

Annex II: EBRD's Independent Recourse Mechanism - Practical recommendations

We want to provide practical advice for affected communities or individuals, NGOs and other stakeholders on whether and how to use the redress mechanism at the EBRD. As there are very detailed guidelines on the Independent Recourse Mechanism (IRM) prepared by the EBRD (www.ebrd.com/about/policies/irm/irm.pdf), we concentrate on strategic decisions that you need to take in the process of submitting a complaint and some practical tips that have come from several complaints that have already been submitted to the IRM since 2004.

EXPECTATIONS

Before submitting any complaint you should make sure that you fully understand the limits of the IRM – some of them are outlined below:

- There are structural problems built into the IRM rules (e.g. there are restrictions for NGOs to use the mechanism, there is a need to prove "material harm" of the project, the independence of the IRM is limited, and there is a constraint regarding EBRD policies that are covered by the mechanism). If you want your complaint to be registered and processed further, you should read the procedures before submitting the complaint.
- The EBRD's leverage over project sponsors is constrained, particularly after a loan is disbursed. The EBRD has obviously the biggest leverage when the project is in a pre-approval stage.
- Out of the eleven complaints that have been submitted to the IRM so far, four complaints have been registered, two finalised and only one has brought the solution that the complainants sought.
- The process is rather lengthy - the first complaint on the BTC pipeline from Azerbaijan took nine months without a positive result for the complainants.

- During the process there is fairly limited communication from the IRM staff with complainants - you need to be patient. You should also know that most of the information you will receive will be of a procedural nature.

All of these factors have stimulated a growing level of scepticism among NGOs who deal with the EBRD on the use of IRM – its procedures need to be substantially changed. Therefore, we recommend that before spending time on filing a complaint to the IRM, you think about other remedies that that might bring the expected results. However, on a positive note, the IRM is due to be reviewed and we hope that changes will remove some of the hurdles that are built into the IRM rules.

GOALS, DECISIONS, ETC.

If you decide to file a complaint, it is important to be clear what you want to achieve by submitting a complaint to the IRM.

- **What are your goals for using the IRM?** What do you want to gain in the end of the process? What remedial measures need to be undertaken to bring the project into compliance with the EBRD policies?
- **How can the IRM report be utilised in the campaign or by an affected community?** What outcome would you like to see reflected in the IRM report?
- **Could there be any negative repercussions that could come from filing an IRM complaint?**
- **Do you have the resources that are needed to deal with the complaint?** Time as well as staff handling the communication, preparing materials, etc. is necessary.

Clear answers to those questions might help you to formulate your complaint as well as provide a plan on how to utilise the IRM complaint in your campaign.

Strategic Impact Assessment of the EBRD Energy Policy

A complaint against the EBRD ignoring provisions for a Strategic Impact Assessment during the review of its Energy Policy was rejected by the Chief Compliance Officer on the grounds that it relates "to the adequacy or suitability of an EBRD policy", an aspect which is not covered by the IRM. Thus, the IRM rules prevent to assess whether the respective provisions of the Environmental Policy should apply to EBRD Sectoral Policies such as the one for energy.

WHAT POLICIES TO ADDRESS?

The IRM addresses issues related to the "Environmental Policy or project-specific provisions of the Public Information Policy". However, to date, the complaints registered by the mechanism have all related in some way to the Environmental Policy. Appeals against non-disclosure decisions by the Bank are handled outside of the IRM by the Bank's Secretary General under the Public Information Policy (See: Information Requests Guide www.ebrd.com/about/policies/pip/requests.htm). Although this mechanism still needs to be tested, past experience of addressing a disclosure related appeal with the Secretary General is negative.

One general recommendation related to policies - it is advisable to identify exactly which paragraphs of the EBRD policies have been in your view violated either by the EBRD staff or by the project sponsor.

COMPLIANCE OR PROBLEM-SOLVING FUNCTION

The IRM has two different windows - the Compliance Review and the Problem Solving Function.

- The compliance function reviews whether a project complies with the EBRD's Environmental Policy or the project specific provisions of its Public Information Policy. Such complaints might be useful for campaign or policy formulation purposes.
- The Problem Solving Function could help to establish dialogue between affected communities and project sponsor. It could deliver, from the EBRD's side, such things as fact-finding, mediation, conciliation, dialogue facilitation, inves-

tigation and reporting, and could be used to address issues where it is difficult to reach agreement, or bring about problem-solving dialogue with project sponsor.

So far there has been no compliance review granted for any of the cases (for various reasons). In the case of problem-solving it is important to be aware that the leverage that the EBRD has over project sponsors diminishes, particularly once the loan has been disbursed (see: the BTC pipeline complaints, Azerbaijan and Georgia cases). In the case of the only successful IRM complaint so far - Sakhalin II - the project was in a pre-approval stage, and thus the project sponsor had a major incentive to cooperate.

