

The Independent Recourse Mechanism

Annual Report for 2007

**Report of the
Chief Compliance Officer**



European Bank
for Reconstruction and Development

Introduction

This report is prepared in accordance with the Chief Compliance Officer's responsibilities under Rules of Procedure ("RP") 67 of the Independent Recourse Mechanism ("IRM"). It is the third annual report outlining the activities of the IRM since the mechanism was introduced in July 2004. This report covers the activities of the IRM during the period 6 November 2006 to 30 November 2007 ("the Reporting Period").

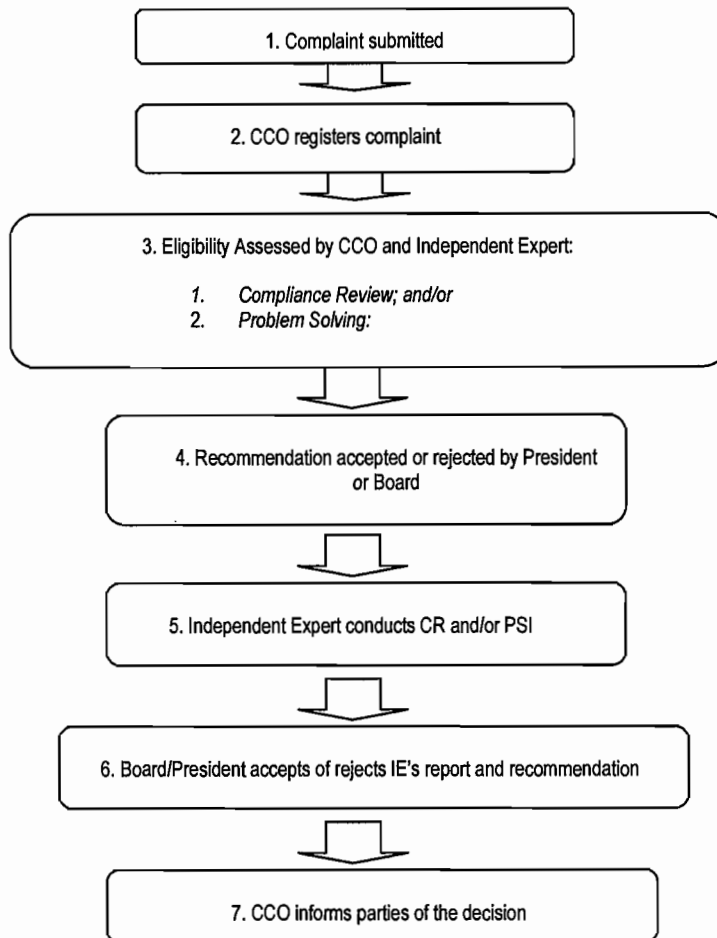
Mechanism

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 to increase the transparency of its decisions in relation to its project operations.

The IRM has two functions: a Compliance Review function which assesses whether the Bank has complied with its policies, specifically its Environmental Policy and the project-specific provisions of the Public Information Policy ("PIP") in relation to a specific project; and a problem-solving function, which aims to restore a dialogue between the parties, typically the members of an affected group and the project sponsor, 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

By way of background, it may be useful to give a brief overview of the essential elements of the IRM. As noted in the diagram below, the mechanism consists of different stages. A complaint will only be "registered", meaning processed for an eligibility assessment, if it has been submitted by two or more individuals with a common interest, likely to be directly and adversely affected by a Bank-financed project. Furthermore, the affected group must have, in good faith, previously attempted to resolve the issues of which it complains with the Bank or other relevant party, generally the project sponsor. Moreover, it must be a project in which the Bank maintains a financial interest, or, if not yet Board approved, for which the Bank has clearly indicated interest in financing. In the former case, the complaint must be filed within 12 months of the physical completion of, or the last disbursement for, the project. Finally, the complaint must not be frivolous or malicious, or related to procurement, fraud and/or corruption, Article 1 of the Agreement Establishing the Bank or the Portfolio Policy, or have already been considered by IRM.



