

Table of Contents

Eligibility Assessment Report.....	1
Recommendation of the Eligibility Assessors	10
Terms of Reference for the Compliance Review.....	12
ANNEX 1:	
COMPLAINT FROM THE AFFECTED GROUP 10 APRIL 2007.....	18
ANNEX 2	
PROJECT SPONSOR’S RESPONSE TO THE NOTICE OF REGISTRATION OF THE COMPLAINT 30 APRIL 2007.....	25
ANNEX 3	
ADDITIONAL BACKGROUND INFORMATION	33

Independent Recourse Mechanism (IRM)

Eligibility Assessment Report

Complaint: Vlore Thermal Power Generation Project

1. On 19 April 2007, the IRM received a Complaint relating to the Vlore Thermal Power Generation Project (the “Project” or Vlore TPGP). In accordance with paragraph 17 of the IRM Rules of Procedure (“IRM, RP”), the Chief Compliance Officer (CCO) registered the Complaint and designated one of the IRM Experts to assist in making an Eligibility Assessment of the Registered Complaint (the “Complaint”). The Complaint is at Annex 1 to this Report. Additional background information regarding the Project and the Complaint can be found at Annex 3 to this Report.

2. The European Bank for Reconstruction and Development (EBRD) was requested by Korporata Elektroenergjeteke Shqiptare (KESH), the State owned power utility of Albania, to participate in the funding of the construction of a Combined Cycle Generation Facility in Vlore¹. The plant size would be between 85MW to 135MW depending on the configuration of the winning equipment bid. The Project is co-financed by the European Investment Bank (EIB), the International Bank for Reconstruction and Development (IBRD, hereinafter referred to as the World Bank or WB)² and the EBRD. There is a sovereign guaranteed loan of up to 40 million Euros. The members of the “Affected Group” are Mr. Gani Mezini, Mr. Muhamet Lazaj and Mr. Stefan Thanasko. They are represented by Mr. Lavdosh Ferunaj³, who originally submitted the Complaint on the Group’s behalf to the Bank’s Resident Office in Tirana on 10 April 2007. Mr. Ferunaj works for an NGO, the Civic Alliance for the Protection of the Vlore Bay (the Civic Alliance), and the members of the Affected Group are, at the same time, either members or supporters of the NGO. However, it should be clarified that it is due to Mr. Mezini’s, Mr. Lazaj’s and Mr. Thanasko’s capacity as individuals from an impacted area and having a common interest that the present Complaint has been registered⁴.

¹ In the various documents submitted, the city is referred to as Vlora or Vlorë. The present report will use Vlore.

² The project is financed by the International Development Association (IDA), as part of the World Bank Group.

³ In the documentation received, Mr. Ferunaj is also referred to as Mr Ferruni. In order to avoid any ambiguity, the present report will use the name of Ferunaj, as it is the spelling used on the Power of attorney documents provided by the members of the Affected Group.

⁴ IRM, RP, 1a).

Allegations of the Affected Group

3. The Affected Group complains that the building of the Project at a “historic beach” (Treport) is likely to have a direct, adverse and material impact on their common interest⁵. Specifically, the Affected Group points out that the Project will both disrupt tourism at the Treport Beach and fishing in the waters of the Vlore Bay. Moreover, the Affected Group also claims that the Project’s Environmental Impact Assessment (EIA) pays insufficient attention to these issues.

4. The Complaint argues that the adverse impact of the Project on a “historic beach” will prevent the Treport Beach to be used as a “natural recreational park” for locals as well as for tourists⁶. It asserts that the nearby areas of the Vlore Bay are used for fishing and that the Project will adversely affect the fishing activity and will reduce income from the fishery industries. It claims that the coral colonies present in the Bay will also be adversely impacted, and that the proximity of the Project site to the Narta Lagoon presents risks for endangered species and for a sanctuary of migratory birds. As a result, tourism income will also be adversely impacted. In addition, the Complaint alleges that the Project breaches Albanian law pertaining to public participation. Specifically, the Affected Group claims that the public consultation process was not carried out early and meaningfully in the design and siting of the Project, as specified by the EBRD Environment Policy of 29 April 2003 (EP), the Albanian Law, and the *United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (the Aarhus Convention) which was ratified by the Government of Albania in 2001⁷.

5. Further, the Affected Group asserts that EBRD did not follow its EP. Specifically, it claims that the Project violates Section II.6 of the EP (precautionary approach to the management and sustainable use of natural biodiversity resources), Section II.11 of the EP (commitment to enabling dialogue with its stakeholders), Section III.21 of the EP (requirement to meet good international environmental practices⁸) and Section III.26 of the EP (meaningful public consultation as a way of improving the quality of Projects).

6. The Affected Group states that despite various efforts, they have been unable to obtain satisfactory response from any of the co-financers of the Project, thus relying on the EBRD’s IRM as last resort⁹.

⁵ See Complaint on pp. 2 and 5.

⁶ *Ibid*, at p. 2.

⁷ It should be noted that the siting of the Project had been the subject of a site selection study finalised in February 2003, prior to the Bank’s participation in the Project.

⁸ Pursuant to this section, the Bank will require that projects be structured so as to meet (i) applicable national environmental law; and (ii) EU environmental standards, in so far as these can be applied to a specific project.

⁹ See Complaint, p.4. It should be noted that the Affected Group filed similar complaints with both the World Bank and the EIB; the EIB rejected the complaint it received in November 2006 whereas the Inspection Panel of the WB has, by report dated 2 July 2007, recommended an investigation of the matters raised in the Affected Group’s Request for Investigation: see *infra*.

Relevant Facts

7. The EBRD Project went to Concept Clearance in June 2003 and the Bank began its due diligence based on its then current Environment Policy. At the time EBRD became involved, the World Bank was overseeing the preparation of the EIA, which was completed October 6th, 2003 and disclosed for 120 days. Several public meetings had been held and the decision on the Project site had already been made. Following the Environment Department's review of the 2003 Vlore TPGP's EIA prepared under the auspices of the World Bank, EBRD concluded that the document needed additional information with respect to site alternatives, protected areas, spill response planning, and existing contamination (mercury) to meet the EBRD's requirements and the EC EIA Directive. An addendum was prepared and, together with the EIA, was disclosed to the public for a second period of 120 days (9 February – 7 June 2004).

8. During the second disclosure period, EBRD did not receive any communication from any members of the Affected Group, whether in their capacity as individuals, or through the Civic Alliance. (In fact, the Civic Alliance was not in existence until some time in 2005.) Nor were there any formal consultations conducted with potentially affected groups. Initially, the Civic Alliance, believing that the EBRD was "under strong pressure from the World Bank" to proceed with the Project, addressed its concerns to the World Bank and not directly to the EBRD. In April 2005, the Civic Alliance submitted a complaint to the Compliance Committee of the Aarhus Convention alleging insufficient public access to information and participation in the decision making by the Government on the construction of the thermal power plant in Vlore. The EBRD and the World Bank were first informed of this complaint by the UNECE Compliance Committee in July 2006.

9. In October 2006, the Civic Alliance communicated its concerns regarding the Project to the EIB and in accordance with its internal review procedures, the Secretary General of the EIB replied to the NGO, by letter dated 27 November 2006, advising that the Project had followed all internal procedures and that the EIB had no evidence of any wrong doing. No further complaint has been filed by the Civic Alliance with the EIB. Formal complaints have since been filed by the Civic Alliance with the World Bank (Request for Inspection dated April 30th, 2007) and the EBRD (Complaint under the IRM received 19 April 2007). Most recently, the Inspection Panel of the World Bank has issued its eligibility report on 2 July 2007 and has concluded that the complaint filed by the complainants was eligible for further investigation¹⁰. Further, on 31 July 2007, the Aarhus Convention Compliance Committee confirmed its draft finding issued 23 March 2007 that the Council of Territorial Adjustment of the Republic of Albania failed to fully

¹⁰ See the report of the WB's Inspection Panel : *Albania: Power Sector Generation and Restructuring Project* , 2 July 2007, available at:
<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/AlbaniaEligibReportFINAL.pdf>.

comply with the requirements of Article 6 of the Aarhus Convention (requirements for public participation)¹¹ with respect to the siting of the Project.

Steps Taken to Conduct an Eligibility Assessment IRM, RP 27

10. Upon registration of the Complaint, the CCO appointed Dr. Ayse Kudat as the Eligibility Assessment Expert (the Expert) on 19 April, 2007. Dr. Kudat, together with the Bank's CCO, Mrs. Enery Quinones are the IRM Eligibility Assessors. Between 20 April and 10 May 2007, the Expert reviewed extensive documentation from the Environment Department relating to the Project and conducted a number of interviews with EBRD staff in the Environment and the Banking Departments.

