

# **The Independent Recourse Mechanism**

## **Annual Report for 2006**

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**Report of the  
Chief Compliance Officer**



**European Bank**  
for Reconstruction and Development

## **Introduction**

This report is prepared in accordance with my responsibilities under Rule of Procedure (“RP”) 67 of the Independent Recourse Mechanism (“IRM”). It is my second report outlining the activities of the IRM since the mechanism commenced functioning on 1 July 2004. This report covers the activities of the IRM over the period 1 November 2005 to 3 November 2006 (“the Reporting Period”).

## **Mechanism**

The European Bank for Reconstruction and Development (“the Bank”) established the IRM to assess and review complaints about Bank-financed projects. The IRM gives local groups that may be directly and adversely affected by a Bank project a means of raising complaints or grievances with the Bank, independently from banking operations. The mechanism aims to strengthen the Bank’s accountability and increase the transparency of its decisions in relation to its project operations.

The IRM has two functions: first, a Compliance Review function, which assesses whether banking operations have complied with Bank policies, specifically its Environmental Policy and the project-specific provisions of the Public Information Policy (“PIP”); and, secondly, a Problem-solving function, which aims to restore a dialogue between the parties, where possible, with a view to resolving the underlying issues that have given rise to the complaint or grievance. In assessing a complaint, there may be a recommendation for a Compliance Review or a Problem-solving Initiative (“PSI”), or both or neither.

## **Complaints**

Over the Reporting Period, the IRM received two new complaints and continued to process the two complaints that were registered in the previous reporting period. In respect of the two new complaints, I decided that one was ‘manifestly ineligible’ for registration under IRM, RP 16, but that the remaining complaint complied with IRM, RP 8 and was duly registered for further processing in accordance with IRM, RP 17. In the handling of all four complaints, I have complied with my responsibilities under IRM, RP 50 (d), (e), (i) and (j) to maintain a documentary record, issue the requisite notices, arranged for the translation of documents and provide administrative and logistical support to the IRM experts.

### *Rejected for Registration*

It would be inappropriate in a report such as this to disclose the details of the complaint that was held by me to be manifestly ineligible for registration under the IRM. However, it is appropriate in my view to indicate why I decided to reject the complaint: I declined to register the complaint as it amounted in my opinion to an attempt to use the mechanism to appeal against a decision taken by the Bank to deny disclosure of documentation under the PIP. I therefore took the view that the complaint related to the “adequacy or suitability” of the PIP’s appeal mechanism and on that basis was ineligible for processing under IRM, RP 19(f).

*Accepted for Registration*

### BTC Pipeline (Georgia)

By 1 November 2006, the IRM had received a complete and translated version of a complaint submitted by two Authorised Representatives on behalf of ten residents of Akhali Samgori Village in the Garabani District of Georgia (“the Affected Group”). The Affected Group complain *inter alia* that they have been denied compensation or have been insufficiently compensated for the damage and blight suffered to their land and livelihoods as a consequence of the construction of the Baku-Tbilisi-Ceyhan (“BTC”) pipeline.

On 3 November 2006, I determined that the submitted complaint was both in form and substance sufficient to warrant registration and I therefore proceeded to enter the complaint in the IRM’s Register of Complaints ([www.ebrd.com/about/irm/register](http://www.ebrd.com/about/irm/register)).

One of the three standing IRM Experts will be designated by me as an Eligibility Assessment Expert and the expert and I, acting jointly as Eligibility Assessors, will examine shortly whether the registered complaint is eligible for further processing towards either a Compliance Review or a PSI or both.