Over the Reporting Period, the Office of the Chief Compliance Officer (“OCCO”) received four new IRM complaints and continued to process the complaint that had been registered in the previous reporting period. In respect of the new complaints, it was decided that two were ‘manifestly ineligible’ for registration under IRM, RP 16; one because the complaint related to a disagreement between contractor and project sponsor having nothing to do with the Bank, and the other because it was submitted by NGOs which, alone, do not qualify as an affected group¹. The remaining two complaints were found to comply with IRM, RP 8 and were duly registered for further processing in accordance with IRM, RP 17, as detailed below.

In the handling of all of these complaints, OCCO has complied with its responsibilities under IRM, RP 50 (d), (e), (i) and (j) to maintain a documentary record, issue the requisite notices, arrange for the translation of documents, and to provide administrative and logistical support to the IRM experts.

Vlorë Thermal Power Generation Project (Albania)

On 19 April 2007, a complaint was registered under the IRM relating to the Vlorë Thermal Power Generation Project (hereinafter Vlorë TPP). The complaint,

¹ The NGOs were advised if the complaint were to be submitted by an affected group, the IRM would consider registration.

submitted by members or supporters of the Civic Alliance for the Protection of the Vlorë Bay, relates to the construction of the Vlorë TPP by *Korporata Elektroenergjetike Shqiptare* (KESH), an Albanian state-owned power utility company, on Treport Beach. The Affected Group claims that the construction of this project on this “historic beach” will adversely impact the environment as well as the tourism and fishing activities of the region and consequently the livelihood OF ITS MEMBERS. The group alleges non-compliance by the Bank with its Environment Policy pertaining to, *inter alia*, the precautionary approach to the management and sustainable use of natural biodiversity resources, as well as meaningful public consultation. Alongside the EBRD, the Vlorë TPP has obtained funding from the World Bank and the EIB.

Dr. Ayse Kudat, one of the IRM experts, was appointed to assist the CCO in the preparation of an Eligibility Assessment Report (EAR). The Report, concluded in September 2007, contained a recommendation that the complaint be held eligible and warranting a compliance review, the first of its kind since the inception of the IRM, without prejudice to the ability of the CCO to recommend a problem solving initiative as well.

Given that the Vlorë TPP is a Board approved project, on 12 October 2007, acting in accordance with IRM, RP 31(a), the Board approved the recommendations contained in the EAR.

Current Status: Dr. Owen McIntyre has been appointed the Compliance Review Expert and the compliance review is currently ongoing. His report is expected to be submitted to the Board early next year.

Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project (Atskuri Village, Georgia) No. 2007/02

On 6 July 2007 a complaint submitted by seven residents of Atskuri Village, in the Akhaltsikhe District of Georgia. (the “Affected Group”) was registered. The members of the Affected Group claim, *inter alia*, that they have been denied compensation, or have been insufficiently compensated, for the damages suffered to their plots, dwellings and crops as consequences of the construction of the Baku-Tbilisi-Ceyhan (“BTC”) pipeline.

Dr. Owen McIntyre, one of the IRM experts, was appointed to assist the CCO in the preparation of an Eligibility Assessment Report (EAR). The Report, concluded earlier this month, contains a recommendation that the complaint be declared eligible but not warranting a compliance review in light of the fact that the complaint essentially relates to the actions of the project sponsor and does not otherwise involve a material failure by the Bank under a Relevant EBRD Policy. This recommendation is made subject to the right of the CCO to make a separate recommendation as to whether a problem-solving initiative should be undertaken.

Since the BTC Oil Pipeline Project is a Board approved operation, the Report has been submitted to the Board for decision. On 23 November, 2007 the Board has decided to accept the recommendations of the Report and to declare the complaint

eligible for further processing towards a possible problem-solving initiative but not warranting a compliance review.

On-going Complaints

Main Baku-Tbilisi-Ceyhan (BTC) Oil Pipeline Project (Akhali Samgori Village, Georgia) No. 2006/01

As at the date of last year's Annual Report, this complaint, submitted by a group of 10 residents of the Akhali Samgori Village in the Garabani District of Georgia, had just been registered. Similar to file No 2007/ 02, the Affected Group complained, *inter alia*, that they had been denied compensation, or adequate compensation, for the damage and blight suffered to their land and livelihoods as a consequence of the construction of the Baku-Tbilisi-Ceyhan ("BTC") pipeline.

