

THE EBRD INDEPENDENT RECOURSE MECHANISM REVIEW

CEE Bankwatch Network's comments on the existing IRM

June 2008

INTRODUCTION

This is an updated version of the analysis of the EBRD Independent Recourse Mechanism (IRM) that was presented at the bank's annual meetings in 2007. Since then, the EBRD has initiated the first review of the IRM and it has also processed the first complaint under the compliance review.

The fear that was expressed during the preparation of the IRM policy in 2003, that the mechanism would be overloaded with a lot of cases, has not materialised. In fact, the opposite has happened. Over the four years of its existence, the IRM has warranted one compliance review, three problem-solving initiatives and it has rejected seven complaints on the grounds of manifest ineligibility. In our view this low number of registered complaints results from structural restrictions built into the IRM. These include, most notably, the obstruction to NGOs and trade unions to file complaints to the IRM.

This paper shows indeed that the IRM, as it was designed, is effective in preventing requests to look into the compliance of certain projects with EBRD policies. The IRM is used only in environmental matters, it restricts the participation of NGOs and it is toothless when it comes to project sponsors after the approval of projects. Nevertheless, we believe that there is enough will within the EBRD to convert the IRM into a true compliance mechanism that will fully apply the principles of the Aarhus Convention and that will serve as a tool to improve the EBRD's operations.

The upcoming review of the policy should mainly address the following issues:

- The IRM should fully incorporate the principles of the Aarhus Convention;
- NGOs, trade unions and other citizens associations should be entitled to the full, unrestricted possibility to put forward complaints for compliance review;
- The IRM should not require the complainants to demonstrate direct material harm if the complaint addresses environmental damage or rejection of information;
- The IRM should establish a special window to deal with any non-compliance with the Public Information Policy from EBRD staff and general non-disclosure matters going beyond project-specific information;
- The IRM should communicate regularly with the complainants, and the communication should avoid legalistic language as far as possible;
- The IRM should come up with a concise strategy on promoting its role in the countries of operation, in particular to those communities potentially affected by the projects;
- The IRM site visits should become a regular practice in all complaints;
- The Compliance Review as well as the Problem-solving initiative should be able to review the suitability of the bank's policies.

INTRODUCTION.....1
LESSONS LEARNED.....3
THE IRM VERSUS THE AARHUS CONVENTION – A LEGAL ANALYSIS.....10
HOW TO MAKE THE IRM FUNCTIONAL.....13
SELECTED IRM RESOURCES.....16
ANNEX I: LIST OF CASES SUBMITTED TO THE IRM IN 2004-2008.....18

LESSONS LEARNED

A number of affected communities and NGOs have sought redress through the IRM in cases where they have found fault with EBRD operations and wished to have these wrongdoings addressed. While the nature of these complaints has varied, the results are inevitably the same: of thirteen cases submitted to the IRM, five have been 'registered' and only in one instance did the IRM find fault with the EBRD's actions, but to date the EBRD has yet to recommended any type of compensation for peoples and communities harmed by EBRD projects.¹

As a result of these fruitless interactions, civil society has learned a number of lessons from its dealings with the IRM. Notably, the IRM does not pass judgment on ineffective EBRD policies and strategies; it does not encourage active engagement from all parts of civil society; it does not safeguard against the rights of workers in EBRD-financed projects; and it does not have power over the actions of the EBRD's clients.

Lesson 1: The IRM should be able to judge the suitability of the bank's policies

The compliance review function of the IRM determines whether the EBRD has violated one of its own policies². However, the IRM refuses to accept complaints if they "relate to the adequacy or suitability of EBRD policies."³ In other words, even if the EBRD's policies are inherently flawed, the IRM will not deal with complaints from citizens negatively impacted by EBRD-financed projects if a bank policy says the EBRD has done nothing wrong.

