The Independent Recourse Mechanism
of the European Bank for Reconstruction and Development

REPORT OF THE CHIEF COMPLIANCE OFFICER

July 2004 - October 2005
Introduction

1. This report is prepared in accordance with my responsibilities under Rule of Procedure ("RP") 67 of the Independent Recourse Mechanism ("IRM"). The IRM commenced functioning on 1 July 2004 and this report covers the activities of the mechanism over its first twelve months, together with the first quarter of the second reporting period. This report therefore covers the activities of the IRM over the sixteen months from July 2004 to October 2005 ("the Reporting Period"). The Reporting Period has been extended exceptionally by four months due to the relative inactivity of the IRM during its first year of operation.

Mechanism

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

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

Complaints

4. Over the Reporting Period, the IRM received seven complaints; five of which were held for varying reasons to be ‘manifestly ineligible’ for registration under IRM, RP 16. The two remaining complaints complied with IRM, RP 8 and were duly registered for further processing in accordance with IRM, RP 17. My decisions in respect of the eligibility of the seven complaints for registration were all taken within the prescribed five business days of the receipt of the complaints. Furthermore, in handling the complaints, I have, when required, selected from the current roster and supported by the appropriate IRM experts, maintained a documentary record, issued the requisite notices and arranged for the translation of documents, as I am required to do by IRM, RP 50 (a), (d), (e), (i) and (j).
Rejected for Registration

5. It would be inappropriate in a report such as this to disclose the details of the five complaints that were held by me to be manifestly ineligible for registration under the IRM. However, it is appropriate in my view to indicate why I decided to reject their eligibility for processing: two of the five rejected complaints were excluded because they related to procurement matters (IRM, RP 19(c)); these complaints were redirected by me to the Director of the Bank’s Procurement and Purchasing Department for his review; one of the complaints was declined due to the fact that the Bank was not involved in financing the project that had allegedly caused the damage complained of (IRM, RP 8(f)); another complaint was rejected because it related to the alleged contravention of a Bank policy that fell outside of the jurisdiction of the mechanism (IRM, RP 19(f)) and the final complaint was eliminated because inter alia the complainant was a trade union and therefore not an Affected Group within the definition given to that expression by IRM, RP 1(a).

Accepted for Registration

Sakhalin 2 Complaint

6. On 26 July 2005, the IRM received a complaint that relates to elements of the Sakhalin 2 Phase 2 project, which involves the construction of a major Liquefied Natural Gas (LNG) plant, associated gas and oil loading terminals, and construction materials off-loading facilities near Prigorodnoye in the Korsakov District of the Sakhalin Region of the Russian Federation. The complaint was filed, with the assistance of Mr. Alexey Tyndik and Mr. Dmitriy Lisitsyn (“the Authorised Representatives”), by a number of local individuals and local enterprises involved in fishing and fish processing (the “Affected Group”). The Affected Group claim that construction vessel traffic to and from the LNG plant and dredging and other works involved in the construction of the loading and off-loading terminals are restricting safe access of fishermen to their nets, causing damage to nets, and adversely affecting the quality and quantity of fish caught in Aniva Bay.

7. On 28 July 2005, I determined that the Sakhalin 2 complaint was both in form and substance sufficient to warrant registration and therefore proceeded to enter the complaint in the IRM’s Register of Complaints. Owen McIntyre, one of the three standing IRM Experts, was designated as an Eligibility Assessment Expert and Mr. McIntyre and I, acting jointly as Eligibility Assessors, proceeded to determine whether, in our view, the registered complaint was eligible for further processing to either a Compliance Review or a Problem-solving Initiative or both.

8. The Eligibility Assessment Report, which Mr. McIntyre and I submitted to President Lemierre on 6 September 2005 in accordance with IRM, RP 30(a), recommended that (1) the Sakhalin 2 complaint be held eligible by the President for further processing towards a Problem-solving Initiative, but that, in the absence of any discernible evidence that the Bank had contravened its environmental or public information policies, the complaint did not warrant a Compliance Review; (2) implementation of the recommendation be suspended for the time-being under IRM, RP 14 pending the outcome of the Bank’s forthcoming decision on whether to declare
the Sakhalin 2 project ‘fit for purpose’. President Lemierre, acting under IRM, RP 31(a) approved the recommendation of the Eligibility Assessors on 20 September 2005.

