically para PR1.14, PR 1.19 and PR 10.8?*

Complaint Description

According to the Complainants, “vulnerable groups have not been assessed and treated separately to ensure that impacts do not fall disproportionately on them. The four impacted villages are home to Internally Displaced Persons as well as nomadic minority groups.”⁵³

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

PR1.14: ... Where stakeholder groups were identified as disadvantaged or vulnerable during the appraisal process, the ESAP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing any development benefits and opportunities resulting from the project.

PR10.8: The first step in successful stakeholder engagement is for the client to identify 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”). Resources for public information and consultation should focus on affected parties, in the first instance.

PR10.9: As part of the stakeholder identification process, the client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. The client will also identify how stakeholders may be affected and the extent of the potential (actual or perceived) impacts. Where impacts are perceived, additional communication may be required to provide information and reassurance of the assessed level of impacts. An adequate level of detail must be included in the stakeholder identification and analysis so as to enable the Bank to determine the level of communication that is appropriate for the project under consideration. Employees are always considered stakeholders.

PR10.11: ... Where stakeholder groups are identified as disadvantaged or vulnerable, dedicated approaches and an increased level of resources may be needed for communication with such stakeholders so that they fully understand the issues that are potentially affecting them.

The Terms of Reference refers to PR1.19 but this requirement is not relevant to vulnerable groups as related to the issue raised in the Complaint.

Responses to Complaint

a. Bank Management Response

⁵³ Cover Letter: Complaint Submission for Shah Deniz II Project.

The Project's treatment of vulnerable groups is not addressed in the Bank Management response.

b. Client Response

None was provided.

Observations and Findings

Review against PR1.14

- The Project ESIA provides a high-level overview of five vulnerable groups in the Project area who may be affected by possible impacts.⁵⁴ This includes internally displaced people (IDPs), herders (nomadic minority groups), and elderly people. It does not include fisherfolk.
 - The IESC notes, “while vulnerable groups have been identified at the wider level in the ESIA, the SEP does not confirm the mitigation and management activities to be undertaken to ensure these groups are not disproportionately affected by the Project.”⁵⁵
 - PR 1.14 requires an ESAP to ensure that project-induced vulnerability is mitigated. As LOSD does not have the ability to influence implementation of additional measures by the Operator, the Board of EBRD agreed no ESAP is required. Instead, through ongoing monitoring by the IESC and publication of progress against alignment with the Bank policies, the EBRD aims to achieve this alignment with PR1.14. Current IESC monitoring visits do not include a specific focus on vulnerable groups.
 - Discussions with EBRD representatives reveal that a resettlement action plan was developed for the displacement of a herder family's winter pasture area. The family was identified as vulnerable and differentiated measures to ensure they were not disproportionately affected were implemented.
 - Fisherfolk were not identified as vulnerable in the ESIA. A plan has been developed relating to economic displacement which includes differentiated measures for that group. The FLMP identifies vulnerable fishing households and includes “specific compensation and mitigation measures to address disproportionate incomes from those families identified as vulnerable.”⁵⁶ As such, the FLMP should be considered a Resettlement Action Plan rather than a Vulnerability Management Plan.
- **The Compliance Review finds the Bank non-compliant with PR1.14. The ESIA does not mention any plans or efforts to mitigate project-induced vulnerability on identified stakeholder groups. Impacts on vulnerable groups have not been systematically monitored.**

Review against PR10.8, 10.9, and 10.11

- There is no evidence as to whether the Project considered if additional communication or if dedicated approaches and an increased level of resources were needed for communication with regard to identified vulnerable groups; neither the scoping consultation nor the Public Consultation and Disclosure Plan (PCDP) mention any specific

⁵⁴ ESIA Shah Deniz 2 (2013), Chapter 7.7

⁵⁵ IESC ESR and Audit Report, p.21

⁵⁶ IESC ESR and Audit Report, p.21

measures either to communicate with vulnerable groups or to include their perspectives otherwise.

- Although the Project maintains project offices in local communities, employs Community Liaison Offices and provides project updates, these efforts by themselves fall short of good industry practice regarding engagement with vulnerable groups. Vulnerable groups typically cannot be reached through conventional engagement methods and require a differentiated approach.