Case: Strategic Environmental Assessment for the EBRD Energy policy review

When the EBRD set out at the beginning of 2004 to review its Energy Policy – the largest of its sectoral policies that dictates the Bank's lending to, among others, environmentally-harmful oil and natural gas projects – NGOs requested that the EBRD fully evaluate the potential impacts of its lending in this sector by conducting a Strategic Environmental Assessment (SEA) of the policy review process.⁴

An SEA helps identify the ways in which civil society can stay informed and effectively contributes to a responsible policy, and increases the likelihood that EBRD policies will promote positive benefits for the environment and society. But NGO requests for an SEA were repeatedly ignored in correspondence with the EBRD and dismissed during several meetings with EBRD officials, so two Czech NGOs filed a complaint to the IRM.

However the complaint was not registered by the IRM and rejected outright.⁵ In this case, the IRM's ruling creates uncertainty about whether or not the relevant provisions of the EBRD's Environmental Policy apply to its sectoral policies.

Case: Access to information and violations of the EBRD Public Information Policy

In another ruling, the CCO declared a complaint from a Polish NGO ineligible for the same reasons. On this occasion, Polish Green Network (PGN) submitted a complaint that its requests for project-specific information about the EBRD's financing of a supermarket expansion were insufficiently answered and that the EBRD inappropriately handled PGN's request, as required by the EBRD Public Information Policy

¹ In the case of Sakhalin II, the project sponsor and the affected communities reached a compensatory agreement, outside the purviews of an IRM-related function, but with assistance from the Mechanism in maintaining dialogue. See the case study below for additional information.

² Specifically the Environmental Policy and project-specific provisions of the Public Information Policy. See Paragraph 1 (aa). IRM Rules of Procedure.

³ Paragraph 19 (f). IRM Rules of Procedure.

⁴ This recommendation is in line with the requirements of the EBRD's own Environmental Policy: "In addition to EIAs on specific projects, the EBRD may also carry out strategic environmental assessments (SEAs) on the likely environmental consequences of proposed sector or country/regional plans or programmes which have the potential to significantly affect the environment." <http://www.ebrd.org/about/policies/enviro/policy/policy.pdf>

⁵ The Chief Compliance Officer made this determination based on Paragraph 19 (f) IRM Rules of Procedure.

⁶ Specifically Paragraph 6.5 of the Public Information Policy: "The Secretary General, assisted as necessary by the General Counsel and other Members of the Executive Committee, will oversee and verify compliance with the Policy".

(PIP). The EBRD provided a EUR 130 million loan to the Kaufland chain for expanding its operations in Poland, despite reports from the Polish state labour inspectorate of serious shortcomings in the project sponsor's requirements for ensuring worker safety and hygiene, and compensation for working overtime, among others.

After PGN's requests for information – regarding Kaufland's mitigation measures to avoid future violations – had been repeatedly ignored and ultimately insufficiently answered by the EBRD, PGN submitted an appeal to the EBRD Secretary General who has a mandate under the PIP to process appeals related to rejection of information⁶. The Secretary General however did not handle the appeal so the PGN addressed the IRM as the ultimate redress body at the EBRD. The IRM determined that these actions were not for the IRM to judge due to "procedural limits"⁷. So, while the EBRD continued its funding of a known violator of workers' rights, the IRM was incapable of assisting NGOs and concerned citizens with their right to know what the EBRD was requiring its client to do to end these practices.

Lesson 2: The IRM should allow NGO participation and oversee contentious non-disclosure of information at the EBRD

Complaints to the IRM may be submitted only by "affected groups;"⁸ however, this definition of "affected groups" is problematic, as it restricts the ability of entities like NGOs, trade and labour unions, and individual citizens, from seeking redress through the IRM. In the words of one EBRD staff member, the IRM was designed to keep NGOs from participating in the EBRD's project design. Instead, the IRM creates technical obstacles that inhibit citizens from expressing their concerns about an EBRD investment.

Case: Violation of worker's rights and disrespect of labour standards by Kaufland Polska

One example of this limitation is highlighted by another complaint related to the EBRD's involvement in the dubious Kaufland Polska supermarket expansion project. A Polish trade union complained to the IRM that the EBRD did not properly assess the project's environmental impacts, because the EBRD failed to ensure safeguard measures from the project sponsor to protect employees' rights, safety standards and worker hygiene.⁹ However, the complaint was rejected outright by the IRM, "as a trade union is not of itself an affected group."¹⁰

In this instance, it is evident that the IRM is characterised by its attempts to limit the participation of different civil society actors in the complaint process. It is unimaginable how the IRM would conclude that a trade union, whose essence and definition is to safeguard the multifarious interests of its members and to protect their livelihoods, is not an affected group. With its excessively legalistic language, the IRM successfully marginalised a significant portion of those impacted by EBRD projects. This decision by the IRM is in contradiction with the Fundamental Human Rights as spelled out by International Labour Organisation convention's 87 and 98¹¹, which gives workers the right to association and protest its treatment by employees in a safe and secure environment.