The Project Sponsor: KESH's position

11. Pursuant to IRM, RP 27 a), the CCO notified the Project Sponsor of the Complaint on 19 April 2007 and invited it to submit its views and comments so that these could be taken into account by the Eligibility Assessors in the preparation of the Eligibility Assessment Report (EAR). On the same date, the Office of the Chief Compliance Officer (OCCO) also informed Mr. Ferunaj, that the Complaint, in accordance with IRM, RP 16, was not manifestly ineligible and that it was therefore registered for further processing under IRM, RP 17. The Project Sponsor's comments to the allegations of the Complaint were set out in their letter to the CCO dated 30 April 2007 (copy whereof is at Annex 2 to this Report) and can be summarized as follows:

- Whereas there may have been a lack of good public discussion regarding the proposed siting of an industrial park in the Vlore area (which park is no longer been constructed in the area), having regard to the Project, the process of the EIA and the public consultation held with respect thereto (in which the Affected Group did not participate) were completed in accordance with the requirements of the domestic legislation and the rules of the Aarhus Convention;
- The EIA has confirmed that the Project will not have any impact on the fishery sector in the Vlore area and indeed, the Project site is not located in a fishing area;
- The construction of the Project in Vlore will not affect the tourism potential of Vlore Bay;
- The EIA fully took into consideration all possible impacts of the Project on the protected area of the Narta Lagoon and concluded that the Project site is far enough away from the Lagoon to have any impact on it;
- The EIA study also concluded that there would not be any impact by the Project on the fauna or flora in proximity to the Project site or in the Vlore Bay;

¹¹ Refer to the *Addendum to the report (ECE/MP.PP/C.1/2007/4/Add.1): Findings and recommendations with regard to communication ACCC/C/2006/12 (Albania)*, available at: http://www.unece.org/env/documents/2007/pp/ECE_MP.PP_C_1_2007_4_Add_1.pdf

- One of the 3 members of the Affected Group, Mr. Lazaj, is the owner of a small restaurant located 2 km away from the Project site which has been built in the sand area, in an eco-system where building is prohibited, and without the permission of the local authorities;
- There is no evidence that the European Centre in Memory of the Victims of the Ethnic Genocide and Clearance in Europe will be built 2 miles to the south of the Project site; nor is there any request by any group to approve plans for the construction of such a site pending before the local authorities;
- There is no scientific bibliography from Albanian authorities establishing the coral colonies in Vlore Bay;
- Contrary to the Affected Group's allegation, the Project is not going to be built on a historical beach, but on an 'anthropic beach' created in the last 25 years, and will be located a certain distance from the coast so as to minimize its presence on the beach; and
- There is no scientific confirmation that that Treport Beach was the landing site of the Sephardic Jews in 1492.

EBRD's position regarding the Complaint

12. Based on discussions held with members of the Environment Department, the Operations Team and the local EBRD office, the position of the EBRD in response to the allegations of the Affected Group can be summarized as follows. The EBRD joined the Project as a potential co-financier alongside the World Bank and the EIB in 2003 subsequent to the site selection of the Project, and the preparation of an EIA associated public consultation carried out under the auspices of the World Bank. Deficiencies in the EIA were identified by EBRD and an addendum to the EIA was prepared. Thereafter, the EIA, together with the addendum, were disclosed for an additional 120 days (9 February – 7 June 2004). No comments were received from the Affected Group in response to the initial public disclosure of the EIA by the World Bank or the subsequent disclosure of the Addendum and EIA. (Indeed, the Authorised Representative of the Affected Group was only formed in 2005, several years after the EIA and the two public consultation periods had been finished.) The concerns being raised by the Affected Group in their Complaint were not brought to the attention of the Bank on a timely basis and only well after the Project had been Board approved.

Findings

Eligibility for Registration [IRM, RP 8]

13. On 19 April 2007, the CCO determined that the Complaint submitted by the Affected Group was eligible for Registration as its mandatory content was in accordance with IRM, RP 8 a to i. The Complaint:

- Sets out the date of the Complaint, *i.e.* 10 April 2007¹² [IRM, RP 8 a];
- Provides the name and contact details of the three members of the Affected Group, namely Mr. Gani Mezini, Mr. Muhammet Lazaj and Mr. Stefan Thanasko¹³ [IRM, RP 8 b];
- Provides the name and contact details of one Authorised Representative of the Affected Group, Mr. Ferunaj and evidence of his power to represent and to act on behalf of the Affected Group in relation to the Complaint¹⁴ [IRM, RP 8 c];
- In relation to Mr. Ferunaj, who is not locally based, the Complaint explains that he is originally from Vlore, Albania and has strong ties with the community and the city. He spends considerable time in Vlore and is involved in numerous environmental activities. He lives and works in Tirana. Although the Complaint does not provide evidence that adequate or appropriate representation is not available in the local community, it claims that the Authorised Representative is a member of a broader group to protect the Vlore Bay and has close ties with the community. The Authorised Representative speaks the native language of the Affected Group, Albanian. The Complaint also provides the full address, telephone, fax and email of the Authorised Representative [IRM, RP 8 d];
- Sets out a summary description of the Project [IRM, RP 8 f];
- Provides a description of how and why the Project is likely to have direct adverse and material effects on the common interest of the Affected Group. It claims that the Affected Group would lose income from tourism should the tourism potential of the area be destroyed by building a plant on the beach and in close proximity to protected areas of importance for tourism [IRM, RP 8 g];
- Provides a description of the good faith efforts undertaken by the Affected Group to resolve the issue with the Relevant Parties, most notably the World Bank and the local authorities;
- Attaches copies of the material correspondence and other relevant materials supporting the Complaint [IRM, RP 8 i].

14. Furthermore, in accordance with IRM, RP 9e, the Complaint provides an indication of the actions the Affected Group expects to be taken by the IRM in order to address the direct, adverse and material effects that the Project is likely to have on cultural heritage, environment, marine resources, tourism, and income that the local community could obtain from tourism and fishing activities. The Complaint notes that the Affected Group requests a Compliance Review and a Problem-Solving Initiative. The Affected Group also requests that a new EIA be produced as soon as possible by a new, independent team of experts. The Affected Group also seeks an IRM

¹² In a letter dated 19 April 2007 and sent to Mr. Ferunaj, the Chief Compliance Officer explained that the Affected Group's letter dated 10 April 2007 was received at the OCCO on 19 April 2007 having been forwarded on to London by the EBRD's Resident Office in Tirana.

¹³ The Complaint also shows that the individuals belong to the Civic Alliance for the Protection of the Vlora Bay.

¹⁴ See Document conferring Power of Attorney annexed to the Complaint, 10 April 2007.

recommendation to stop commencement of the Project and/or to suspend further work or disbursement¹⁵ (see paragraph 28).

Eligibility for Further Processing

15. Pursuant to IRM, RP 18 and 19, upon registration of a Complaint, the IRM requires the Eligibility Assessors to make an Eligibility Assessment of the Registered Complaint within 30 business days of the receipt of the Complaint.

IRM, Rules of Procedure 18

The relation between the Complaint and the Project (IRM, RP 18 a ii)

16. The Eligibility Assessors have determined that the Vlore Thermal Power Generation Project meets the definition of a 'Project' within the meaning of IRM, RP 1(x)¹⁶. The Project has been approved by the Bank's Board on 8 June 2004 and the Bank currently maintains its financial interest in the Project.

The Registered Complaint by an Affected Group and Evidence of Adverse Material Effect (IRM, RP, 18b)

- The notion of Affected Group

17. The complainants qualify as an 'Affected Group' within the meaning of IRM, RP 1(a) as they consist of two or more individuals from an 'Impacted Area', as defined under IRM RP 1(p), each of whom has a common interest, i.e. protecting the unique environment of the area for the purposes of tourism and safe access to healthy fisheries resources in Vlore Bay. They also have a common interest in promoting tourism and believe that the site selected for the Project risks significantly reducing the tourism potential of the area and thereby adversely impacting their income.

- Prima facie evidence of direct adverse and material effect on the common interest of the affected

¹⁵IRM, RP 10 provides: "Effect of a Complaint on a Bank Operation. Notwithstanding any other provision of these Rules, the filing, registration, assessment or processing of a Complaint or the carrying out of a Compliance Review or Problem-solving Initiative shall not have the effect of suspending processing of, or disbursements in respect of, the relevant Bank Operation. If at any time during the processing of a Complaint, an IRM Officer is of the opinion that serious, irreparable harm shall be caused by the continued processing of the Bank Operation or implementation of the Project, such IRM Officer may make an interim recommendation to suspend further work or disbursement. Such recommendation shall be considered in light of any contractual obligation or other relevant policies of the Bank and the decision concerning such recommendation shall be made by the relevant Bank officer or body vested with the power to make such a decision; and only if the Bank has the right to suspend or cancel in accordance with the terms of any applicable loan and/or investment and/or other agreement."

¹⁶ See IRM RP 1(x), which defines a 'Project' to mean 'a specific Project or technical assistance that is designed to fulfil the Bank's purpose and functions, and in support of which a Bank Operation is outstanding or may reasonably be expected'.