### *On-going Complaints*

#### Sakhalin 2 Complaint

A Complaint relating to the Sakhalin 2 Phase 2 Project was made to the IRM on 26 July 2005 by *inter alia* a consortium of fishing companies that comprised Calypso Ltd, Contract Ltd and KFC Ltd. I registered the complaint on 28 July 2005 and proceeded with Mr. Owen McIntyre, the appointed IRM Expert, to conduct an Eligibility Assessment. On 20 September 2006, President Lemierre, acting upon my and Mr. McIntyre’s recommendation, decided under IRM, RP 31 to hold the complaint of disruption to fishing caused by the construction of oil and gas plants and terminals near Prigorodnoye in the Korsakov district of the Sakhalin region to be eligible for further processing towards a PSI, but that there was no evidence to warrant a Compliance Review. The President also decided on 20 September to suspend further processing of the complaint towards a PSI pending the outcome of the decision on whether to declare the Sakhalin 2 project “fit for the purpose of consultation”. On 14 December 2005, the decision was taken that the Sakhalin 2 documentation was fit for the purpose of public consultation and the suspension on processing the complaint towards a PSI was lifted (see: [www.ebrd.com/about/irm/register/200501.pdf](http://www.ebrd.com/about/irm/register/200501.pdf)).

Following negotiations in the first quarter of 2006, I was informed at the end of March by the Sakhalin Energy Investment Company (“SEIC”) that it had reached a settlement with one of the complainants, Calypso Ltd, and that it was poised to enter into similar negotiations with Contract Ltd and, if necessary, KFC Ltd. Given that the stated purposes of a PSI is “to restore an effective dialogue” between the disputing parties (IRM, RP 42), I took the decision under IRM, RP 14 to delay the submission of the Problem-solving Initiative Report (“PSIR”) to President Lemierre, pending the outcome of those negotiations. As settlement negotiations between SEIC and Contract Ltd are continuing, it would in my view be inappropriate for the IRM to

initiate a PSI that could disrupt the “effective dialogue” that currently exists between the remaining members of the Affected Group and SEIC. As such, at the date of this report, my decision to postpone the submission of the PSIR to the President remains in effect.

### *Finalised Complaints*

#### BTC Pipeline (Azerbaijan)

On 16 August 2005, I received a complaint under the IRM from an Affected Group located in Gyrakh Kesemenli village, Azerbaijan in respect of the BTC Pipeline Operation. I determined that the complaint was not manifestly ineligible under IRM, RP 16 and registered it on 22 August 2005.

I appointed Mr. Graham Cleverly, one of the three standing IRM Experts, as an Eligibility Assessor and Mr. Cleverly and I submitted on 4 October 2005 a recommendation to the Board of Directors as part of our Eligibility Assessment Report on the BTC (Azerbaijan) Complaint. The recommendation was that the complaint of vibration damage to residential properties in the Azeri village of Gyrakh Kesemenli, allegedly caused by traffic engaged in the construction of the pipeline, should be held eligible for further processing under the IRM towards a PSI, but that the evidence did not warrant the conduct of a Compliance Review. In accordance with IRM, RP 31(a), this recommendation was approved by the Board on 25 November 2005 (see: [www.ebrd.com/about/irm/register/200502.pdf](http://www.ebrd.com/about/irm/register/200502.pdf)).

IRM, RP 45 requires that I submit to the President a PSIR. Moreover, it is a mandatory requirement of IRM, RP 44 that the report contains my recommendation as to whether or not to proceed with the conduct of a PSI. IRM, RP 42 stipulates that the objective of a PSI is to “restore an effective dialogue between the Affected Group and any Relevant Party with a view to resolving the issue or issues underlying a Complaint, without seeking to attribute blame or fault to any such party”. Mr. Cleverly conducted at my behest a field trip to Baku in order to speak with representatives of the BTC Company. Several unsuccessful attempts thereafter were made to urge company representatives to positively engage the Affected Group in a dialogue. Contact was also made with the IFC, whose Compliance Ombudsman confirmed that she was also failing to resolve a similar complaint in Georgia lodged under the IFC’s inspection mechanism.

In light of this, I concluded that the restoration of an “effective dialogue” between the Affected Group and the BTC Company was improbable, as the latter refuted any liability for the alleged vibration damage and declined any further engagement on the subject. For this reason, I concluded that there was no possibility to satisfy the criteria of IRM, RP 43 (i.e., that a PSI was likely to have a positive result). Accordingly, my recommendation to President Lemierre was that a PSI should not be undertaken; a recommendation that was accepted by the President on 28 February 2006. The Authorised Representatives of the Affected Group were notified of the President’s decision on 16 March 2006 and processing of the complaint under the IRM was finalised as of that date.