⁷ The Office of the CCO response says: „The IRM's focus is to examine project-related issues and it is not intended to be a procedure for appealing against a refusal by the EBRD to disclose project-specific documents under the terms of the Public Information Policy ("PIP)".

⁸ Defined as "a group of two or more individuals from an Impacted Area who have a common interest and claim that a Project has, or is likely to have, a direct adverse and material effect on their common interests".

Paragraph 1.a. IRM Rules of Procedure

⁹ The substance of this complaint is corroborated by the May 2005 reports from the State Labour Inspectorate (<http://www.bankwatch.org/project.shtml?apc=147579-236052o-1&x=1956017>).

¹⁰ http://bankwatch.org/documents/irm_complaint_kaufland_10_05.pdf

¹¹ See: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087> and <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>

Lesson 3: The IRM can do little about the actions of the EBRD's clients after the Bank disburses a loan

The IRM asserts that it only accepts complaints if the EBRD has "provided a clear indication of its interest in financing the project".¹² The IRM also maintains that its decisions will in no way have an effect on the loan status to the project sponsor¹³. Moreover the IRM has never concluded that EBRD operations are in the wrong. These policy provisions indicate that it is highly unlikely that the IRM would have any leverage over the actions of the EBRD's clients once the client has been paid.

Case: Impacts of the Baku-Tbilisi-Ceyhan pipeline construction

When construction in spring 2003 for the Baku-Tbilisi-Ceyhan (BTC) Pipeline brought large, heavily-loaded vehicles through the Azeri village of GyraK Kesemenli, many houses located near the road were damaged by this increased traffic. Several residents sought redress from the project sponsor, BTC Consortium, by lodging formal complaints with the Consortium. When the Consortium provided only minimal reparations to a handful of complainants, villagers sought redress through the IRM, asserting that the Consortium did not properly live up to agreements with the EBRD¹⁴ regarding compensation.

While the complaint of the Azeri villagers was registered by the IRM, the IRM did not determine that any type of compliance review was warranted, ending any chance for villagers to receive further compensation. Even though evidence from external experts suggested that the project caused damage to the villagers' homes¹⁵, the IRM would not ask the Consortium to provide compensation; rather more precisely, the IRM could not, because the Consortium had damaged local property with full respect to all EBRD policies. One conclusion here then is that the EBRD's policies are not adequate for safeguarding the rights of affected communities.

Since the EBRD argued that its agreements with the client were satisfied – including those for compensation and dispute resolution – the IRM could merely suggest that the EBRD ask its client to enter into discussions with the affected villagers. Given past experiences with dialogue, the proposal was unsatisfactory to both the Consortium and the villagers, as these communities already understood what negotiations with the EBRD and its client meant.

Case: Compensation for indigenous fishing communities on Sakhalin Island

In a somewhat different outcome, the complaint from Sakhalin island fishermen highlights how the EBRD can in certain instances have leverage over its clients if the Bank has yet to disburse a loan. As a result of pipeline construction on the Sakhalin II, Phase 2 liquefied natural gas plant and facilities,¹⁶ local fishing groups near Aniva Bay in Sakhalin, Russia, suffered serious setbacks to their traditional enterprise. Specifically, construction near the fishing sites restricted the safe access of fishermen to their nets, caused damage to these nets, and adversely affected the quality and quantity of fish caught. Following difficult discussions with the project sponsor, Sakhalin Energy Investment Corporation¹⁷, the fisherman engaged the IRM's Problem Solving Initiative Function to seek some form of dispute mediation for the remaining complainants.