➤ **The Compliance Review finds the Bank non-compliant with PR10.8, 10.9 and 10.11.**

Complaint Recommendations

General

1. The Bank should consider providing guidance to clients with regard to the evidence it requires to be assured that impacts do not fall disproportionately on the vulnerable groups identified in the ESIA. This guidance could include the key elements of a Vulnerability Management Plan.
2. The Bank should consider developing guidance for its clients on the development and implementation of stakeholder engagement plans based on Good International Industry Practice (GIIP) principles. An important element of this guidance would be to demonstrate effectiveness of engagement activities, for example by providing an overview of effectiveness indicators.

Project-Specific

3. As a matter of priority, the IESC should be provided the mandate during subsequent monitoring visits to monitor project-induced impacts on vulnerable groups in the project area and publicly report on its findings.
4. The Bank should request LOSD to work with the Operator to demonstrate how impacts on vulnerable groups are measured, mitigated and assessed on their effectiveness.

3.3. Awareness of Grievance Mechanisms: *Whether the Bank took sufficient steps to ensure that community members were made aware of the availability of the Client grievance mechanism and how they can access it to submit complaints in relation to the EBRD funded Project in line with 2008 Environmental and Social Policy, more specifically PR 5.13 and PR 10?*

Complaint Description

The Complaints state that "Community members are not aware of any grievance mechanism, whether through the client or at the EBRD, and do not know how to submit complaints to the project officials."⁵⁷ According to additional documentation submitted with the Complaint, "Local villagers do not know whether there is an ombudsman to receive complaints either at the company (Lukoil or BP), and they do not know where they could complain regarding the impacts of the project" and testimony is provided from some community members.⁵⁸

Relevant EBRD Policy and Performance Requirements

⁵⁷ Cover Letter: Complaint Submission for Shah Deniz II Project

⁵⁸ Shah Deniz II Community Assessment Analysis

EBRD 2008 Environmental and Social Policy:

PR5.13: The grievance mechanism to be established by the client in accordance with PR 10 will be set up as early as possible in the process, consistent with this PR, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner. A summary of complaints and the measures taken to resolve them shall be made public on a regular basis, in accordance with PR 10.

PR10.24: The client will need to be aware of and respond to stakeholders' concerns related to the project in a timely manner. For this purpose, the client will establish a grievance mechanism, process, or procedure to receive and facilitate resolution of stakeholders' concerns and grievances about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and potential adverse impacts of the project.

PR10.25: The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution. The mechanism, process of procedure must not impede access to judicial or administrative remedies. For projects to which PR 5 or PR 7 applies, the client will ensure that there is an independent, objective appeal mechanism. The client will inform the affected communities about the grievance process in the course of its community engagement activities, and report regularly to the public on its implementation, protecting the privacy of individuals.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

“The Independent Environmental and Social Consultant (IESC) highlight the issue of consultation with project affected people in Section 6.2 of their report, available on the EBRD web page. As shown on Table 6.2 the IESC indicates that the project documents demonstrate PR compliance, although only partial compliance relating to a few items. The partial conformances relate to lack of disclosure of the ESMPs (as mentioned in the request for derogation noted in the PSD), consultation by third party operators of associated facilities, external communication methods and grievance mechanisms.”⁵⁹

b. Client Response

None was provided.

Observations and Findings

Review against PR5.13

- Based on information from the IESC and in the publicly disclosed FLMP, there is a Project grievance mechanism for the fishermen economically displaced by the Project as required

⁵⁹ Bank Management Response, included in Eligibility Assessment Report

by PR5.13 and community members were made aware of it. The FLMP includes a list of engagements where fishermen and local stakeholders were informed of the process for reporting grievances. Furthermore, in the 2016 Monitoring Review Report, the IESC states: “The grievance records associated with the FLMP process suggest that here is a high level of awareness and engagement within the community of the Plan.”⁶⁰ However, there is no information provided on whether a summary of complaints and the measures taken to resolve them shall be made public on a regular basis, in accordance with PR5.13.

- The BP Azerbaijan Sustainability Report, last published for 2016, states: “We received 135 requests from communities and other stakeholders, mainly relating to getting permission for infrastructure works to be carried out on the pipeline corridor. By the end of 2016, we responded to 118 of these requests, while 17 are to be closed-out in 2017.”⁶¹ However, the report does not provide a summary of the nature of the complaints or the measures taken to resolve them.