## **Register of Complaints**

During the currency of the Reporting Period, I took steps to ensure that a Register of Complaints was maintained on the IRM's web-pages in accordance with IRM, RP 50(c). The register, which contains a contemporaneous log of events, together with relevant documentation, such as the Eligibility Assessment Reports for the Sakhalin 2 and BTC (Azerbaijan) complaints, can be accessed via [www.ebrd.com/about/irm/register/index.htm](http://www.ebrd.com/about/irm/register/index.htm).

## **Publications and Translations**

As part of my responsibility to publicise the existence and workings of the IRM, and ever mindful of the intent expressed in IRM, RP 70, I have continued over the Reporting Period to ensure that Guidelines to the mechanism have been published and distributed to the Bank's resident offices in all of its Countries of Operations. I noted in last year's report that the Guidelines and, more significantly, the RPs have been translated from English into Russian and the Russian version of the texts has also been distributed. Work remains on-going to translate the RPs and the Guidelines into all of the national languages of the Bank's Countries of Operations. Moreover, publicity for the IRM has been facilitated by the continued existence and maintenance of the IRM's web-pages on the Bank's web-site. The pages contain a summary description of the IRM and provide the user with ready access to the English and Russian versions of the RPs and the Guidelines. The IRM's homepage on the Bank's web-site can be accessed via [www.ebrd.com/about/irm/index.htm](http://www.ebrd.com/about/irm/index.htm).

It is also noteworthy in the context of publicising and explaining the functioning of the IRM that, under my delegated authority, an officer from the Office of the Chief Compliance Officer has participated in discussions with Non-Governmental Organisations. Most recently, my deputy travelled to Prague in order to meet with representatives of the CEE Bankwatch Network and, as a consequence of his visit, he has been invited by that organisation to participate as a speaker at a conference that it is organising on inspection mechanisms in Brussels in November.

## **Liaison with Other Mechanisms**

With a view to fulfilling my obligations under IRM, RP 15, I have over the Reporting Period maintained and enhanced professional relationships with the inspection mechanisms operated by *inter alia* the World Bank, the International Finance Corporation ("IFC"), the Multilateral Investment Guarantee Agency ("MIGA") and the Asian Development Bank (ADB"). Over the period 18-19 May 2006, I attended in Montreal, Canada the 3<sup>rd</sup> Meeting of Principals of Independent Recourse Mechanisms of IFIs and Related Institutions. The EBRD will host the 2007 meeting of this group in London.

## **Training of Experts**

Mindful of the requirement under IRM, RP 57 to provide training for the IRM Experts, I can report that all three experts gathered at the IRM's offices' in London in June 2006 in order to meet with me and other Bank officials, most notably from the Environment and Banking Departments. Aside from sharing their experiences in

respect of the BTC (Azerbaijan) and Sakhalin 2 complaints, the Experts were updated on recent developments within the Bank, including the proposed amendments to the Bank's Environmental and Public Information Policies. I intend at present to conduct another such workshop in the second quarter of 2007.

### **Budget**

IRM, RP 68 requires that I prepare an annual budget indicating the level of resources required to carry out the mechanism's mandate. In discussions with management on the 2007 budget for the Office of the Chief Compliance Officer, I proposed to maintain the level of IRM financing at the same level as for 2006. As for 2006, expenses over and above the amount budgeted for the IRM will be met by drawing down from the management reserve fund.

### **Amendment of the Rules**

I mentioned in last year's report that, during the processing of the Sakhalin 2 and the BTC (Azerbaijan) pipeline complaints, I encountered several difficulties in implementing certain RPs and that they might require review and possible amendment. I also mentioned that it would be prudent for any proposed changes to await the review of the mechanism, which, according to the Board approved Background Paper on the Establishment of the Mechanism, was due to take place in 2006. However, given the paucity of registrable complaints and the associated lack of operating experience, I am of the opinion that it would be precipitous to conduct a review of the mechanism now and I have communicated my view in this respect to the Bank's management and to its Directors. I remain open minded on the timing of any such review and I will consider the merits of the initiative in 2007.

Date: 3 November 2006

Signature:



Enery Quinones  
Chief Compliance Officer