Though the complaint was registered and held for further processing by the IRM after the Eligibility Assessors' Report, the IRM refrained from taking action on the complaint, so as not to „undermine or jeopardise pending or on-going settlement negotiations that could resolve the underlying complaint.“. But since the EBRD had not yet disbursed a loan, the IRM was in a convenient position to persuade the project sponsor to continue talks with fishing companies, if Sakhalin Investment eventually wanted to receive any

¹² This typically means that the EBRD has already given out a project loan, or that the proposed project has passed Final Review and is merely awaiting the Board's approval.

¹³ Paragraph 10. IRM Rules of Procedure.

¹⁴ Specifically its commitments for Environmental and Social Impact Assessments (ESIA), as required by World Bank Operational Policy 4.30 on Involuntary Resettlement <http://www.worldbank.org/html/fpd/em/power/wbpolicy/4300D.stm>.

¹⁵ Paragraph 12. IRM Eligibility Assessment Report.

¹⁶ As of January 11, 2007, the EBRD is no longer considering financing for this project. See: <http://www.bankwatch.org/project.shtml?apc=147580-166066-1&x=1959441&d=r>

¹⁷ Of the complainants involved in this case, Calypso LTD was the first to resolve its dispute through initial negotiations with Sakhalin Energy, although the terms of settlement were much less - nearly one third - of what the groups were seeking in damages.

funds from the EBRD. In the end, Sakhalin Energy and the remaining complainants reached a compensatory agreement- outside the purviews of an official IRM function- but with the IRM acting to facilitate communication between the two parties.

Lesson 4: The IRM should take a precedent ruling on complaints pending parallel litigation

Case: Compensation for the residents of the Akhali Samgori village, Georgia for land damage caused by the BTC Pipeline

In October 2006, the IRM received a complaint from authorised representatives of ten residents of the Georgian village of Akhali Samgori that had been suffering losses and land degradation connected with the property acquisition and construction of the Baku-Tbilisi-Ceyhan (BTC) pipeline. The community members argued among other things that they received no compensation for damage to their land caused by clearance and construction works on the pipeline that exceeded the area originally proposed for compensation and that they suffered loss of harvests due to the damage caused to the irrigation channel.

The IRM conducted an Eligibility Assessment Report and proposed to exercise problem-solving in the matter. This commendable initiative, as subsequently approved by the board of directors, was to consist of fact-finding and facilitation of talks between the project sponsor and the affected villagers. The IRM expert consequently travelled to Georgia to receive an insight into the situation, a decision welcomed by the claimants as well as local civil society organisations assisting with their claims.

The authors of the Eligibility Assessment Report identified no evidence of material breaches of the EBRD policies; hence they did not suggest compliance review, correctly commenting that the review would not render the negotiations about land compensation desired by the local community.

Access to land is vital for the majority of the 2 000 residents of Akhali Samgori. After the standstill of the state subsidised metallurgical plant in the 1990s, when they were left to scrape by, subsistence farming and cattle grazing became the only sources of living for many. The villagers have experienced two processes of land acquisition and compensation since then. The first land appropriation took place in connection with the building of the midway terminal for the Baku-Supsa pipeline; the latter came with the BTC pipeline promoted by the BTC Company in 2003. Some of the villagers have deemed both processes to be problematic due to land fraud and manipulation resulting from the inaccuracies in the state land registry and corruption.¹⁸ The complaint filed to the IRM in 2006 was the result of three years of unsuccessful individual and collective attempts to resolve the land concerns with the BTC Company and the construction company.

In response to the Akhali Samgori complaint to the IRM, BTC Company acknowledged faults in the land registry; it claimed however that it had been resolving the disputed land claims with the state authorities and the claimants. It also contended that the irrigation system would suffer harm as a result of the pipeline construction. Finally, BTC Company pointed out that several of the IRM complainants were members of the group of 107 villagers who had filed a court case against the company before the Tbilisi District Court seeking compensation of USD 1.8 million.