BTC Pipeline

9. On 16 August 2005, the IRM received its second registrable complaint, this time from a group of residents (“the Affected Group”) of Gyrakh Kesemenli village in the Akstafa district of Azerbaijan. The Affected Group, who are represented by Ms. Mirvari Gakhramanly, a local human rights defender, allege that their property has sustained vibration damage caused by the passing of trucks involved in the construction of the Baku-Tbilisi-Ceyhan (“BTC”) pipeline. The complaint, which I held to be in compliance with IRM, RP 8, was duly entered into the IRM’s Register of Complaints on 22 August 2005. Graham Cleverly, who, like Owen McIntyre, is one of the three standing IRM Experts, accepted the task of acting as an Eligibility Assessment Expert. Following our deliberations on the eligibility for processing of the BTC pipeline complaint, Mr. Cleverly and I, acting in our capacity as Eligibility Assessors, submitted in accordance with IRM, RP 30(b) our Eligibility Assessment Report to President Lemierre for onward transmittal to the Bank’s Board of Directors on 4 October 2005; as the Board has approved the BTC pipeline project, it is for the Board to decide whether to approve, reject or remit the Eligibility Assessment Experts’ recommendation in respect of the eligibility of the complaint for processing beyond registration.

Register of Complaints

10. During the currency of the Reporting Period, I took steps to ensure that a register of Complaints was established on the IRM’s web-pages in accordance with IRM, RP 50(c). The register, which contains a contemporaneous log of events, together with relevant documentation, such as the Eligibility Assessment Report for the Sakhalin 2 complaint, can be accessed via the following URL: www.ebrd.com/about/irm/register/index.htm.

Publications and Translations

11. As part of my responsibility to publicise the existence and workings of the IRM, and ever mindful of the intent expressed in IRM, RP 70, I have taken steps over the Reporting Period to ensure that Guidelines to the mechanism have been published and distributed to all of the Bank’s resident offices. The Guidelines and, more significantly, the RPs have been translated from English into Russian and the Russian version of the texts has also been distributed. Work has continued over the Reporting Period 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, improvement and maintenance of the IRM’s web-pages on the Bank’s web-site. The pages contain a summary description of the IRM and provide the user with ready access to the English and Russian versions of the RPs and the guidelines. The IRM’s homepage on the Bank’s web-site can be accessed via the following URL: www.ebrd.com/about/irm/index.htm. It is also noteworthy in the context of publicising and explaining the functioning of the IRM, that, under my
delegated authority, an officer from the Office of the Chief Compliance Officer took part in the Non-Governmental Organisations Forum, which was convened in Belgrade on 22 May 2005 as part of the Bank’s 2005 Annual General Meeting.

Liaison with Other Mechanisms

12. With a view to fulfilling my obligations under IRM, RP 15, I have over the Reporting Period established professional relationships with the inspection mechanisms operated by *inter alia* the International Finance Corporation (“IFC”), the Multilateral Investment Guarantee Agency (“MIGA”) and the Asian Development Bank (ADB”). I have met in Washington DC with Ms. Meg Taylor, the Compliance Advisor/Ombudsman for IFC and MIGA and the Office of the Chief Compliance Officer has hosted visits from officers representing the inspection panels of both the IFC and the ADB. Furthermore, in conjunction with the other international financial institutions, I assigned during the Reporting Period an officer from the OCCO to attend a three day accountability mechanisms seminar in Bangkok, Thailand.

Training of Experts

13. IRM, RP 57 requires that the present three IRM Experts receive at least five days training per calendar year. In view of the mechanism’s inactivity over the first twelve months of its existence, I took the decision to postpone additional training of the experts until the mechanism was tested by its first registrable complaint. However, I am in a position to report that, during the Reporting Period, all three experts attended at the Bank in order to meet with me and that all three experts have, for the sole purpose of enhancing their own knowledge of the procedures, liaised in respect of the Sakhalin 2 and the BTC Pipeline complaints. The IRM training session will take place in the first quarter 2006.

Budget

14. IRM, RP 68 provides that the Chief Compliance Officer shall prepare an annual budget indicating the level of resources required to carry out its mandate. In discussions with management on the 2006 budget for the Office of the Chief Compliance Officer, it has been proposed to maintain the level of IRM financing at the same level as for 2005. As for 2005, expenses over and above the amount budgeted for the IRM will be met by drawing down from the management reserve fund. In 2006, expenses incurred as a result of a problem solving initiative pursuant to the recommendations in the Eligibility Assessment Reports for Sakhalin 2 and BTC which cannot be met by the IRM budget, will be covered by the management reserve fund.
Amendment of the Rules

15. During the processing of the complaints in respect of Sakhalin 2 and the BTC pipeline, I have encountered several difficulties in implementing certain RPs that require review and possible amendment. While IRM, RP 69 envisages the amendment of the rules by the Board, it might be prudent to await the review of the mechanism, which, according to the Board approved Background Paper on the Establishment of the Mechanism, is due to take place following the second anniversary of the operation of the IRM on 1 July 2006.

Date: 1 November 2005

Signature: Enery Quinones
Chief Compliance Officer