BTC Pipeline - damage on properties in Azerbaijan

In this case, complainants requested both the Compliance Review and the Problem Solving Initiative. The Compliance Review was not warranted "as there is no indication that the Bank failed to comply with the Bank's Environmental Policy and project specific provisions of Public Information Policy in material way." But the damages of private properties are real and thus the only logical conclusion is that EBRD policies do not protect adequately the affected people.

Nevertheless, the EBRD decided to proceed with the Problem-Solving Initiative, which ultimately proved to be unsuccessful as BTC Co. announced that it "did not agree to the setting up of an Appeals Mechanism" that was proposed by the IRM.

WHO CAN SUBMIT THE COMPLAINT

It became evident that EBRD was worried about NGOs having better knowledge of policies and an access to legal advice and other resources so it designed the IRM rules in a way that they either prevent the participation of NGOs or make it very difficult for local communities or staff of the companies to seek support from NGOs.

The key related restrictions are the following:

- The complainants must be individuals based in "an Impacted Area";
- An individual cannot file a complaint - at least two complainants are required by IRM;

- Complainants must show that they "[have] suffered or [are] likely to suffer direct harm as a result of a project".

The fact that a complainant identifies a violation of the EBRD policies is not sufficient as he must meet the criteria above and cannot be an NGO. It is thus necessary to identify and provide direct assistance to individuals from the impacted area that might be willing to submit a complaint. They also need fulfil other criteria under IRM rules (interest in project, material harm).

Kaufland Poland

Complaint against Kaufland violating the Polish Labour Code is probably the best case illustrating the absurdity of the IRM rules that restrict participation of NGOs and trade unions. The IRM rules lead to rejection of the complaint on the grounds that "Inicjatywa Pracownicza" trade union is not of itself an 'affected group'.

Nearly sixty years after the adoption of the ILO Convention on Freedom of Association and Protection of the Right to Organise, the EBRD fails to recognise trade unions as legitimate representatives of workers' interests.

In such a situation those individuals could authorise someone else to be the representative of the group (e.g. someone from an NGO who identified violation of the EBRD policy). Nevertheless, IRM procedures require that that this person provides "evidence that there is no adequate or appropriate representation in the local community and evidence that the Authorised Representative is fluent in the native language of the Affected Group." (The "Affected Group" are those who submit the complaint in the IRM jargon). This approach illustrates well what one of the IRM staff said to Bankwatch: "The IRM was designed to prevent NGOs participation".

LANGUAGE ISSUE

Although officially you can submit a complaint in any language, experience shows that it is advisable to do it in English if it is feasible for complainants - this avoids time delays in the communication caused by the need to translate documents.

Furthermore, we would suggest that you either work with an English speaking lawyer or an NGO who has experience with IRM communication, as the letters from the IRM are written in very legalistic language that might be difficult to understand even with the services of an interpreter.

HARM

You should describe in your complaint the harm that has taken place in truthful but a compelling way. The policy states that: "The complaint must identify the project, and the harm or potential harm resulting from the project" and the procedures specify this as "a description of why and how the Project has, or is likely to have, a direct adverse and material effect on the common interest of the Affected Group". This could include impacts on woman, children or other vulnerable groups; economic impact on a local community, e.g. loss of livelihoods, access to resources or; environmental impacts at the local, regional or global level.

USEFUL LINKS AND INFORMATION

IRM - The guide to making a complaint about an EBRD-financed project - is an EBRD publication dealing with the technicalities of how to submit complaints; it also includes a sample complaint form. Rules of Procedure are a part of it.

www.ebrd.com/about/policies/irm/irm.pdf

IRM webpages - including a registry of eligible complaints and reports

www.ebrd.com/about/integrity/irm/register.htm

Strategic Guide: Strategic tips for filing complaints with international financial institutions - practical tips for preparation of complaints based on experience with the World Bank Inspection Panel

www.foei.org/publications/pdfs/strategic_guide.pdf

CEE Bankwatch Network - collects information and documentation about various complaints to the EBRD as well as about EBRD policies and projects

www.bankwatch.org/project/ebrd

Bank Information Center - a US based NGO that provides assistance to communities and NGOs regarding the IFIs

www.bicusa.org

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CEE Bankwatch Network is an international non-governmental organisation with member organisations from countries of Central and Eastern Europe and the Commonwealth of Independent States. The basic aims of the network are to monitor the activities of the international financial institutions in the region, and to promote constructive alternatives to their policies and projects. CEE Bankwatch Network was formally set up in 1995, and has become one of the strongest networks of environmental NGOs in Central and Eastern Europe.

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