

LESSONS LEARNED: FILING BHOLA IPP COMPLAINT IN AIIB'S PROJECT AFFECTED PEOPLES' MECHANISM

CONTEXT

CLEAN (Coastal Livelihood and Environmental Action Network), a Bangladeshi environmental and human rights organization, and NGO Forum on ADB, an Asian-led network of organizations monitoring the ADB and AIIB based in Manila, formally filed a complaint against the Asian Infrastructure Investment Bank (AIIB) regarding the Bhola Gas Power Plant (Bhola IPP) (Project Number 000057). This is the first complaint filed against the Bank in its 7 years of operation.

Bhola IPP is a 220 MW Combined Cycle Power Plant (CCPP) that intends to help improve Bangladesh's power generation capacity and address shortages but according to impacted communities, this is not true.

COMPLAINT

On 8 April 2022, on behalf of the community, CLEAN and NGO Forum on ADB filed a complaint (or "request" as per the PPM) in its dispute resolution function. The complaint highlights three main issues.

LACK OF INFORMATION DISCLOSURE AND MEANINGFUL CONSULTATION

There was an overall lack of timely information disclosure by both AIIB and NBBL on project information. There was likewise a poor and misleading translation of key documents, especially the Environmental and Social Impact Assessment (ESIA), E&S Summary, Environmental Management Plan (EMP) and Grievance Redress Mechanism (GRM) that have been identified by CLEAN. The translated documents are in some instances incomprehensible and do not make sense in the original English or in the translated Bengali. The lender has not provided any documentation or output from the consultation reports, and have misrepresented accounts of consultations which could not be validated.



COERCION, FRAUD, AND INTIMIDATION ON LAND ACQUISITION

Grave concerns about the project were raised by impacted communities, particularly on the issue of land grabbing. There were coercion and intimidation faced by local communities especially Hindu from 'middlemen' appointed by NBBL to forcibly acquire land at lowest rates.

The Hindu communities fearing retaliation in case they are identified as stakeholders raising concern. There was also no records of sale or transaction on first phase land acquisition by NBBL. Essentially, the land acquisition practice was in violation of the "Bangladesh Acquisition and Requisition of Immovable Property Ordinance, 1982 and the amended ordinance of 2017", which stipulates that land owners to be entitled to thrice the market price from private companies (in this case NBBL). The local grievance redress mechanism (GRM) was also not visible, effective or functional.

ENVIRONMENTAL IMPACT AND LIVELIHOOD LOSS

The construction and Sand waste deposited by NBBL has led to Mandartoli Shakha Khal/River Channel river bed over siltation. The NBBL embanked its northern part with sand sacks and has taken over half of the canal. The sand from the sacks has spilled out into the canal-bed causing siltation and the canal to gradually dry up. Now the canal is only 1-2 feet deep and has lost its water carrying capacity.

It also led to the destruction of Betel Leaf farms. Due to Mandartoli Shakha Khal clogging, monsoon water overflows during high tide and directly floods the Dakshin Kutba village. There was an estimate of 400 Betel leaf farms have been destroyed which led to the displacement of over 2000 families dependent on agriculture. Over 100 households are approximated to be directly waterlogged and left completely disconnected from public services, communication, health care and other necessary services.

The project site has taken over half of all grazing land in the area, leading to a direct impact on goat herders who are mainly women. The labor colony has discharged large amounts of effluent, sewage and waste to surrounding villages, leading to uninhabitable living conditions.

CLEAN and NGO Forum on ADB pointed that local communities and civil society organizations are exhausted raising these issues to NBBL and AIIB management for the last three years with no meaningful resolution to the problems. The complaint was the last resort to ensure justice to the aggrieved communities to resolve the problems surrounding Bhola IPP.

PPM VISIT IN BHOLA

On 5 - 9 February 2023, the PPM met with the Requestors, authorized representatives and the borrower.

DETERMINATION OF INELIGIBILITY

On 28 February 2023, the PPM deemed the complaint as ineligible. Accordingly, PPM could not find any evidence that Requestors had approached AIIB Management to resolve their pending concerns. AIIB Management, therefore, did not have a chance to resolve their specific issues as raised in the Submission.

In accordance with the PPM Policy and PPM Rules of Procedures, and after reviewing the information gathered through its own due diligence, the PPM found that the Submission is ineligible for a Dispute Resolution on the grounds that the Requestors did not make good-faith efforts as required under the PPM Policy Clause 5.1.8 to raise their concerns with AIIB Management or to satisfactorily explain why they were unable to do so.

The PPM informed the authorized representatives that accordingly NBBL confirmed to them that the Project-level GRM is fully functioning and can address any outstanding concerns. In addition, as you are also aware, MIGA's (the guarantee provider of new financial arrangement of Bhola IPP) Compliance Advisor Ombudsman remains an avenue for pursuing any pending concerns.

CSO ASSESSMENT ON THE INELIGIBILITY

On satisfying the good faith efforts, there are no guidance nor parameters of what it (good faith efforts) actually means either in the PPM or in the procedure itself. The remark that, "Good faith efforts in this case would mean that the Requestors, having exhausted the avenue of Project-level GRM, escalated the matter and formally submitted their specific complaints to AIIB Management as they eventually did to PPM, for resolution" is completely unfounded. Where exactly does it provide that the use of the project-level GRM should be exhausted first and then escalating it to management and the PPM. In the 28 February 2023 email from MD CEIU, Mr. Hamid Sharif cited that the requestors have tried to resolve their issues through the project-level grievance redress mechanism (GRM), as confirmed by project records.

"PPM could not find any evidence that the Requestors formally submitted their grievances to AIIB Management for resolution. PPM also confirmed with AIIB Management that no specific grievances had been received from any of the project-affected people (PAP)." Same comment/clarification. This is nowhere in any of the PPM documents. What does formal submission of grievances to AIIB management for resolution mean? Citing that it is only for resolution only comes in when filing the submission at the PPM.

However, at the management level, the policy merely provides for the ineligibility that "5.1.8. The Requestors have not made good faith efforts to resolve the issues with the Project-level GRM and with Management or have not indicated to the satisfaction of the PPM why they have been unable to do so;" By providing all these subjective interpretations in terms of justification for the ineligibility of meeting the good faith efforts requirement, it seems the PPM had already prejudged the outcome for this submission.

In relation to the previous point, does this also mean that PPM expects that the grievances should be coming from the PAP i.e., through emails and/or meetings? Throughout the duration of raising the concerns in Bhola, it is clear that CLEAN and Forum are doing so on behalf of the PAPs.

"Despite the ample opportunity that the Requestors and their Authorized Representatives had to approach AIIB Management during AIIB's involvement in the Project, they chose not to request AIIB Management to resolve their specific issues as raised in the Submission to PPM." Again, in the past when we did raise these issues to AIIB management we specifically requested/demanded that the management address them. It is unclear what type of formal submission directed at the AIIB management is being asked for. This also means that raising issues in the AIIB Annual Meeting CSO Management session is not considered as raising issues to AIIB Management. It needs to be mentioned that according to formal bank processes, the AIIB Annual Meeting CSO Management session is the only session where CSOs can raise issues.

On the land grievances, you might have a better grasp on what transpired on this. Do we have a position on this AIIB recommendation that the community should have approached the Bangladesh Inland Water Transport Authority? Still, the fact remains in terms of AIIB's due diligence in ensuring that compensation was adequately given. In addition to the land ownership, it is unacceptable to just cite that the "Borrower informed the PPM that the complainants did not produce any land ownership records. Accordingly, these complaints had been closed at the Project-level GRM."

