

## **Comments to Draft Rules of Procedure for the Project Complaint Mechanism of the European Bank for Reconstruction and Development**

The Ecological Society Green Salvation welcomes the initiative of the European Bank for Reconstruction and Development (EBRD) to review the Independent Recourse Mechanism (IRM). Having reviewed the draft rules of procedure for the Project Complaint Mechanism (PCM), we deem it necessary to add a number of comments and suggestions. These are determined by the experience of filing complaints to the Office of Compliance Advisor Ombudsman (CAO), and the provisions of the CAO Operational Guidelines (<http://www.cao-ombudsman.org/html-english/documents/WEBRussianCAO06.08.07Web.pdf>).

### ***1. WHO MAY SUBMIT A COMPLAINT (PCM, 1 and 2)***

Individuals and legal entities should have equal rights to demand both problem-solving initiatives and compliance reviews. According to the given version of Rules, public organizations can only be involved in the EBRD compliance reviews which limits their participation in problem-solving initiatives with general population.

It is also reasonable to exclude the PCM's requirement that an organization submitting a complaint must be officially registered. In many CIS countries which are the EBRD stakeholders, public organizations fail to register officially due to barriers of legal, financial and bureaucratic nature which are intentionally built by local authorities. Hence, this EBRD's requirement discriminates public initiative groups.

As the EBRD is going to comply with the Aarhus Convention, in this section the Bank should have used the concept of "the public" which, according to the Convention, means one or more natural or legal persons (*The Aarhus Convention, article 2.4*). This will give natural persons better conditions for submitting their complaints to the PCM, since according to the present edition of the Rules they should be a group "of two or more individuals" (*PCM, 1 and 2*).

In this case, the EBRD could benefit from the experience of the CAO. Any individual, group, community, entity, or other party that believes it is affected – or potentially affected – by the social and/or environmental impacts of a project may make a complaint to the CAO (*CAO, 2.2.2*).

### ***2. LANGUAGE OF COMPLAINTS AND REPORTS (PCM, 6 and 66)***

The success of the PCM's operation will depend on the efficiency of information exchange with complainants, which may include native people and minorities who are not only unable to speak the working languages of the EBRD, but also may have difficulties with using the official languages. Thus, complaints to the PCM should be filed in any language. The present version of the Rules limits the language of complaints by the working languages of the EBRD and official languages of the Bank's countries of operations (*PCM, 6*).

The PCM reports should be translated into the language of complaints for their better understanding by the complainants, and not be limited by the English language only as stipulated by the present version of the Rules (*PCM, 66*).

In this case, the EBRD could benefit from the experience of the CAO which not only accepts complaints in any languages, and responds and makes reports in the language of the complaints, but also seeks a possibility for communication with complainants "in a more culturally appropriate manner" (*CAO, 1.4 and 2.2.3*).

### ***3. WHERE TO SUBMIT A COMPLAINT (PCM, 8)***

The PCM should provide a possibility to file a complaint by electronic mail in addition to post, fax or courier delivery.

In this case, the EBRD could benefit from the experience of the CAO which uses electronic mail to collect complaints and communicate with complainants (*CAO, 2.2.3*).

### ***4. REGISTRATION OF COMPLAINTS (PCM, 10.f)***

If complainant wants to claim EBRD's noncompliance with relevant Policies, he should generally indicate these cases in the complaint. However, the EBRD should not require the complainant to specify which particular EBRD Policies were violated, as this demands special knowledge and complainant may not have such knowledge.

In this case, the EBRD could benefit from experience of the CAO which has requirement for a complainant to specify particular policies, guidelines, or procedures (*CAO, 2.2.4*).

#### **5. CONDUCT OF A PROBLEM-SOLVING INITIATIVE (PCM, 32)**

The PCM should provide clear timing for the problem-solving initiative process and reporting. Otherwise, this stage may take undefined period of time which will prevent efficient and prompt complaint assessment, and may bring negative consequences.

In this case, the EBRD could benefit from the experience of the CAO which defines clear timing for every stage of the complaint assessment. E.g. the CAO's complaint assessment is completed within 120 working days upon the date it was determined to be eligible for assessment (*CAO, 2.3.3*).

#### **6. CONDUCT OF A COMPLIANCE REVIEW (PCM, 37, 38)**

The PCM should provide clear timing for compliance review and reporting. Otherwise, this stage may take undefined period of time which will prevent efficient and prompt complaint assessment, and may bring negative consequences.

In this case, the EBRD could benefit from the experience of the CAO which defines clear timing for every stage of the complaint assessment. E.g. the CAO's appraisal of compliance audit is limited by 45 days (*CAO, 3.3.7*).

#### **7. MODEL LETTER OF COMPLAINT**

The PCM should have a model letter of complaint including major points to be covered by the complainant. Such model will expedite the overall process for the potential complainant.

In this case, the EBRD could benefit from the experience of the CAO (*CAO, Appendix A*).

**February 9, 2009**

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The above comments are indorsed by the following public organizations:

1. "Eco-Renaissance" NGO (Ganja, Azerbaijan);
2. "Ecomed" NGO (Azerbaijan);
3. "Zhabagly-Manas" Mountain Club (Taraz, Kazakhstan);
4. "TAN" Support and Development Fund (Atyrau, Kazakhstan);
5. "National Ecological Expertise" NGO (Bishkek, Kyrgyzstan);
6. "Partner Initiative" Coalition (Bishkek, Kyrgyzstan);
7. Bureau on Human Rights and Rule of Law (Bishkek, Kyrgyzstan);
8. "Terra-1530" NGO (Moldova);
9. "Ecopolice" ANPO (Tambov, Russia);
10. "Dront" Ecological Centre (Nizhniy Novgorod, Russia);
11. Youth EcoCentre (Dushanbe, Tajikistan);
12. "Armon" Ecological Law Centre (Tashkent, Uzbekistan).