18. The Affected Group alleges that the Project Sponsor's construction activities would result in the following direct, adverse, and material effects on their common interest:

- The operation of the Project at its maximum capacity would severely reduce fisheries income;
- The use of the beach for the Project would destroy the environment and therefore any potential tourism income.

EBRD's EP refers to IFC OD 4.30¹⁷ with respect to Involuntary Resettlement, which includes provisions for safeguarding income sources, including from fisheries¹⁸. The IFC's *Handbook for Preparing a Resettlement Action Plan*, in its glossary of terms, defines 'economic displacement' as loss of income streams or means of livelihood resulting from land acquisitions or obstructed access to resources that result from the construction or operation of a Project or its associated facilities¹⁹. Loss of tourism from the use of a specific site for other purposes, whether owned privately or in the public domain for the use of local communities and tourism, could imply potential loss of income and would thus require the use of OD 4.30²⁰.

19. It is still too early in the Project's construction activities (commenced whilst this report was in process) to establish concrete evidence of direct and actual adverse impacts on the common interest of the Group attributable to the Project. The Affected Group maintains that the site characteristics have not been correctly described in the EIA, that the Cultural Heritage factors have not been sufficiently examined within the EIA and that the failure to properly assess these issues has resulted in the improper siting of the Project, the construction of which will adversely affect the ecosystem of the area, and ultimately impact tourism and the fishery industry in the area.

20. Therefore, in the absence of any contrary evidence, the allegations of the Complaint must be held to establish that there is *prima facie* evidence that the Project is likely to have direct, adverse and material effect on the Affected Group's common interest sufficient for this stage of the IRM.

Good faith efforts initiated by the Affected Group [IRM RP 18(c)]

21. Whilst the Affected Group did not communicate directly with the EBRD before the end of 2006, the Eligibility Assessors are of the view that the fact that the Affected Group was in communication with the World Bank, the EIB, and the UNECE, and ultimately with the EBRD, and undertook various public actions to draw attention and seek redress to their concerns regarding the Project, some of which was made known to the EBRD prior to the end of 2006, satisfies the requirements of IRM, RP 18 (c). In coming to this conclusion, the Eligibility Assessors are mindful of the fact that the EBRD

¹⁷ See IFC Operational Directive 4.30, 1 June 1990, as cited in a footnote of the 2003 EBRD Environment Policy.

¹⁸ *Ibid.* paragraph 2.

¹⁹ See IFC (2002), *Handbook for Preparing a Resettlement Action Plan*, at p. ix.

²⁰ With regard to issues mentioned above, the new World Bank policy, OP/BP 4.12 may also apply.

is a co-financier of the Project alongside the World Bank and the EIB and that the concerns of the Affected Group appear to arise principally from the siting of the Project and the EIA which had been prepared under the auspices of the World Bank prior to the EBRD's participation in the Project. Accordingly, in order to give meaning to the application of the IRM, the Eligibility Assessors do not believe that IRM, RP 18 requires the exhaustion of separate efforts with all co-financiers to a project to resolve the same issues before allowing a complaint to proceed under the IRM.

No reasonable prospects of resolving the issue through the continuation of efforts [IRM RP 18(c)]

22. As noted above, the Affected Group does not feel that there is a reasonable prospect of resolving the issue through continued good faith efforts with the EBRD, particularly as the other co-financiers and Project Sponsor are still committed to construct the Project on the contested site.

IRM, Rule of Procedure 19

23. Further, the Eligibility Assessors are of the view that the Complaint satisfies the requirements of IRM, RP 19 in that:

- The materials provided suggest that the Complaint is neither frivolous nor malicious [IRM, RP 19 (a)];
- As the members of the Affected Group are not engaged in an area of economic activity similar or related to that of the Project Sponsor, it is difficult to see how the primary purpose of the Complaint could be to 'seek competitive advantage through the disclosure of information or through impeding or delaying the Project or the Bank Operation' [IRM, RP 19 (b)];
- The Complaint does not relate to procurement matters [IRM, RP 19 (c)];
- The Complaint does not relate to an allegation of fraud or corruption [IRM, RP19 (d)];
- The Complaint does not relate to Article 1 of the Agreement Establishing the Bank, the Portfolio Ratio Policy or any other policy specified by the Board [IRM, RP 19(e)];
- The Complaint does not relate to the adequacy or suitability of EBRD policies [IRM, RP 19 (f)]; and
- The Complaint does not relate to matters upon which an Eligibility Assessment Report has already been approved by the Board or the President [IRM, PR 19 (g)].

Recommendation of the Eligibility Assessors

The Affected Group's expectations:

24. The Affected Group seeks the IRM to:

- Conduct a Compliance Review to establish whether, how and why EBRD “environment policy failed to detect that the proposed construction site contained fatal flaws and how it was allowed to be presented before the Board while being in violation of Albanian law, International Law and EBRD’s own internal guidelines”²¹. It also suggests that the reasons for the late conduct of public participation procedures be examined, and;
- Launch a Problem-Solving Initiative (PSI) in order to:
 - re-assess the cultural and historical aspects of the Project site to facilitate the changing of the site of the Project from Vlore Bay to Fier, and to:
 - Require that a new EIA be prepared, based on the Affected Group’s view that the existing EIA misrepresents facts on the ground and that the mitigation plans proposed are insufficient and irrelevant²².

The Affected Group is also seeking an interim recommendation to stop commencement of the Project and/or suspend further work or disbursement, in accordance with IRM RP, 10.

Recommendations

Compliance Review IRM, RP 22, 23 and 33-41

25. In accordance with IRM, RP 23, the Eligibility Assessors shall consider whether any EBRD actions, or failure to act, in respect to the Project may have involved a material violation of a Relevant EBRD Policy and, in such a case, shall conclude that a Compliance Review is warranted. In considering whether there may have been such a violation, the Eligibility Assessors shall examine the Environment Policy that was in effect on the date the Bank Operation was submitted to Concept Review, namely the Environmental Policy of 29 April 2003²³.

26. The Eligibility Assessors recommend that the Complaint be held eligible and warranting a Compliance Review. This recommendation is based on the view that it is necessary to establish if, and understand why, any EBRD action, or failure to act, in respect of this Project has involved one or more material violations of the Bank’s EP. Specifically, the Compliance Review will focus on the adequacy of the environmental and social due diligence, including associated public consultation, undertaken by the Bank subsequent to 13 June 2003 (the date the Project passed EBRD Concept Review).

²¹ See Complaint, p. 6

²² *Ibid.*

²³ See IRM, RP 23 a.

27. This recommendation for a Compliance Review is without prejudice to the ability of the Chief Compliance Officer to recommend a Problem-solving Initiative in accordance with IRM, RP 44.

Effect of a Complaint on a Bank Operation [IRM, RP 10]

28. The Eligibility Assessors reject the request by the Affected Group to suspend processing of, or disbursements in respect of the Project. The Affected Group has not asserted, nor has it advanced evidence to support, that serious or irreparable harm may be caused by the continued processing or implementation of the Project. A mere allegation by the Affected Group that the relocation of the plant is required does not constitute sufficient ground on which to rely on IRM, RP 10.

Terms of Reference (TOR)
Compliance Review of Vlore Thermal Power Generation
Albania

Background

The European Bank for Reconstruction and Development (EBRD) was requested by Korporata Elektroenergjetike Shqiptare (KESH), the State owned power utility of Albania, to participate in the funding of the construction of a Combined Cycle Generation Facility in Vlore. The plant size would be between 85MW to 135MW depending on the configuration of the winning equipment bid. The project is co-financed by EIB, WB and EBRD. There is a sovereign guaranteed loan of up to 40 million Euros.

The “Affected Group” includes Mr.Gani Mezini, Mr. Muhamet Lazaj and Mr. Stefan Thanasko. They are represented by Mr. Lavdosh Ferunaj who originally submitted the Complaint on the Group’s behalf to the Bank’s Resident Office in Tirana on or about 10 April 2007.

The Affected Group has complained that the Vlore Thermal Power Generation Project (the “Project”) has or is likely to have direct, adverse and material impacts on their common interest, in that the Project will allegedly adversely impact tourism at Treport Beach and fishing in the waters of the Vlore Bay. The Affected Group has provided a list of good faith efforts made to have their concerns addressed by the WB, EIB, KESH and the EBRD. Having failed to obtain a satisfactory response from the co-financers of the Project, namely the WB and the EIB, they applied to the IRM both to launch a process of Compliance Review and a Problem-Solving Initiative.

The Affected Group argues that the adverse impacts of the Project on a “historic beach” will prevent Treport Beach to be used as a “natural recreational park for locals as well as tourists”. They assert that loss of tourism income will arise due to the adverse impact of the Project on Vlore Bay, where coral colonies are present, and on Narta Lagoon, which is a haven for endangered species and a sanctuary for migratory birds.