➤ **The Compliance Review finds the Bank partially non-compliant with PR5.13 as the requirement to provide “a summary of complaints and the measures taken to resolve them” is not made public on a regular basis.**

Review against PR10.24

- The IESC verified that a grievance mechanism exists as it viewed the Project’s grievance log, but not the procedure, during a meeting with the Operator on 25 June 2015, as part of the initial ESR and Audit. The IESC states: “Documentation on implementation and resolution of grievances was evidenced through records contained in the project community complaints log which shows a range of mechanisms are used to raise grievances including public meetings where grievances are raised through formal structured processes and telephone calls to the Project CLO’s and the publicised complaints line.”⁶² Information from the IESC also indicates that “many informal issues are raised and dealt with verbally” by Project Community Liaison Officers without being recorded in the log.⁶³
- Project updates include contact details in case of complaints or grievances.
- The IESC identified that the Project’s main ST construction contractor TKAZ has a grievance process which is independent from the Operator’s (BP) process. “The four nearby villages have their own meetings with TKAZ, the contractor undertakes self-verification of their stakeholder engagement and grievance process, with BP oversight and annual audit.”⁶⁴ In 2016, 2017 and 2018 the IESC did not review any documentation of the contractor’s grievance process.
- The IESC identified weaknesses in the Project grievance mechanism during the initial ESR and Audit, noting that “the SD2 Project process for recording of grievances raised in relation to the FLMP is a significant improvement on the previous records of complaints documented in the General Complaints Log. It is recommended that the management and recording of all Project-related grievances include the level of detail contained in the FLMP

⁶⁰ IESC Monitoring Report 2016, p.11

⁶¹ BP Azerbaijan Sustainability Report 2016, *Working with Communities*, p.28

⁶² IESC ESR and Audit Report, p.152

⁶³ IESC ESR and Audit Report, p.152

⁶⁴ IESC ESR and Audit Report, p.38

grievance record and as described in the Fishing Livelihoods Management Plan Grievance Procedure.”⁶⁵

- Grievance data is also provided in the 2016 and 2017 Monitoring Reports from the IESC.

➤ **The Compliance Review finds the Bank compliant with PR10.24 and the requirement to establish a grievance mechanism.**

Review against PR10.25

- There is limited information available on how the grievance mechanism has been communicated to communities. The IESC states that it reviewed records of engagement dating back to 2010 which “include meetings held jointly by BP and the main construction contractor for SD2, TKAZ; whereby issues of local employment, training, public safety and the grievance process were discussed with potentially impacted communities.”⁶⁶ The Bank states that the grievance mechanism is well-established from the time of the original Sangachal Terminal construction and was discussed in the Shah Deniz II public consultation, and through continued use of project updates, CLOs, and community offices.
- PR 10.25 is, however, about effectiveness of the grievance mechanism. In its 2017 Monitoring Report the IESC states: “It has not been possible for IESC to verify any of the grievance management process with external stakeholders to confirm accessibility and understanding of the mechanism, including feedback from the mechanism owners in closing any grievances raised as well as reporting back to the community on the type and numbers of grievances, in line with good international industry practices. IESC hopes to be able to meet with external stakeholders at subsequent monitoring visits to verify satisfaction levels and obtain comments from grievance mechanism users, including reporting back to communities on grievance summary data and Operator responses.”⁶⁷
- Discussions with the IESC indicate that difficulties in assessing the effectiveness of the grievance mechanism continue. During the April 2018 monitoring visit, the IESC was unable to verify whether issues that have been raised are being further considered and incorporated into 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.
- The EBRD Country Strategy for Azerbaijan (dated April 30, 2014) noted that freedom of expression was an area where “further progress” was needed with respect to the track record of Azerbaijan in the area of human rights.⁶⁸ In a context where there are concerns about the ability of people to speak out publicly, particularly in relation to a Project in partnership with the government, the EBRD has not demonstrated that it took sufficient steps to ensure that local communities were made aware of the grievance mechanism and that it was “readily accessible to all segments of the affected communities, at no cost and without retribution” as required by PR10.25.
- As PR5 applies to the Project, PR10.25 requires that the Client will ensure that there is an independent, objective appeal mechanism. There is no evidence available that an appeal mechanism is in place for affected members of the fishing community.

⁶⁵ IESC ESR and Audit Report, p.86

⁶⁶ IESC ESR and Audit Report, p.v

⁶⁷ ESC 2017 Monitoring Report, p.19

⁶⁸ EBRD Azerbaijan Country Strategy, April 30 2014, p.35, Available from:

<http://www.ebrd.com/downloads/country/strategy/azerbaijan-country-strategy.pdf>

- **Based on the available information, the assessment finds that the Bank is non-compliant with PR10.25 as it is not able to clearly verify the effectiveness of the grievance mechanism.**

Complaint Recommendations

General

1. The effectiveness criteria of the UN Guiding Principles on Business and Human Rights (UNGPs) constitute Good International Industry Practice (GIIP) with regard to grievance mechanisms. The Bank should consider issuing guidance for clients how project grievance mechanisms can demonstrate alignment with these effectiveness criteria.