Following the registration of the complaint on 3 November 2006, on 8 November 2006, Dr. Owen McIntyre was appointed as the Eligibility Assessment Expert to assist the CCO in the preparation of an EAR. The Report, finalised in February 2007 and approved by the Board in March 2007, contained a recommendation that the complaint be declared eligible for further processing towards a problem-solving initiative but not warranting a compliance review.

At the beginning of April 2007, Dr. McIntyre went to Georgia to meet with representatives of BTC and the Affected Group, as well as to carry out a site-visit. Ultimately, however, BTC has declined to participate in any Problem-solving Initiative due, in large measure, to the risk of contrary findings in respect of a civil suit covering similar items of complaint pending before the local courts. Given the inability to de-link the issues raised in the IRM complaint from the ongoing court action, a Problem-solving Initiative Report has been submitted to the President recommending that the Problem-solving Initiative does not proceed.

Current status: On 6th November 2007, the President approved the Problem-solving Initiative Report and the recommendation that the initiative not proceed. The members of the Affected Group and Project Sponsor have been informed, as well as the Board, that all avenues of processing the complaint under the IRM have now been exhausted and that no further action will be taken by the Bank thereunder.

Closed Matters:

Sakhalin II

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 with respect to a disruption to fishing caused by the construction of oil and gas plants and terminals near Prigorodnoye. On 20 September 2006, President Lemierre, acting upon the recommendation of Dr. McIntyre and the CCO, decided to declare the complaint eligible for further processing towards a Problem-solving Initiative but not warranting a Compliance Review. The Problem-solving initiative was in turn suspended in light of the parties' decision to enter into settlement negotiations in relation to the matters raised in the IRM complaint.

In January 2007, following the Bank's decision not to finance the Project, the Affected Group was informed that the IRM no longer had jurisdiction over the complaint and the CCO duly proceeded to close the file. The settlement negotiations between the parties that started after the IRM declaration of eligibility led to a satisfactory resolution of many of the issues which were the subject of the complaint.

Register of Complaints

During the currency of the Reporting Period, OCCO 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, together with copies of Eligibility Assessment Reports can be accessed via www.ebrd.com/about/irm/register/index.htm.

Publications and Translations

As part of OCCO's responsibility to publicise the existence and workings of the IRM, and ever mindful of the intent expressed in IRM, RP 70, it has 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. 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 which can be accessed via www.ebrd.com/about/irm/index.htm.

Liaison with Other Mechanisms

With a view to fulfilling OCCO's obligations under IRM, RP 15, OCCO has, 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"), the InterAmerican Development Bank ("IaDB"), the Asian Development Bank ("ADB"), the African Development Bank ("AfDB") and the European Investment Bank.

In addition, the EBRD hosted the 4th Meeting of Principals of Independent Accountability Mechanism in IFI's at its offices of London, on June 21 and 22, 2007. Among others, representatives from the IFC, OPIC, AfDB, IaDB, ADB, EIB and IBRD were present.

Topics discussed included the role of accountability mechanism experts, the management of complaints, the enforcement of accountability initiatives, and the limits of the accountability mechanisms.

Training of Experts

Mindful of the requirement of IRM, RP 57 that training be provided for the IRM Experts, OCCO can report that all three experts gathered at the Bank's offices in London in June 2007. The session provided an opportunity for the Experts to review

their recent experiences with the IRM, as well as difficulties encountered, and to identify possible areas for review of the mechanism within the context of the 2008 IRM comprehensive review.

Budget

IRM, RP 68 requires that the CCO prepares an annual budget indicating the level of resources required to carry out the mechanism’s mandate. In discussions with management on the 2008 budget for the OCCO, it was proposed to maintain the level of IRM financing at the same level as for 2007. As was the case for 2007, expenses over and above the amount budgeted for the IRM will be met by drawing down from the management reserve fund.

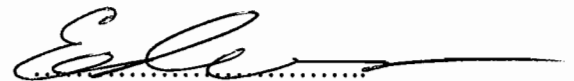
Review of IRM

It is proposed that a comprehensive review of the IRM be carried out in 2008. Items to be addressed in the course of this review include:

- a. problems adhering to current time lines; and
- b. the limited scope for Problem-solving Initiatives.

Date: 30 November 2007

Signature:



Enery Quinones
Chief Compliance Officer