Despite the IRM's overall positive stance to the Problem-solving Initiative (PSI), it considered the pending litigation claim as a factor possibly impeding successful operationalisation of the initiative. In its cautious position on this point, the IRM referred to its own rules of procedure that require it when warranting the PSI to consider "whether the Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Complaint".¹⁹

In light of this, the complainants decided to withdraw from the litigation before the Georgian courts in order that they remained members of the affected group under the IRM complaint. The court however refused the application to withdraw from the case to two of the complainants. Due to this, BTC Company remained concerned "that the issues in question in the litigation are substantively the same as those on

¹⁸ For more details on the overall land compensation problems related to the BTC pipeline see: Baku-Tbilisi-Ceyhan Pipeline. BTC Company and Social and Environmental Undertakings. May 5, 2004. http://bankwatch.org/documents/btc_land_report_april_2004.pdf
Part Three: Disgust, Distrust, and Death Threats. Pipeline Project Splits Georgian Village Into Winners and Losers. By Raffi Khatchadourian. March 4th, 2003. <http://www.villagevoice.com/news/0310,174283,42297,1.html>

¹⁹ IRM RP 43 (f)

which the Complaint is based and that any findings from the fact-finding process might be admissible in Court proceedings and might influence the decision of the Court".²⁰ BTC Company also claimed that the land compensation process was ongoing and that it was dependent on the Government of Georgia reviewing the land registration rights. The company would therefore risk making inappropriate compensation payments.

Although the company remained engaged in preparation for the PSI, it decided to withdraw from the PSI stating the litigation and pending land registrations review as the principal reasons for its withdrawal in August 2007. Subsequent to the BTC Company's refusal to participate in the PSI, the IRM Chief Compliance Officer concluded that the restoration of the dialogue between BTC Company and Akhali Samgori residents was unlikely on the grounds that "the complaint cannot be de-linked from the ongoing court action or the Government's ongoing review of the land registration records in the affected area".²¹ As a result, the IRM terminated the PSI.

While on the one hand, the IRM's effort to maximise the sponsor's receptiveness to the PSI is laudable, on the other hand it is difficult to understand why the IRM considers a parallel litigation to interfere with its own initiative. In our contrary view, we see a positive role to be played by the international financial institution in carrying out its own investigation into the claim and acting as a champion of accountability. As such, the EBRD should not fear setting precedents.

As of June 2008, the village irrigation system remains damaged. The court case with 107 complainants continues. The villagers lack information about the ongoing review of the land titles; the Georgian International Oil and Gas Corporation, in its correspondence with Georgian civil society, claims that it has no information on the matter of the land rights registration review. Nobody from the 107 complainants of Akhali Samgori has received compensation.

Lesson 5: Site visits by the IRM, accompanied by experts if circumstances require, should be a regular practice on all complaints

Case: Compensation for the residents of the Atskuri village, Georgia for damage to land and houses caused by the BTC Pipeline

In July 2007, the IRM registered a complaint lodged by seven residents of the Georgian village of Atskuri who requested resolution of a land degradation and compensation dispute relating to the Baku-Tbilisi-Ceyhan (BTC) pipeline. The nature of the complaint was largely similar to the claims raised with the IRM by the Akhali Samgori community a year before. The residents complained about the construction works causing damage to the irrigation facilities and the land as a result of the pipeline works exceeding the proposed route. Apart from seeking compensation for the loss of the harvest, the complainants sought reparation for the damage to residential houses and other buildings caused by excessive vibrations from the heavy construction traffic.

As in the case of Akhali Samgori, the complainants had undertaken efforts to resolve the issues with the project sponsor (the BTC Company), the bank and other parties. With some of these resolution attempts dating back to 2003, continuation of the efforts was found unlikely to render reasonable results by the IRM. Convinced that independent fact finding and dialogue facilitation might bring effective talks between the affected party and the company, the IRM proposed to conduct the Problem-solving initiative, however at the same time deeming that this did not warrant the compliance review. The proposal was later approved by the EBRD's board of directors.

In March 2008, the Problem-solving facilitator, accompanied by the EBRD Chief Compliance Officer (CCO), undertook a visit to Atskuri to examine the individual complaints. The CCO's site visit is viewed as a commendable way of getting acquainted with the circumstances of the complaints and rendering qualitative findings that a desk top review – conducted for instance in the case of the compliance review for Vlora Power Generation Project, Albania – is unable to bring. It is therefore proposed that IRM site visits become standard practice on all the complaints registered for PSI or compliance review.