Project Specific

1. The Bank should request for a more frequent (quarterly) update on Shah Deniz II specific summary of complaints and what measures were taken to resolve these.
2. Especially in the context of concerns about civil liberties and human rights risks, the Bank should request from the Client that an independent appeal mechanism is developed, preferably by the operator. To ensure the independent nature of such a mechanism, it should include independent and credible third parties or respected individuals (e.g. university professors, former judges, etc.).
3. As the grievance mechanism is likely the most important and accessible venue for impacted communities to have access to remedy, the Bank should require the IESC to assess the effectiveness of the grievance mechanism and report on this as a standard aspect of future IESC monitoring visits.

3.4 Did the Bank adequately monitor Client commitments as stated in the Stakeholder Engagement Plan and the Environmental and Social Management Plan? Do these plans contain the details and commitments to manage or mitigate potentially significant environmental and social impacts of the Project in line with 2008 Environmental and Social Policy, more specifically PR 1.14-15 and PR 10.17?

Complaint Description

The Complaint includes “lack of necessary soil, air and water quality monitoring” and “inability to grow fruits and vegetables in the impacted villages due to contamination of the soil” when describing the harm that has been caused or that might be caused by the Project.⁶⁹

According to the Complainants, local community members from Sangachal, Masiv III, Ezimkend, and Umid “cite significant concerns relating to health, employment, and social and economic displacement. No one has heard of or seen the Stakeholder Engagement Plans or Social and Environmental Management Plans.”⁷⁰

The Community Assessment Analysis document provided with the Complaint states: “The majority of residents complained about air and soil pollution since the launching of the terminal. Soil pollution has been the central complaint, as it has had considerable impacts on

⁶⁹ Complaint

⁷⁰ Refers to those who were interviewed by a Crude Accountability consultant as part of the “Community Assessment Analysis” completed in Summer 2017.

subsistence food production. Residents can no longer grow fruits and vegetables for their personal use. Many residents have noted complications in both human births and in livestock births. Declining fish stocks have also been noted. No soil, water, or air testing has been conducted in any of the four villages to check for hazardous emissions and contamination.”⁷¹ Testimony from interviewed community members also includes concerns about noise from the Terminal and effects on fish.

The Complainants also question how EBRD ensured monitoring of project compliance if the IESC had limited access to project information because the project Operator is not the party seeking finance.⁷²

Relevant EBRD Policy and Performance Requirements

EBRD 2008 Environmental and Social Policy:

PR1.14: Taking into account the findings of the environmental and social appraisal and the result of consultation with affected stakeholders, the client will develop and implement a programme of mitigation and performance improvement measures and actions that address the identified social and environmental issues, impacts and opportunities in the form of an Environmental and Social Action Plan (ESAP). Mitigation measures and actions will be identified so that all relevant stages of the project (for example, pre-construction, construction, operation, closure, decommissioning/reinstatement) operate in compliance with applicable laws and regulations and the PRs of this Policy. The ESAP should take a long-term and phased approach and also take into account expected future regulatory requirements. The ESAP shall focus on avoidance of impacts, and where this is not possible, mitigation measures to minimise or reduce possible impacts to acceptable levels.

PR1.15: The level of detail and complexity of the ESAP and the priority of the identified measures and actions will reflect the project’s risks, impacts and opportunities. The ESAP will document key environmental and social issues, the actions to be taken to address them adequately, as well as any actions to maximise environmental or social benefits, the schedule and person/unit responsible for implementation and monitoring, and an estimate of the associated costs. Desired outcomes will be defined against the baseline established during appraisal as measurable events to the extent possible, with elements such as performance indicators, targets, or acceptance criteria that can be tracked over defined time periods.

PR10.17: Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues. Vulnerable people may need special attention and could require resources to understand the impacts and to allow meaningful input.

Responses to Complaint

⁷¹ Shah Deniz II Community Assessment Analysis

⁷² Assessment of Available Project-Related Information, Shah Deniz II

a. Bank Management Response

In its response to the Complaint, Bank Management states:

“The final report of the independent consultant for this project is available on the EBRD web site, along with the results of post-Board approval monitoring. The Bank has been closely monitoring the Project with this independent consultant.”⁷³

b. Client Response

None was provided.