Based on a desk review of all available relevant materials, the Eligibility Assessors have determined that the complaint is eligible and warrants a Compliance Review. This TOR pertains to the process of that Compliance Review.

Scope

1. These Terms of Reference apply to any inquiry, action or review process identified as necessary for this Compliance Review and, specifically, for determining whether or not any EBRD action, or failure to act, in respect of the Project has involved one or more material violation of any Relevant EBRD Policy or any other EBRD policy as per IRM, RP 23 and 24, and / or with a view to identifying any remedial changes which may be appropriate to recommend.

2. The Compliance Review Expert shall identify which investigative processes are necessary for the Compliance Review having regard to the issues which one might reasonably expect EBRD to have examined and considered and taking into account *inter alia*:
 - (i) the requirements inherent in any Relevant EBRD Policy
 - (ii) the scale and character of the proposed Project and the nature and extent of any likely adverse impacts
 - (iii) the measures that EBRD has taken or might reasonably have taken, having regard to:
 - a. the Bank's leverage to influence change;
 - b. the stage in the planning of the Project at which EBRD became involved;
 - c. the involvement of other MDBs/IFIs; or
 - d. the involvement of the competent authorities of sovereign States in determining compliance with national requirements.
3. Such processes shall be conducted in accordance with these Terms of Reference subject to such modification as the Compliance Review Expert and the Chief Compliance Officer may, at any time, expressly agree upon, except such modification as may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice which shall not be permitted.
4. The Compliance Review shall remain within the scope of the original Complaint. It shall not go beyond the parameters of the Complaint to address other issues.
5. For the purposes of the present Complaint, the Compliance Review shall consider how EBRD assured itself of compliance with its policies in accordance with IRM RP 23 and 24.

Time Frame

6. After the recommendation to undertake a Compliance Review has been approved by the Board, the Compliance Review shall commence when the Eligibility Assessment Report containing these Terms of Reference is forwarded by the Chief Compliance Officer to all Relevant Parties and to the Heads of relevant Bank Departments.
7. Every effort shall be made to ensure that the Compliance Review shall be conducted as expeditiously as circumstances permit and it is intended that it shall be concluded within 25 Business Days of its commencement, within which period the Compliance Review Report shall be finalised and submitted to the President for transmittal to the Board, in accordance with IRM, RP 37. However, pursuant to IRM RP 14, this time period may be extended by the Chief Compliance Officer for as long as is strictly necessary to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

Budget and Additional Resources

8. The Compliance Review shall require up to twenty (20) Business Days input from the Compliance Review Expert and may require up to five (5) Business Days input from additional expertise to be retained to assist with research pursuant to IRM, RP 33(c) and 64. In addition, it may be necessary to conduct a Project site visit in order to ascertain disputed facts, for which translation, transportation and other support services will be required.

Compliance Review Expert	-	20days	-	€20,000
Additional Expertise	-	5 days	-	€ 2,500
Project Site Visit			-	€ 2,500
<u>Total</u>			-	<u>€25,000</u>

Compliance Review Expert

9. In accordance with IRM, RP 27(b) (iii), the Chief Compliance Officer recommends the appointment of Dr. Owen McIntyre as the Compliance Review Expert for this Compliance Review.
10. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

Procedure: Identification of Core Compliance Issues

11. The Compliance Review process shall commence with an examination of the core questions of compliance contained in the Complaint with a view to identifying the central elements of the Compliance Review, including (without limitation):
- that 'EBRD personnel who handled the loan agreement and relevant project paperwork was in breach of compliance with ... EBRD due diligence standards';²⁴
 - that 'the Project violates EBRD's environmental policies and sustainable development because while attempting to fulfil current needs, it seriously compromises those of the future';²⁵
 - that the Project EIA was inadequate and misrepresented the facts;²⁶
 - that the Project violates the requirement to adopt a 'precautionary approach';²⁷
 - that the Project has violated the requirements for public consultation under the Public Information Policy;²⁸

²⁴ Complaint, page 2, para. 4.

²⁵ Complaint, page 4, para. 1.

²⁶ Complaint, page 5, para. 2.

²⁷ Complaint, page 5, para. 3.

- that the Project has violated the requirements of the Aarhus Convention;²⁹ and
 - that the Project violates IFC OPN 11.03 on cultural property.³⁰
12. In identifying the core questions of compliance contained in the Complaint, the Compliance Review Expert shall, where necessary and appropriate, distinguish between those requirements of Relevant EBRD Policies which are capable of review and those which effectively involve the exercise of discretion or the making of a technical determination by person(s) so authorised. In the absence of some procedural impropriety, the latter category of requirement is less suitable for Compliance Review.
 13. Similarly, in identifying the core questions of compliance contained in the Complaint, the Compliance Review Expert shall, where necessary and appropriate, distinguish between those requirements that are, in the context of the present Project, central to meeting the objectives of the Relevant EBRD Policies, and those which are factually irrelevant or of minimal significance.
 14. Any elements which are beyond the scope of the Compliance Review will be excluded.³¹

Procedure: Conduct of the Review

15. The Compliance Review Expert may conduct the Compliance Review process in such a manner as he considers appropriate, taking into account the Rules of Procedure of the IRM, the wishes of the Affected Group as set out in the Complaint, and the general circumstances of the Complaint. Specifically, the Compliance Review Expert may:
 - (i) review the Complaint to identify the compliance issues to be included in the Compliance Review, specifically whether EBRD complied with its Environment Policy of 29 April 2003, II-6, II-11, III-21, and III-26 and Annex 2: Consultation with the Public;
 - (ii) review all documentation, including internal memos and e-mail exchanges relevant to the Complaint;
 - (iii) consult extensively with EBRD staff involved in the Project from the Environment Department, the Operations Group, and the local EBRD Resident Office;
 - (iv) solicit additional oral or written information from, or hold meetings with, the Affected Group and any Relevant Party;

²⁸ Complaint, page 5, para. 4.

²⁹ Complaint, page 5, paras. 4 and 5.

³⁰ Complaint, page 5, para. 5.

³¹ For example, suggestions that 'EBRD has been under strong pressure by the World Bank to become a co-lender in this project', would not be considered relevant or for the purposes of this Compliance Review. See, Complaint, page 6, para. 2.

- (v) conduct a visit to the Project site to ascertain disputed facts accompanied by such officials of the Bank, representatives of the Affected Group or the Project Sponsor, or other persons, as he may consider necessary and appropriate;
- (vi) retain additional expertise if needed, in accordance with IRM, RP 33(c) and 64;
- (vii) cooperate, pursuant to IRM, RP 15, with another international financial institution with which the Affected Group, or part thereof, may have filed a grievance or request, in order to avoid duplication of efforts in the inquiry, review, or processing of the Complaint;
- (viii) identify any appropriate remedial changes in accordance with IRM, RP 34(c) subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements;
- (ix) take any other action as may be required to complete the Compliance Review within the required time-frame.

Procedure: General

- 16. In accordance with IRM, RP 65, the Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files and Bank Staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.
- 17. In accordance with IRM, RP 65, access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document.
- 18. In accordance with IRM, RP 63, the Compliance Review Expert shall take care to minimise the disruption to the daily operations of all involved parties, including relevant Bank staff.
- 19. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to advance the Compliance Review as expeditiously as possible and, in particular, shall endeavour to comply with requests from the Compliance Review Expert to obtain access to sites, submit written materials, provide information and attend meetings.

Compliance Review Report

20. In accordance with IRM, RP 34, the Compliance Review Report shall include:
- (i) a summary discussion of the relevant facts, the respective positions of any Relevant Party in relation to the subject matter of the Complaint and the steps taken to conduct the Compliance Review;
 - (ii) a copy of the original Complaint, the response of the relevant Bank department(s) and a list of supporting documents relied upon in the review;
 - (iii) the findings of the Compliance Review Expert, which shall be limited to determining whether or not any EBRD action, or failure to act, in respect of the Project has involved one or more material violation of policies in accordance with IRM, RP 23 and 24;
 - (iv) any recommendation for remedial changes to systems or procedures within EBRD or in the scope or implementation of the Bank Operation, and / or any steps to be taken to monitor the implementation of such changes.
21. In accordance with IRM, RP 36, the recommendations and findings of the Compliance Review Report shall be based only on the facts relevant to the present Complaint and shall be strictly impartial.
22. Prior to submitting the Compliance Review Report to the President for transmittal, pursuant to IRM RP 36 and 37(b), the Compliance Review Expert shall ensure that all factual information relating to the Affected Group or any Relevant Party is verified with such party.