Furthermore, the Problem-solving initiative report put forward a proposal to recruit an agriculture specialist to investigate the elements of the Atskuri complaints touching on agriculture, such as loss of harvests and use of orphan land. If required by the circumstances of the complaint, the presence of an

²⁰ Independent Recourse Mechanism. Baku-Tbilisi-Ceyhan Georgia Pipeline Complaint. Akhali Samgori Village. Problem-Solving Initiative Report

²¹ Notice of the President's Decision to Akhali Samgori Village. IRM. 12 November 2007

expert opinion is seen as a laudable method for reaching qualified, independent and impartial findings into the complaints. An expert-led approach, based on reliable baseline information and mindful of local particularities, is recommended to be practised by the EBRD on a routine basis. The IRM might consider seeking engineering assistance on the claims connected with the damaged houses.

Lesson 6: The IRM should use the structural problems revealed during the Problem-solving initiative fact-findings to start a compliance review

Case: Fact-findings during the Problem-solving initiatives over the complaints on the BTC Pipeline in the Atskuri and Akhali Samgori villages, Georgia

In the past two years, the IRM has registered two complaints about land degradation and lack of compensation in connection with the Baku-Tbilisi-Ceyhan (BTC) pipeline in Georgia. The affected communities identified repeated failures by the project sponsor, contracted company and others, like state and local authorities, in the implementation and monitoring of the project.

The complainants argue that construction works exceeded the proposed route in the project's design and damaged their lands and local irrigation systems, and negatively impacted harvests and work on orphan lands. Some complained also about damage from heavy construction trucks to residential houses and other buildings, an issue brought to the IRM in a separate 2005 complaint from Azerbaijan.

In both cases, the IRM made an effort to restore dialogue between the BTC Company and Georgian residents via the Problem-solving initiative (PSI). Through correspondence and particularly fact-finding missions conducted by the Problem-solving facilitators, the IRM noted shortcomings in the performance of the sponsor and others involved, including an inadequate grievance mechanism from the client, delayed responses to community members and problems at the state land registry.

These recurring mistakes suggest that there might be systemic problems with project assessment, implementation and monitoring required of the client by the EBRD, which necessarily reflects on the rigour of the EBRD Environmental Policy. As noted in the previous case study [SEA], this is inherently problematic, since the IRM will not comment on "the adequacy or suitability of EBRD policies", meaning that poor project design, monitoring and implementation can go forward as long as it does so within the framework of established EBRD policies.

Furthermore, when the IRM refrains from addressing "the adequacy or suitability of EBRD policies", a larger structural issue concerning the IRM's PSI emerges. Qualitative reviews of the EBRD's compliance with its own policies and the adequacy of its standards and performance requirements for its client's are impossible, irrespective of PSI a finding, which necessarily limits the IRM's instigation of its Compliance Review function. Regardless of PSI outcomes, the IRM should enhance the scope of the PSI so that it can present its findings from the PSI process to EBRD management and potentially request the Compliance Review function.

Lesson 7: Even if the IRM makes recommendations following a compliance review, they may not be properly addressed

Case: Citizens of Vlora in Albania seeking compliance review on the Thermal Generation Power Project

The only instance in which the IRM found a complaint eligible for a compliance review was related to the Vlora Thermal Generation Power Project in Albania. At the heart of the complaint were allegations that the EBRD violated the provisions of its Environmental Policy in financing the Albanian state-owned power utility for the construction of a 97 megawatt thermal power plant situated on the coastline near Vlora.

In parallel, the affected communities submitted a complaint to the World Bank's Inspection Panel. In 2005 the affected group lodged a complaint with the Aarhus Convention Compliance Committee (ACCC) for violations of public participation requirements.

In its Compliance Review report, the IRM cites its Rules and Procedures that "where a complaint, grievance or request has been filed by an Affected Group with another international financial institution or entity, the Bank and IRM Officers shall work in close cooperation to avoid duplication of efforts in the investigation or processing of a Complaint."