Observations and Findings

Review against PR1.14 and 1.15

- Air quality impact mitigation measures have been identified in the ESIA.⁷⁴ However, within the Summary of Shah Deniz Stage 2 Environmental and Social Management document (‘Summary document’) that has been disclosed, these measures are not included and while ambient air quality monitoring is listed under the Nuisance Management Plan, no detail of specific monitoring actions are provided.⁷⁵
- Project commitments of mitigation and management measures related to soil are specifically for soil used/affected by the Project. The Pollution Prevention Management Plan includes measures related to pollution prevention and spill prevention and response. Measures are also included in the Restoration and Landscape and Ecological and Wildlife Management Plans (verified by IESC, not disclosed).⁷⁶ There is no specific soil monitoring program however. The Summary document only includes ESIA commitments which relate to the testing of soil excavated by the Project to ensure appropriate re-use and disposal.⁷⁷
- Groundwater and surface water impacts by the Project are addressed in the Pollution Prevention Management Plan (not disclosed, as verified by the IESC).⁷⁸ The Summary document states that ground water and surface water monitoring are conducted (within the section on the Nuisance Management Plan); however, no details are provided.⁷⁹
- Noise management and mitigation measures are included in the Pollution Prevention Management Plan (not disclosed, verified by IESC).⁸⁰ Noise impacts are covered in Community Engagement and Nuisance Management and Monitoring Plan and a summary of mitigation measures are included in detail in the publicly disclosed Summary document.⁸¹
- The Summary document indicates that fish monitoring in Sangachal Bay has been conducted will continue in accordance with the Project’s Environmental Monitoring

⁷³ Bank Management Response, included in Eligibility Assessment Report

⁷⁴ Shah Deniz Stage 2 Project, Environmental and Socio-Economic Impact Assessment, Ch. 11: Operations Environmental Impact Assessment, Mitigation and Monitoring, p.7

⁷⁵ Summary of Shah Deniz Stage 2 Environmental and Social Management, p.27, Available from <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395264246981&d=&pagename=EBRD%2FContent%2FDownloadDocument>

⁷⁶ IESC ESR and Audit, p.60

⁷⁷ Summary of Shah Deniz Stage 2 Environmental and Social Management, p.21

⁷⁸ IESC ESR and Audit, p.60

⁷⁹ Summary of Shah Deniz Stage 2 Environmental and Social Management, p.27

⁸⁰ Ibid, p.62

⁸¹ Ibid, p.25-30

Programme schedule.⁸² No additional information on mitigation measures related to effects on fish are provided.

- It is difficult to assess if “the level of detail and complexity of the ESAP and the priority of the identified measures and actions will reflect the project’s risks, impacts and opportunities” as required by PR 1.15 because only a Summary document and the FLMP are disclosed.
- From the information provided by the Project, it is not clear if the Project is measuring the types of health impacts included in the Complaint.

➤ **The Compliance Review finds the Bank compliant with PR1.14 and 1.15 as monitoring plans are in place; the effectiveness of implementation plans still needs to be determined.**

Review against PR10.17

- The Project ESMPs are not publicly disclosed, and the Summary document is provided only in English. There is no evidence that the summary document has been provided to local stakeholders or affected communities. As a result of this lack of disclosure, it is difficult to tell how meaningful consultation around proposed mitigation measures is able to take place.
- In the 2017 monitoring visit the IESC reviewed summaries of two meetings with communities which included “updates on monitoring results including ambient air quality, surface & ground water quality, soil & vegetation, faunal survey - mammals, reptiles, amphibians, bird survey and ambient noise monitoring.”⁸³ However the IESC also states that: “adjustment to management plans as a result of consultations and grievances received are recommended to be communicated back to interested stakeholders and affected communities.”⁸⁴
- The April 2018 visit by the IESC to the project area revealed community concerns about project impacts on air quality and water resulting in impacts on health. Although disclosure of data regarding air emissions and noise takes place through meetings and printed information, discussions with local community stakeholders signal there is little trust in the information provided by the Operator, in particular related to environmental emissions, and the health impacts thereof.
- The IESC meeting with community stakeholders also identified there is little evidence of community involvement in the development of mitigation or compensation options such as increased access to health care or fresh food. Such informed participation is a PR 10.17 requirement.
- Also, exactly to avoid the trust deficit between the project and impacted communities around project impacts, PR 10.17 requires that Category A projects require a formalised and participatory assessment process. There is no evidence that such participatory monitoring takes place.