Exclusion of Liability

23. Without prejudice to the privileges and immunities enjoyed by IRM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

COMPLAINT FROM THE AFFECTED GROUP 10 APRIL 2007

PART A: Information you must include in your complaint

You must provide all the information we have asked for in this section. (Par. 8 of Rules of Procedure)

Date: April 10, 2007

1. About the affected group:

Name of members of the affected group: Mr. Gani Mezini, Mr. Muhamet Lazaj, Mr. Stefan Thanasko.³²

What the common interest of the group is:

The common economic and social interest of the group includes:

(i) preserving and protecting for tourism purposes the coastal area of Bay of Vlora at Treport Beach/Kavallona, - where a combined cycle thermo-power plant project is being financed by the EBRD - as well as the adjacent sand dunes, forest and the southwestern bank of the Narta Lagoon wetland.³³

(ii) Ensuring safe access to the healthy fisheries resources of that the area;

2. Authorized representative:

Name of the authorized representative: Mr. Lavdosh Ferunaj, environmentalist based in Tirana, Albania (Rr. Sami Frasheri p 20/10);

Your relationship to the group. Mr. Lavdosh Ferunaj is originally from Vlora, Albania and has very strong ties with the community and the city. He spends considerable time there and is involved in numerous environmentally related activities.

If the authorized representative is not locally based, reason you are representing the affected group: Mr. Lavdosh Ferunaj lives and works in Tirana, capital of Albania, in proximity with the EBRD office.

³² Individuals who are members of the Affected Group are also either members or supporters of the Civic Alliance for the Protection of the Vlora Bay (hereinafter Alliance).

³³ This is an area of unique natural beauty and character and is a home to a number of endangered species and bird sanctuary. Treport Beach/Kavallona is also a historic beach. It is believed that there was the landing site in 1492 of Sephardic Jews escaping from Inquisition in Western Europe. In their quest towards East, Normans, Angevins and Crusaders landed there, too. The site's history and cultural heritage aspect is within the common interest of the affected group since the area could become a major tourist attraction benefiting local economy.

Native language of the affected group: Albanian.

Can you communicate effectively in the group's native language? Yes. We both are native speakers.

3. About the EBRD-financed project:

Project name: Vlorë Thermal Power Generation Project, Project #: 33833

Country: Albania

Project Description: The building of a Thermo Power Plant at an historical sandy Mediterranean beach, within a de facto protected area, composed of a very delicate ecosystem made up of wetlands, sand dunes, Mediterranean forest, and inhabited by endangered species, including rare migratory birds.

Please state how the group's common interest is affected, likely to be affected and possibly harmed by this project:

The building of a power plant - with a lifespan of only 25 years - at this historic beach will have a permanent, direct adverse and material effect on the common interest of the affected group. From the economic social point of view, Treport Beach is widely used as a natural recreational park for locals as well as tourists. The nearby waters in Vlora Bay are extensively used for fishing. Coral colonies are also present in the Vlora Bay. Narta Lagoon, only 746 meters distant from the project location, is already a protected area under Albanian law. It is also an area with endangered species and a sanctuary of migratory birds.

The Affected Group supports the conversion of the entire Treport Beach/Kavallona area into a Historical Natural Park³⁴. In addition, the area that lies approximately two miles south is intended to become a European Center for the Remembrance of the Victims of Genocide and Ethnic Cleansing in Europe (see relevant Council of Europe Resolution)³⁵.

4. What the affected group has done so far to resolve the problem:

The group has made several efforts to resolve the problem individually and/or through the good faith efforts of the Civic Alliance for the Protection of the Vlora Bay. It has addressed both the EBRD and other relevant parties:

- It has complained to the EBRD with letters and emails asking for an internal inquiry or investigation, because we believed EBRD personnel who handled the loan agreement and relevant project paperwork was in breach of compliance with Albanian law and EBRD due diligence standards;

³⁴ The relevant project-proposal has been presented to the government. Based on the U.S. – Albania Agreement on the Preservation of Cultural Heritage, a similar proposal to protect and preserve Treport Beach as the historical beach marking the landing of Sephardic Jews in 1492 has been presented to the U.S. Government by the Albania-Jewish Committee of New York.

³⁵ In the 1960s the then-Communist government of Albania built a chemical plant at this area with absolutely no regard for the natural environment, public health and cultural heritage. The site is currently under de-contamination procedures.

- It has worked through the domestic democratic process in numerous forms:
 - i. Made the protection of Treport Beach a campaign issue during 2005 general political elections as well as in the 2007 local elections. It secured promises and assurances by one political party to hold a local referendum on the issue, a promise later broken. Based on a platform to remove the power plant from the endangered Treport Beach, two local deputies of that party were elected in the National Assembly, thus ensuring the victory and governing majority for that party.
 - ii. Collected more than 14,000 signatures for holding a local referendum to decide about the power plant. Unfortunately, the local referendum procedures were defeated on bogus claims by the Central Electoral Commission (CEC). The voting result within CEC that “defeated” our procedural steps for a local referendum was three votes for versus three votes against..., which in fact, was not a “no” vote. We believe that CEC refusal was based on political pressure.
 - iii. Appealed CEC’s decision before the country’s Constitutional Court. This Court refused to hear the case citing lack of jurisdiction. We believe its refusal was based on political pressure as well. The Group is mulling the possibility to appeal the matter before the European Court of Human Rights in Strasbourg.
 - iv. Supporters or members of the Alliance have corresponded with the World Bank and with the European Investment Bank, raising issues of violation of Albanian law and EU law, allegations of fraud, misconduct and conflicts of interests³⁶.

³⁶

The Thermo Power Plant was planned to be built at the wrong site. Harza consultants that chose the site and produced the EIA have misrepresented the true character of the site by stating that:

“The selected site is a six hectare green field site adjacent to the offshore oil tanker terminal located on the Adriatic coast north of the Port of Vlorë. The site is situated on a relatively barren coastal area with little vegetation or wildlife.”

Treport Beach is not:

- *a green field* but it is a unique, fine-sand, flat. Mediterranean beach;
- *adjacent to the offshore oil tanker terminal*, but it is in close proximity to a fishing harbor;
- *a barren coastal area with little vegetation of wildlife*, but a natural coastal beach, formed after thousands of years of geological activity, with significant presence of vegetation and forest as well as endangered floral and fauna species.
- *Two kilometers South of Narta Lagoon*, but less than 700 meters from the Lagoon’s Southwestern bank.

- v. Supporters and members of the Alliance have had long correspondence with high-level officials of the World Bank, raising serious issues of non-compliance with Albanian law. The World Bank has thus far declined to change its position.
- vi. Considering that the Albanian Utility Corporation (KESH) and the World Bank have ignored our concerns and have signed a construction contract on February 9, 2007, and given the urgency of the matter the Alliance filed a complaint before the Ombudsman and is considering legal action at a local court.
- vii. We believe that at this stage further discussion with EBRD will not be fruitful. The loan has been approved, the contract was signed, the government backed away from its promise to seek the opinion of the people, and the contractor is ready to break ground. All this might raise tensions significantly with the local population. Therefore we submit to you as a last resort within the EBRD.

5. Facts and evidence:

1. Your Project description at:
<http://www.ebrd.co.uk/projects/psd/psd2004/33833.htm>
2. Google map describing the exact distances of the site with the affected area of Narta Lagoon, the Kavalona Medieval site, and the city of Vlora;
3. Map of the projected power plant site and of the industrial park site. Map of the protected area, the current one and the first one, which would include the protected area as well.
4. UNEPS-funded study of the University of Marche in Italy on the cultural historic tourism potential of the area, with recommendations to preserve and protect the area, and not to allow industrial or other developments;
www.univpm.it:7778/pagine/Upload/Economia/Novelli/Piano%20Valona.doc³⁷
5. Pictures and photos of the area;
6. Video of the area;
7. Ancient maps of the area
8. Project-Proposal of the Albanian-Jewish Committee of New York.
9. Relevant excerpts from the EIA.
10. Rebuttal to the EIA, by a group of local experts and scientists, and presented to the World Bank's.
11. Statement of the legal advisor to the Alliance before the Aarhus Compliance Committee XIV Meeting, Geneva, 15 December.
12. Statement of the Prime Minister before the Parliament, in September 2005.

PART B: Other information to support your complaint: (Par. 9 of Rules of Procedure)

Why do you think the Bank has not followed the Environmental Policy and/or Public Information Policy on the project:

Name and description of the specific Bank operation, if known, or if different from the project name above.

³⁷ Also at <http://www.univpm.it/pagine/Upload/Economia/Novelli/imp.%20Turismo.pdf> - page 127

Same as above. Operation Contact: Georgios Giaouris: As an interim measure during the handling of this complaint we seek from the relevant IRM official that Mr. Giaouris recuses himself from all relevant decision-making and follow-up procedures.