While the IRM may have sought to avoid duplicating the efforts of the Inspection Panel, in practice the methods of the two mechanisms in evaluating the complaints differed greatly, as IRM staff did not once

visit the project site and conducted a desk review of the project documentation. Central to the IRM's approach was its review of the Environmental Impact Assessment (EIA) and related documentation.

But it was precisely the EIA process with which the complainants took issue – notably on public participation – so a review of the documentation could not effectively evaluate the situation on the ground, such as the misrepresentation of the siting for the power plant or the thoroughness and thoughtfulness given to public engagement in the project design. It was in part the preparation of a “rosy” EIA for which the complainants sought redress.

The EBRD contends that it entered into the project after site selection for the project had been determined, so the bank took the word of the Albanian government and the World Bank that public input was duly considered through meaningful consultations, assuring itself “That the EBRD sought to rely on these public consultations which it believed had been carried out in accordance with Albanian legislation and the World Bank’s environmental guidelines is not surprising”.

Despite rulings from the ACCC that the Albanian government violated the provisions of the Convention in determining the site of the project, the IRM was wont to recommend that any significant changes to the project be made. Instead, the IRM offered some basic suggestions on better implementation of the Bank’s Environmental Policy, a majority of which were balked at in Management’s Response to the Compliance Review report. Furthermore, the IRM limited its assessment of these violations to the decision on siting for the project, whereas the ACCC rulings were much broader and critical of the entire consultation process, including conclusions that the project sponsor failed to: ensure early participation in project design; prepare the public for informed participation; and take due account in the final decision outcomes and suggestions from the consultations.

The EBRD congratulated itself that it provided an additional 120 days for comments on the annex to the EIA, but brazenly declared “the ultimate location selected for the siting of the Project would not likely have been greatly influenced by information received in the course of a more satisfactory public consultation exercise”. It is unclear on what basis this conclusion is made. Reassessing different project locations – including those advanced by the public and NGOs in Vlora – was not a part of this IRM review, and could be seen in some ways as disrespect for public input into such highly necessary consultation processes.

THE IRM VERSUS THE AARHUS CONVENTION – A LEGAL ANALYSIS

Filip Gregor, programme Global Alliance for Responsibility, Democracy and Equity - GARDE of Environmental Law Service, Czech Republic

Brief analysis of the EBRD's Independent Recourse Mechanism (IRM) compliance with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (herein known as the Aarhus Convention)

With regard to Article 11 of the EBRD Environmental Policy that states: “In pursuit of its mandate set forth in Article 1 of the Agreement Establishing the EBRD, the EBRD will also support the spirit, purpose and ultimate goals of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”;

and to Article 3.7 of the Aarhus Convention that states: “Each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment”;

and to Council Decision 2005/370/EC, by which the European Community adopted the Aarhus Convention,

following that the review procedure of compliance with the EBRD's Public Information Policy under IRM corresponds with the procedure defined in Article 9.1 of the Aarhus Convention, and the review procedure of compliance with the EBRD's Environmental Policy under the IRM corresponds with the procedure defined in Article 9.2 of the Aarhus Convention,

the following issues in the EBRD's IRM are problematic in respect of compliance with the Aarhus Convention:

1. According to § 2 of the IRM Rules of Procedure, a Complaint may only be filed by an Affected group which consists of at least two individuals.

The Aarhus Convention, however, explicitly obliges its Parties to ensure that individuals have access to review procedures.

Firstly, regarding the review procedure of compliance with the EBRD's Public Information Policy:

Article 9.1 of the Aarhus Convention deals with access to review procedures in cases where environmental information is requested. The Article states that: “**any person** who considers that his or her request for information under article 4 has been ignored, wrongfully refused ... or otherwise not dealt within accordance with the provisions of that article, **has access to a review procedure.**”

Article 4 of the Aarhus Convention obliges Parties to the Convention to provide environmental information to the **public** (for definition of public see below).

Secondly, regarding the review procedure of compliance with the EBRD's Environmental Policy:

Article 9.2 of Aarhus Convention states that:

“Each Party shall ... ensure that **members of the public concerned** ... have access to review procedures ... to challenge the substantive and procedural legality of any act....”.