➤ **The Compliance Review finds the Bank non-compliant with PR 10.17.**

Complaint Recommendations

Project-Specific

⁸² Ibid, p.8

⁸³ 2017 Monitoring Report, p.18.

⁸⁴ IESC 2016 Monitoring Report, p.8; IESC 2017 Monitoring Report, p.9

1. The EBRD should find ways to encourage the Operator to increase community participation in environmental monitoring efforts. This is not only a PR 10.17 requirement but also mainstream practice in the extractive industries.

3.5. Gas Pipeline Explosion Incident: *Did the Bank satisfy its monitoring obligations, if any, in relation to the December 2016 incident affecting the Massiv III settlement?*

Complaint Description

According to the Complainants, “In December 2016, a gas pipeline exploded in Massiv III settlement, causing a fire and damaging a number of private houses. None of the victims of the explosion have been compensated.”⁸⁵

Relevant EBRD Policy and Performance Requirements

2008 Environment and Social Policy:

Paragraph 34: The Bank considers it essential that the environmental and social performance of projects is monitored. Monitoring serves several purposes. The first is to ensure that the applicable standards and various environmental and social components included in legal agreements, such as the implementation of an ESAP, are being substantially met. The second is to keep track of the ongoing environmental and social impacts associated with investments, and to provide feedback on the effectiveness of mitigation measures. Finally, by tracking improvements achieved during project implementation, the monitoring data serve as indicators of how the Bank’s investments are contributing to sustainable development at both the project and the portfolio levels.

Responses to Complaint

a. Bank Management Response

In its response to the Complaint, Bank Management states:

“The final report of the independent consultant for this project is available on the EBRD website, along with the results of post-Board approval monitoring. The Bank has been closely monitoring the Project with this independent consultant.”⁸⁶

b. Client Response

None was provided.

Observations and Findings

- As indicated in E&S Policy Paragraph 34, the Bank does have a monitoring obligation with respect to the incident raised in the Complaint because the policy states: “The Bank considers it essential that the environmental and social performance of projects is monitored. Monitoring serves several purposes. [...] The second is to keep track of the ongoing environmental and social impacts associated with investments and to provide feedback on the effectiveness of mitigation measures.”⁸⁷
- There is no evidence that the gas pipeline was connected to the Shah Deniz II project. Interviews with EBRD staff and the IESC signal that the EBRD has made concerted efforts

⁸⁵ Cover Letter: Complaint Submission for Shah Deniz II Project

⁸⁶ Bank Management Response, included in Eligibility Assessment Report

⁸⁷ Paragraph 34, EBRD 2008 Environmental and Social Policy.

to determine a possible link between the Shah Deniz II project and the pipeline incident. Reportedly, media reports as well as the nature of the incident (the Shah Deniz II Project does not have any live gas pipelines) indicate that the incident was related to a pipeline associated with another project and not with Shah Deniz II.

4. Compliance Review Conclusion

The Shah Deniz II Project is by all accounts somewhat of an unusual project in the EBRD portfolio as it concerns a loan to a client (LOSD) who has a non-operating interest of 10% in the Project and has, thus, limited leverage over the Operator to ensure that EBRD requirements are followed.

The EBRD was willing to proceed based on its long-standing and constructive relationship with the Operator in Azerbaijan and elsewhere. Much confidence was placed in the fact that the investment concerned an extension project with an existing track record and no known history of incidents.

Recognizing the limited ability of the Client to influence the Operator, the EBRD took a proactive approach and directly engaged the Operator in an effort to meet Bank requirements. This approach did not lead to full compliance by the Client with the EBRD requirements however, as the Operator to date has not been able or willing to disclose detailed Project information to affected communities in a manner that is accessible to them. In addition, the approach taken by the Bank may also have provided a disincentive for the Client to exercise its limited leverage over the Operator during the life of the Project and to meet the intent of EBRD policies. It is not possible to verify the Client's perspective as the Client has been unable, or unwilling, to participate in the Compliance Review.

In addition, neither the EBRD nor the IESC have been in the position to have direct and unrestricted engagement with affected communities to verify community perspectives and effectiveness of the engagement approach until the April 2018 visit by the IESC, almost three years after Board approval. The report on this visit was not public at the time of this Review.