Why you think the Bank has not followed its policies in the course of preparing, processing or implementing the project:

1. We believe that the Project violates EBRD's environmental policies and sustainable development because while attempting to fulfill current needs, it seriously compromises those of the future (tourism, fishing, natural habitat, ecosystems, cultural heritage and property, all within the broader meaning of "environment" adopted by the Bank);

2. We believe that the Project was flawed in its inception, and that misrepresentation played a major role in presenting a "rosy" Environmental Impact Assessment (EIA). Contrary to the requirements for such Category A Project, EIA's authors avoided several factors (such as tourism (its beach location), safe fisheries, coral colonies, cultural property, proximity with the Narta Lagoon, which per se would simply represent "fatal" flaws to the Project. Obviously, any "mitigating" measures proposed would be completely insufficient and irrelevant. In this regard, we would call the attention of Section II.4 of EBRD's Environmental Policy (hereinafter Policy) whereby:

The EBRD also clearly establishes the principle that a proposed project can be rejected on environmental grounds, when there are major environmental problems, or when a proposed project fails to address environmental issues in a satisfactory way.

3. We consider that the Project violates Section II.6 of the Policy (precautionary approach in natural biodiversity resources).

4. We believe that the Project violates Section II.11 and 26 of the Policy (more specifically Public Information Policy). The right of the local people to public participation in projects of this magnitude and impact has been severely violated. The site selection process – decided in June 2001 - was a secretive procedure. There was absolutely no public participation at this stage. We argue that there was no access to information at this stage for the people concerned. The EIA and its results were not presented to the public in a meaningful way. EIA authors and KESH claim that there was also a public consultation meeting (the first one) in November 2001 in Vlora, but they have not produced any evidence of such meeting because such meeting simply did not take place. The remaining two meetings were a mere rubber stamp of a decision already taken. Therefore, there was no meaningful public participation at an early stage for the project. We believe Annex II Procedures have not been properly followed.

The Alliance submitted a complaint to the Aarhus Convention Compliance Committee [ACCC] at UNECE in Geneva. Based on the Aarhus Convention, the Alliance argued that it was prevented from public participation at an early stage, in violation of Articles 5 and 6 of the Aarhus Convention. It is EBRD's firm policy to "support the spirit, purpose and ultimate goals of the Aarhus Convention." On 15th December 2006 ACCC considered our complaint as formally "admitted". Their Draft Findings and Recommendations were delivered on March 29, 2007. A copy of them was sent to Mr. Anthony Marsh, Director of Power and Energy Utilities with EBRD. **With respect to the proposed thermo power plant, which is funded by the EBRD, the ACCC found violations of Article 6, paragraph 3, 4 and 8 of the Aarhus Convention.**

5. We therefore believe that the Project violates Section II. 21, because it contravenes Albania's obligations under the Aarhus Convention as well as IFC OPN 11.03 on cultural property, which is also followed by the EBRD.

- (i) We suspect that private economic interests outside of the EBRD may have played a negative and decisive role for pushing this project. We note that EBRD intended initially to finance environmental friendly energy projects in Albania. We note that the opinion of Albanian experts expressed to the World Bank as of December 12, 2001 was to seek funding only for the rehabilitation of the existing Fier Power Plant³⁸.
- (ii) We believe that the EBRD has been under strong pressure by the World Bank to become a co-lender in this project³⁹.

2. How you would like the problem to be solved:

- a. *Compliance review:* to fully review as to how and why EBRD environmental policy failed to detect that the proposed construction site contained fatal flaws and how it was allowed to be presented before the Board while being in violation of Albanian law, International Law and EBRD's own internal guidelines⁴⁰.
- b. *Problem solving:* in addition to EBRD's own internal procedures, we would like to see (and seek) that the Bank engages an independent group of experts to review and assess the cultural, historical aspect of the Project site (something which was completely ignored by the EIA authors). We would like to see in such group the following experts if possible:
 - i. Prof. Pëllumb Xhufi; University of Tirana;
 - ii. Prof. Neritan Ceka; University of Tirana;
 - iii. Prof. Alain Ducellier; University of Toulouse
 - iv. Prof. Giuseppe Roma, University of Calabria.
 - v. Dr. Anna Kohen, Albanian-Jewish Committee of New York;
 - vi. Dr. Vasil Bereti; Albanian historian based in Athens.
 - vii. Dr. Novruz Bajrami, historian based in Vlora.
 - viii. Agron Alibali, legal expert based at the University of Massachusetts in Boston.

Moreover, we would like to see that the Bank engages as soon as possible a new, independent team of experts in order to review and produce an alternative Environmental Impact Assessment or otherwise **cancel the loan** (see below).

³⁸ <http://www.eec.org.al/newsletter%2019.pdf>

³⁹ It was made known to a representative of the Vlora Alliance at a UNECE meeting in Geneva, Switzerland in December 2006, that EBRD personnel had discussed with the U.N. agency in Geneva non-public information related to the cultural significance of the power plant site, which was contained in letters exchanged between Dr. Anna Kohen of the Albanian-Jewish Committee of New York and high-level officials of the World Bank. Apparently such information had filtered from the World Bank offices in Washington, D.C. to the EBRD's London office.

⁴⁰ Compliance review may also address the issue as to why public participation procedures were implemented at such late stage of the project, especially after the site selection and the EIA were already completed.

- c. Moreover, the Bank should conduct a Compliance Review to determine why Bank policies, guidelines and procedures were violated throughout the stages of this project.

Please say what you would like to see as an outcome to the problem:

We would like to see a positive implementation of Rule 10 of the Rules of the Procedures. More specifically we would like to see an interim recommendation to stop commencement of the project and/or suspend further work or disbursement. [Part 3, 10, of the Rules of Procedure]. We believe that Power Plant relocation at Fier is the best and only alternative at this stage. Otherwise we believe that the Bank has the right to suspend and/or cancel the loan as a final measure and we hope that the Bank will undertake such step if necessary.

3. Previous Complaints: Please refer to Part A. 4.

4. Preferred language for receiving communications from the IRM.

English.

5. Confidentiality for group members: N/A

Declaration and signatures

I am/we are making this complaint as the authorized representatives of the affected group.

If there are two authorized representatives:

Please tell us how the group has authorized you to act for them:

Must act together ____ May act individually ____ X

First authorized representative
Your signature

Second authorized representative
Your signature

Your name
Lavdosh Ferunaj

Your name
Not Applicable

Rr. Sami Frasheri P20/10 Tirane

Address for correspondence

Tel: +355 4 250575/0692099047

Daytime telephone number

Fax number: +355 4 250575

Fax number

E-mail: lferruni@icc-al.org

E-mail

**PROJECT SPONSOR'S RESPONSE TO THE NOTICE OF REGISTRATION OF
THE COMPLAINT 30 APRIL 2007**



No: _____ Prot.

Tirana, on 30.04.2007

Mr. Enery Quinones
Chief Compliance Officer
European Bank for Reconstruction and Development

Answer to your letter of 19 April 2007

Dear Mr. Quinones,

I would like to thank you for letting us know about the Complaint of a group of Albanian Citizens on the construction of the Thermo Power Plant (TPP) of Vlore, and giving us the chance to comment on it. On behalf of the entire corporation, I would like to ensure you about the sensitivity of KESH sh.a., on any issue that does concern any citizen. We carefully consider each one of our projects, to avoid affecting any group in any way.

In fact, several times, almost the same citizens recognised in the letter addressed to you as "the affected group", have written letters to World Bank and EIB, and now to EBRD. In respect to the opinion you will express on the complaint, I have to underline that right answers have been given also to them from both the abovementioned institutions, as well as that the facts remain the same.

I will, hereby, present a brief history of the process of the decision-making for the TPP of Vlore.

After receiving a grant from the United States Trade and Development Agency (USTDA), the Albanian Ministry of Industry and Energy retained Montgomery Watson Harza (MWH) to assist the Albanian Government in the development of a new thermal power generation facility. MWH is an experienced consultancy company with representation in 36 countries. The conclusions of the study of MWH have been confirmed by a consortium of very well known Europeans companies. According to the

Korporata Elektroenergjitike Shqiptare sh.a.

Tel. +355 4 259729, Fax. +355 4 232046 Address: Blloku "Vasil Shanto", P.O. Box 259/1 Tiranë, E-Mail: mail@kesh.com.al

EIA (Environmental Impact Assessment) document, the EIA for the proposed Vlorë facility was prepared in accordance with the requirements of all three financing institutions (WB, BEI, and EBRD) as well as the relevant European Union standards.

Since there have been no reliable existing air quality data for the Vlorë area, following the EIA recommendations, KESH have installed over 1 year before, a modern station for collecting meteorological and environmental data near the site of the TPP.

Also, an allegation about the lack of public participation in the decision-making process has already been transmitted to the Aarhus Convention Compliance Committee (ACCC) by the same group of citizens. Anyway, their complaint to the Aarhus Convention Compliance Committee (ACCC) is on a much larger scale than only the TPP, referring to a possible larger Energetic-Industrial Park (EIP). It has to be clarified that some facts may show that the previous Albanian Government may have under evaluated somehow a good public discussion process before the decision making to project this Energetic-Industrial Park (EIP) in the Vlorë area, on 19 February 2003. But, the new Albanian Government have already cancelled last year the previous decision for the location of the EIP in Vlorë.

As far as TPP is concerned, the process of EIA (Environmental Impact Assessment) and the public participation have been completed in accordance with the requirement of domestic legislation and the Aarhus Convention rules. This is also the opinion expressed by our international and financial partners. All projects financed by WB, EIB, or EBRD, have to follow all the appraisal procedures before a loan can be signed.

As regards the environmental procedures set up by the Ministry of Environment of Republic of Albania, they have been successfully implemented and as a result, the environmental permission for the TPP has been given by this institution.

Anyway, in full respect to the citizens and their opinions, we reserve the right to make some comments on some problems addressed on the complaint letter of the called "affected group". Please see the Annex for further details.

Please, Sir, accept the assurances of my consideration.

Sincerely,

Gjergji Bojaxhi

Korporata Elektroenergjitike Shqiptare sh.a.

Tel. +355 4 259729, Fax. +355 4 232046 Address: Blloku "Vasil Shanto", P.O. Box 259/1 Tiranë, E-Mail: mail@kesh.com.al

ANNEX

In full respect to the opinion of the citizens, we studied very attentively their complaint. Our Environmental Unit at the KESH Corporation have verified same facts in the Vlora area and worked with the environmental experts of the Ministry of Environment and of the University of Tirana (Faculty of Biology). We have redacted these comments:

As regard to the common “interest of the group”, we notice that:

- The construction of the Thermo Power Plant (TPP) which be build in Vlora, will not at all affect the touristic potentialities of the area of Vlora Bay. Unfortunately, al least one of the citizens of the “affected group” has abused with the natural and environmental resources of the area having build an abusive restaurant (without documentation and permissions) right in the belt of sand (in the beach), around 1,5 km North of the site of the building of the TPP.
- The study of the Environment Impact Assessment (EIA) does strongly confirm that the TPP will not have any impact in the fishery sector in the Vlora area. As about the area near the TPP site, the local experts of the Regional Agency for the Environment of Vlora do confirm that this area (called the area of Triporti, where the TPP will be built) is not a fishing area. Docks of anchoring for the fishing ships are there, but the fishing activity is applied not near the site but at a distance around 10 km from the coast, where no effect does occur. Also, the local amatory fishermen do exercise their hobby in the lagoon of Narta and far from the site, because of the presence of some petroleum plants in the beach. The area is a site where the transportation of the oil is exercised through a single mooring point built around 30 years before by the state company ARMO. So, beside to the northern boundary of the site of the TPP, this entire infrastructure is situated (see pictures).



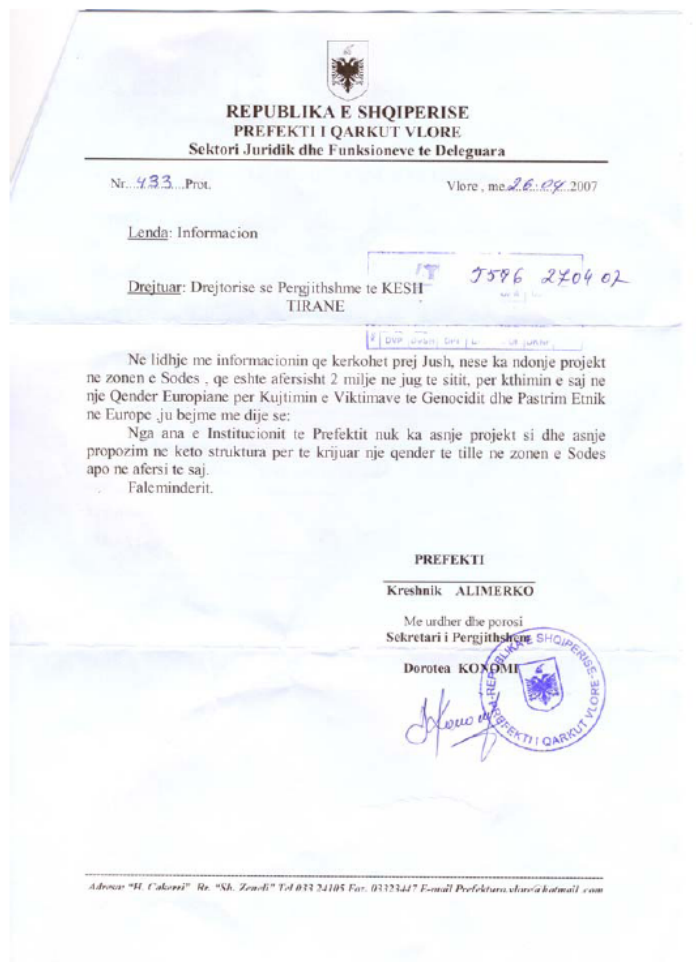
The oil transport infrastructure in the aground area.



The single mooring point in the off-shore area in front of the TPP site.

- As regard to the citizens included in the ‘affected group’ we have to underline that no one of them has been involved in the public discussions organized by the company who made the EIA study for the TPP of Vlora, even many public notifications have been published for several days. We notice that no one of the members of the “affected group” does have direct relation to the decision of the TPP construction. For example, the complainant Mr. Muhamet Lazaj, is the owner of a small restaurant located 2 km away from the TPP site construction. The restaurant is built some years ago right in the sand area of the beach, so in an eco-system where is prohibited to build, and consequently his “property” this structure is without permission by the respective authorities of the local government of the territory. So, we point out that the interests of the abovementioned complainant are in some way not fair.
- We judge that the language used by the complainants is, unfortunately, in some cases emotional and scientifically not correct. So the term “...de facto protected area ...” (page 2, point 3) doesn’t make sense for us, and nor the environmental experts of the Ministry of Environment, Forestry and of Management of the Waters. There is only one Protected Area and this is the Narta Lagoon. The Environmental Impact Assessment has fully taken into consideration all the topics about this area. The TPP construction area is enough distant from the Narta Lagoon area that it doesn’t have any impact on it. The Narta Lagoon has been the focus of recent biodiversity studies conducted by the UNDP and the Global Environmental Facility (GEF). Representatives of the NGO-s involved in this MedWestCoast project have attended the meetings of public information during the EIA discussion process and there hasn’t been any negative comment from the UNDP or GEF authorities on the EIA and the project itself of building a TPP in the area.

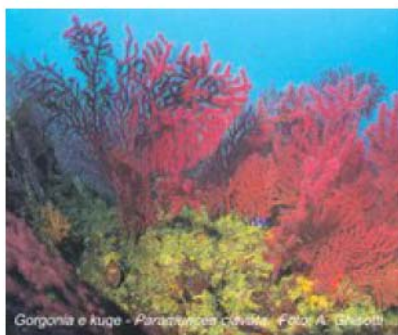
- Regarding the pretension that 2 miles in the south of the TPP will be constructed the European Center in Memory of the Victims of the Genocide and Ethnic Cleansing in Europe, the vice-chairman of the Vlora City Hall, Mr. Bashkim Dervishi and the officer of the City Planning Office of Vlora District verbally have confirmed that neither in the City Hall nor in the District there does not exist any document to prove the plans for the construction of such center. Also there is not any request or argumentation by any group or association on this purpose. This confirmation is verified by the letter no.433 prot. date 26.04.2007 (here attached) of the Prefecture of the Vlora District that is the responsible authority of territory management. So based on the above, the claim of the "affected group" is an abuse.



- In the EIA study of the Vlora TPP is evidenced that there would not be any impact on the aquatic fauna and flora in nearness of the site or in the entire Vlora Bay. KESH does not have any reason to consider not correct such a conclusion issued by a prestigious studio as HARZA,

which has closely collaborated with the local experts and representatives of the projects implemented in the area.