In its 2014 Country Strategy for Azerbaijan, the EBRD quotes a European Neighborhood Policy (ENP) progress report of March 2013 that states that “despite progress compared to the past, Azerbaijan needs to continue its efforts to meet its commitments on democracy, including electoral processes, the protection of human rights and fundamental freedoms, and the independence of the judicial system.”⁸⁸ As a general observation, the combination of the above mentioned factors (limited leverage of the Client over the Operator, lack of full disclosure of relevant Project information by the Operator, and the lack of access to impacted communities by the IESC to verify practical compliance with Bank policies) in the context of Azerbaijan would have justified a call for more rigorous assurance that policy requirements were met. The recommendations provided aim to capitalize on the lessons learned from this Project to ensure that future projects are better able to demonstrate they meet EBRD requirements prior to project approval.

In a context where entire communities could possibly be classified as “vulnerable”, where accountability mechanisms are weak and access to remedy is a challenge to local communities, the EBRD policies essentially provide one of the very few – if not only – safeguards for impacted communities to have a say in corporate decisions that affect their lives. It is therefore important to the credibility of the mandate of the EBRD that both the letter as well as the intent of EBRD policies can be demonstrated.

⁸⁸ EBRD Azerbaijan Country Strategy 2014, p. 10

EBRD policies are very explicit in their intent and “what” clients are required to do but lack specificity with regard to “how” requirements to should be met or how much is enough. Inevitably this allows for subjectivity, for example in determining the seriousness of certain findings of the IESC audit. Several of the recommendations of this review therefore center around the provision of additional guidance to clients in order to clarify expectations and reduce the EBRD’s vulnerability to complaints from impacted stakeholders.

The lack of collaboration by the Client throughout this Compliance Review process has been problematic as it affects the credibility of the EBRD accountability mechanism and, indeed, challenges the principles of the EBRD policies themselves. The Bank may consider, as part of its policy review process, to clarify its expectations from clients regarding collaboration with Bank mechanisms or the consequences of failing to collaborate.

5. Recommended Monitoring Measures

All recommendations have been designed to be action oriented. The PCM office should track those recommendations accepted by the Bank through an action plan and a specific timeframe.

Two types of recommendations have been made: those that are general and apply to the EBRD’s practices more broadly, and those that are project-specific where actions should be taken by the EBRD with respect to the Shah Deniz II Project.

For the implementation of all recommendations, the PCM should report back to Complainants on progress on a periodic basis. For Project-Specific recommendations, the PCM should monitor that the IESC consultant reports back to local communities during monitoring visits about the progress of these recommendations to demonstrate the effectiveness of the PCM and to maintain public trust in the EBRD safeguards.

6. Appendix – Documents Reviewed

EBRD – General Information	
EBRD ESIA Register	http://www.ebrd.com/esia.html
EBRD in Azerbaijan	http://www.ebrd.com/azerbaijan.html
EBRD - Azerbaijan Overview	http://www.ebrd.com/where-we-are/azerbaijan/overview.html
EBRD - Strategy for Azerbaijan	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395238396115&d=&pagename=EBRD%2FContent%2FDownloadDocument
EBRD - Strategy for Azerbaijan - Report on the Public Invitation to Comment	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395238396223&d=&pagename=EBRD%2FContent%2FDownloadDocument
"EBRD President visited Azerbaijan" (May 25, 2016)	http://www.ebrd.com/news/2016/ebird-president-visited-azerbaijan.html
"EBRD President concludes visit to Azerbaijan" (8 Sep 2017)	http://www.ebrd.com/news/2017/ebird-president-concludes-visit-to-azerbaijan.html
EBRD - Project-specific Information	
Project Summary Document (EBRD): Lukoil Shah Deniz Stage II	http://www.ebrd.com/work-with-us/projects/psd/lukoil-shah-deniz-stage-ii.html
2015 List of Derogations (EBRD Sustainability Report 2015)	http://2015.sr-ebird.com/assurance/#derogations
22 July 2015 EBRD Board Report (where SD2 approved)	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395246426046&d=&pagename=EBRD%2FContent%2FDownloadDocument
IESC Environmental & Social Review and Audit	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395246196192&d=&pagename=EBRD%2FContent%2FDownloadDocument
Independent Environmental and Social Consultant's Monitoring Report 2016	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395257980882&d=&pagename=EBRD%2FContent%2FDownloadDocument
Independent Environmental and Social Consultant's Monitoring Report 2017 (1)	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395256525175&d=&pagename=EBRD%2FContent%2FDownloadDocument
Independent Environmental and Social Consultant's Monitoring Report 2017 (2)	http://www.ebrd.com/cs/Satellite?c=Content&cid=1395256525175&d=&pagename=EBRD%2FContent%2FDownloadDocument
Report of IFC and EBRD Multi-Stakeholder Forum (MSF) Meetings on Shah Deniz Phase 1 (2003)	https://www.ebrd.com/english/pages/project/eia/18806msf.pdf