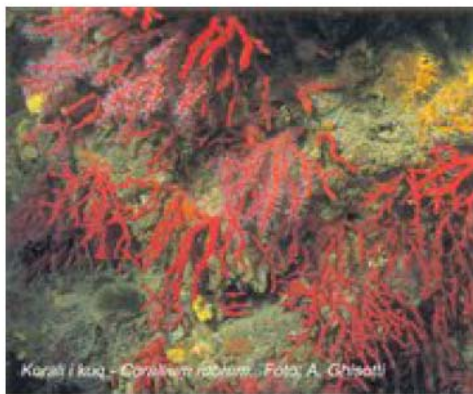
- Amateur information underline that there are coral colonies in Vlora Bay , but the scientific authorities of the Universities of Albania underline that there is no scientific bibliography to refer to, and which may show that coral do exist in that area. There is only a partial study made in 2005 over the inventory of the “posidonia meadows” (sea-grass). Meanwhile, there are only amateur opinions over the existence of the red Coral at the Vlora Bay at the rocky area of the coast (far from the sandy area where the TPP is supposed to be build). This gives us reason to believe that only amateur information are at the base of what the claimant claims for true. Information like this have to be analyzed carefully, because in such circumstances, as the scientists underline, it is very easy for amateur people to mix what are the real Chorals with some closely-like corals looking such as Gorgonians or Bryozoans which are definitely not Corals, though they look so much like corals.(see pictures; Mojetta, A.Ghisotti, A 2000, Flora e fauna del Mediterraneo. Ed. Mondadori, Milano: 45,13)



Gorgonians

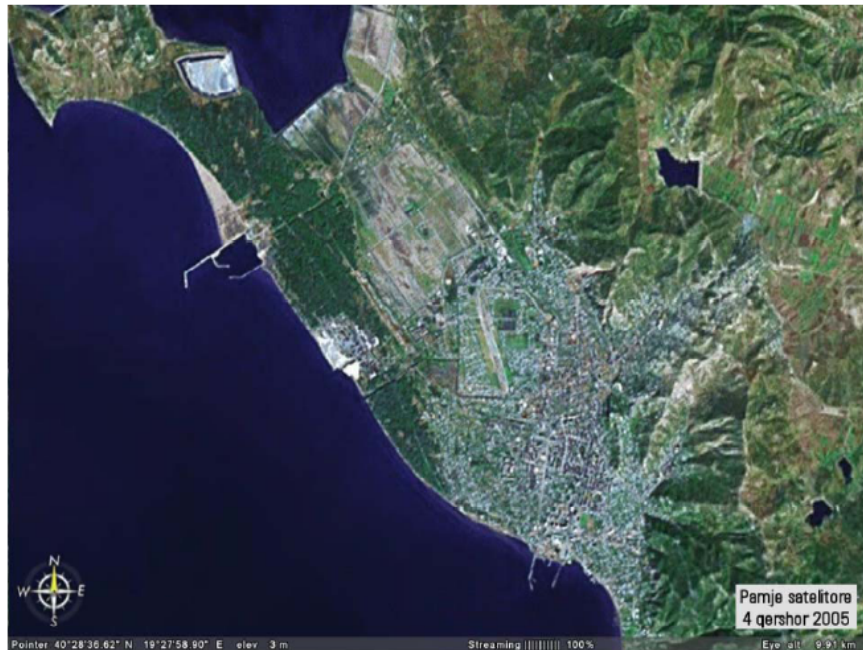


Bryozoans



The Red Coral

- Regarding the claim that the TPP is being build on a historical beach, we have to shed the light upon the fact that the site where TPP is going to be build, from the geological point of view is simply an “anthropic beach”, so it is a beach created during the last 25 years from the lodgment of the particulate marine sediments accumulation that has followed the building of a port (the actual port of the fishing ships) at this coast (see pictures).

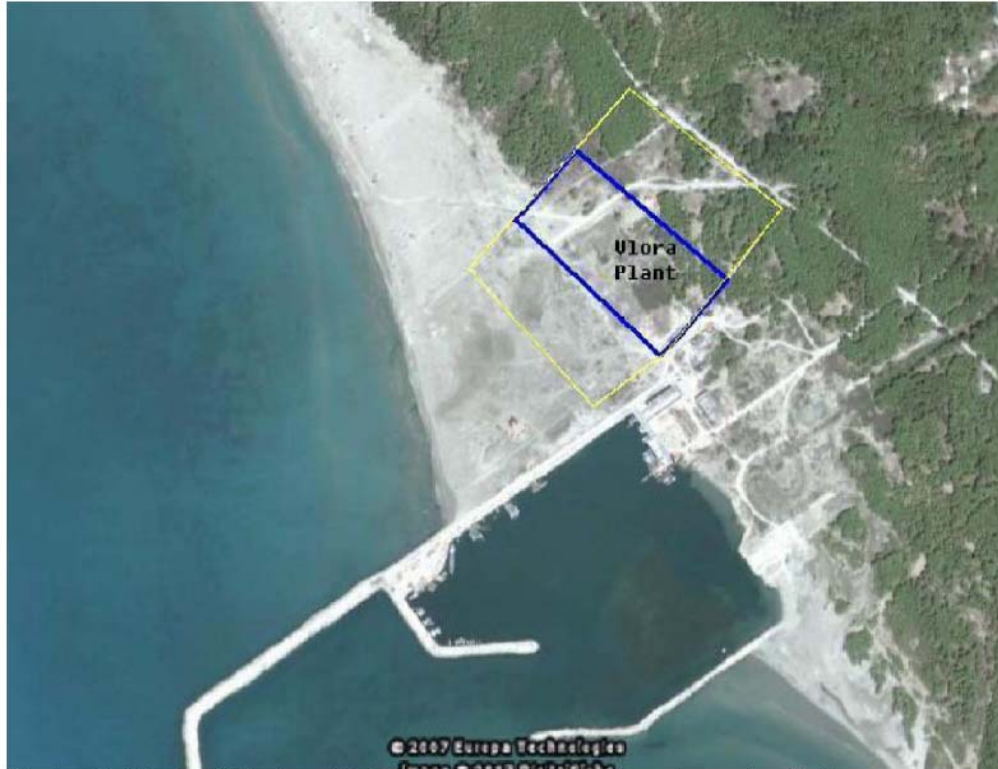


A satellite photo where the area of the anthropical beach is very well seen



The anthropic beach area and the docks where the fishing ships are anchored

- Even though the beach is not historical one but totally anthropic, in order to respect the sea coast as an important ecosystem, the construction area zone of the TPP has been shifted to a certain distance from the sea coast in order to not affect any metre square of the beach itself.



The site of building the TPP has been shifted from the area signed by yellow to the area signed by blue.

- Regarding the claims that the Triport Beach is the landing site of the Sephardic Jews when in the 1492 they escaped from the Inquisition in Western Europe, since there isn't any confirmed scientific source about it, it remains a hypothesis. In the matter we consider reliable the official opinion expressed by the Institute of Cultural Monuments, the only scientific institution in Albania that has the constitutional duty to take care over the natural and cultural heritage of Albania. This Institution has expressed its opinion that there are insufficient and unreliable information regarding the above assumption.

ADDITIONAL BACKGROUND INFORMATION

Albania: Vlore Thermal Power Generation Project

1. The Project passed Concept Review on 13 June 2003.

As at that date:

- The site selection study regarding the construction of the Plant in Vlore was completed and public consultation in Vlore to introduce the Project was started (October 2002);
- The Council of Territorial Adjustment of the Republic of Albania confirmed the site through Decision No. 20 (19 February 2003);
- The EIA and the attendant public consultation under the auspices of the World Bank was underway (April 2003).

2. The Project passed final review on 23 April 2004.

As at that date:

- The EIA document prepared under the auspices of the World Bank was finalised and published (6 October 2003);
- The EBRD had completed its due diligence of the EIA prepared under the auspices of the World Bank, had an Addendum to that EIA prepared, and had made both EIA and Addendum available for public consultation (9 February – 7 June 2004).

3. Project was Board approved on 8 June 2004.

As at that date:

- World Bank had signed its loan agreement for the Project with Albania

(EIB obtained its Board Approval to the Project in July 2004.)

Complaints by the Affected Group and/ or Civil Alliance

- No comments were received by the World Bank or EBRD from any member of the Affected Group during the public consultation periods held in 2003 and 2004;

- The Civic Alliance was formed some time in 2005. Following its creation, letters of concern were addressed to both the World Bank and the EIB regarding the Project. (These letters were brought to the attention of EBRD staff in the summer of 2007.);
- In April 2005, the Civic Alliance submitted a complaint to the Compliance Committee of the Aarhus Convention alleging insufficient public access to information and participation in the decision making on the construction of the plant in Vlore by the Government. (The EBRD and the World Bank were first informed of this complaint by the UNECE Compliance Committee in July 2006.);
- In October 2006, the Civic Alliance communicated its concerns regarding the Project to the EIB and in accordance with its internal review procedures, the Secretary General of the EIB replied to the NGO, by letter dated 27 November 2006, advising that the Project had followed all internal procedures of the EIB and that the EIB had no evidence of any wrong doing. No further complaint has been filed by the Civic Alliance with the EIB;
- On April 30th, 2007 the Inspection Panel of the World Bank received a Request for Inspection from the Civic Alliance related to the Project. The Complaint was registered by the Panel on 2 May 2007. On 2 July 2007, the Inspection Panel issued its eligibility report which concludes that the complaint filed by the Alliance is eligible and warranting further investigation;
- On 31 July 2007, the Aarhus Convention Compliance Committee confirmed its draft finding issued 23 March 2007 that the Council of Territorial Adjustment of the Republic of Albania failed to fully comply with the requirements of article 6 of the Aarhus Convention (requirements for public participation) with respect to the siting of the Project;
- On 11 April 2007, the Bank's Resident Office in Tirana received a complaint from the Affected Group under the IRM. The complaint was received by the CCO on 19 April 2007 and, on the same date; the CCO registered the complaint and appointed an independent expert to assist with the eligibility assessment;
- On 27 September 2007 the Eligibility Assessment Report is circulated to members of the Board for approval of the recommendations contained in the Report.