Board Document BDS15-162 (8 July 2015)	
Complaint Information	
Lukoil Shah Deniz Stage II - Complaint	http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html
Lukoil Shah Deniz Stage II - Processing Steps	http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html
Lukoil Shah Deniz Stage II - Eligibility Assessment Report	http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html
Correspondence	
CA (Crude Accountability) Letter to EBRD re Azerbaijan 13 Jan 2017	Provided by EBRD to Compliance Review Expert (not publicly disclosed)
EBRD Response to CA Azerbaijan 7 Feb 2017	Provided by EBRD to Compliance Review Expert (not publicly disclosed)
CA Response to EBRD SDII 27 Feb 2017	Provided by EBRD to Compliance Review Expert (not publicly disclosed)
EBRD Response to CA Azerbaijan 27 March 2017	Provided by EBRD to Compliance Review Expert (not publicly disclosed)
External Project Information - from Operator (BP plc)	
BP: "Shah Deniz Stage 2"	https://www.bp.com/en_az/caspian/operationsprojects/Shahdeniz/SDstage2.html
Shah Deniz II ESIA – English (Incl. Chapter 8 on Consultation and Disclosure)	https://www.bp.com/en_az/caspian/sustainability/environment/eng-and-social-documentation/ShahdenizESIAs/ESIA.html
BP ESIA Appendix 8B – Public Consultation and Disclosure Presentations and Meeting Minutes	https://www.bp.com/content/dam/bp-country/en_az/pdf/ESIAs/SD2_Appendix_8B_Eng.pdf
Summary of Shah Deniz Stage 2 Environmental and Social Management	https://www.bp.com/en_az/caspian/sustainability/environment/eng-and-social-documentation/ShahdenizESIAs/ESIA.html
Shah Deniz II ESIA - Azeri - on BP website	https://www.bp.com/az_az/caspian/sustainability/environment1/ESIAs1/SD-ESIAs/ESIA.html
BP Azerbaijan Sustainability Report 2016	https://www.bp.com/en_az/caspian/sustainability/sustreport/SRlibrary.html
BP Azerbaijan Sustainability Report 2015	https://www.bp.com/en_az/caspian/sustainability/sustreport/SRlibrary.html
BP Azerbaijan Sustainability Report 2014	https://www.bp.com/en_az/caspian/sustainability/sustreport/SRlibrary.html
BP EITI Report 2014	https://www.bp.com/en_az/caspian/sustainability/sustreport/SRlibrary.html

Complainant Information	
Crude Accountability COVER-LETTER-Complaint-submission-for-Shah-Deniz-II-Project	http://crudeaccountability.org/wp-content/uploads/COVER-LETTER-Complaint-submission-for-Shah-Deniz-II-Project.pdf
Crude Accountability: Assessment of available project related information, Shah Deniz II	http://crudeaccountability.org/wp-content/uploads/Assessment-of-available-project-related-information-Shah-Deniz-II-.pdf
Shah Deniz II Community Assessment Analysis	http://crudeaccountability.org/wp-content/uploads/Shah-Deniz-II-Community-Assessment-Analysis.pdf
Letter to BP Consortium	http://crudeaccountability.org/wp-content/uploads/Letter-to-BP-consortium-Azerbaijan.pdf
Letter to EBRD President on His Upcoming Visit to Azerbaijan and Meeting with Aliyev	http://crudeaccountability.org/letter-ebrd-president-upcoming-visit-azerbaijan-meeting-aliyev/
Letter to EBRD President regarding Comments about EITI and its Decision to Suspend Azerbaijan	http://crudeaccountability.org/letter-ebrd-president-regarding-comments-eiti-decision-suspend-azerbaijan/
Client (Lukoil) Information	
Lukoil in Azerbaijan	http://www.lukoil.com/Company/BusinessOperation/GeographicReach/Asia/LUKOILinAzerbaijan
Lukoil International Projects	http://www.lukoil.com/Business/Upstream/Overseas?wid=widGKgEkESqK0q8ziEB9tCsNg
Lukoil Group Sustainability Report 2015-6	https://csr2015-2016.lukoil.com/pdf/csr/en/en_LUKOIL_SR_book_pages.pdf