Article 2.5 of the Aarhus Convention defines **members of the public concerned** as:

“**public** affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

Article 2.4 of Aarhus Convention defines public as:

“**one or more natural or legal persons**, and, in accordance with national legislation or practice, their associations, organizations or groups.”

2. The IRM requires complainants to prove direct adverse and material effect that a Project has, or is likely to have, on them (see IRM Rules of Procedure § 1.a. and § 8.g.).

This has no backing in the Aarhus Convention regarding access to review procedures in environmental information cases. Article 9.1 of the Aarhus Convention in connection with Article 4 obliges the Parties to ensure access to review procedures to every member of the *public*. In contrast, in other cases (art. 9.2) it requires the Parties to ensure such access to *members of the public concerned* and sets further conditions. For definitions, see above.

Concerning access to review procedures under Article 9.2 of the Aarhus Convention, the condition set is that members of the public concerned asking for a review must alternatively **be affected or likely to be affected** by (1), **or have an interest in** (2), the environmental decision making. (see Article 2.5, Aarhus Convention). The Article goes on to say that: **“NGOs promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”** It is uncertain how *“having an interest”* should be interpreted but the minimum standard, which is that “environmental” NGOs are always having an interest, must be met. In most other cases *“having an interest”* could be interpreted as *“be affected by”* provided that *impairment of a right, including right to environment* is deemed to be sufficient for the complainant. Consequently, this interpretation is in line with standing conditions in Article 9.2 of the Aarhus Convention:

a) *having a sufficient interest*

or, alternatively

b) *maintaining impairment of a right.*

On this point the IRM *might be* in breach of the Aarhus Convention. It depends on how the EBRD interprets “direct and material effect”. It would be, of course, more clear if the IRM would use the same definitions as the Aarhus Convention.

3. The IRM review is limited to "Project-specific provisions of the Public Information Policy" (see IRM Rules of Procedure § 1.aa. and § 25.b).

This, again, has no backing in the Aarhus Convention. Article 9.1 of the Aarhus Convention obliges Parties to ensure access to review procedures in any case concerning disclosure of environmental information. The “Project-specific provisions of the Public Information Policy” seem not to match the definition of environmental information as stated in Article 2.3 of the Aarhus Convention.

4. The IRM review is conducted partly by independent IRM experts that may give recommendations regarding remedial changes to the President or Board, but whether the revision will be conducted is up to the President or Board (see IRM Rules of Procedure § 34 and § 37). The same principle applies when judging the eligibility of a complaint (§ 30-31) and when deciding whether to grant interim measures (§ 10).

This is in breach of the Aarhus Convention requirement that review procedures must be carried out by “the court of law **or other independent and impartial body** established by the law” (see Articles 9.1 and 9.2 of the Aarhus Convention). Article 9.4 of the Aarhus Convention states that: “the procedures referred to in paragraphs 1,2 and 3 above **shall provide adequate and effective remedies, including injunctive relief** as appropriate, **and be fair, equitable, timely** and not prohibitively expensive.”

The procedure set in the IRM resembles the way the institute of ombudsman works. However, an ombudsman does not conduct “review procedures” or “revisions” of decisions and acts as required by the Aarhus Convention just because he or she has no right to decide about remedies.

For example, Article 195 of the EC Treaty defines the rights and duties of the European ombudsman. This is further specified in the Statute of the European Ombudsman as adopted by the Decision of Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15). According to these, the Ombudsman may conduct investigation and shall help uncover misadministration. But there is no mention that the ombudsman could “review” the decisions, omissions or any other acts.

5. The IRM restricts the review procedure to “material violations of the Relevant Policies” (see IRM § 23).

It is unclear whether the word “material” is used in the meaning of “serious” or whether this provision excludes from revision issues of violation of procedural rules of decision-making in matters that may affect the environment. In the latter case, this would be in breach of the requirement of the Aarhus Convention set out in Article 9.2: “Each Party shall ... ensure that **members of the public concerned** ... have access to review procedures ... to challenge **the substantive and procedural legality** of any act....”.

Additional questions for further analysis:

6. The Guide to the IRM (not the Rules of Procedure though!) states that: “We do not review actions that are the responsibility of a third party.” It depends on the content of the EBRD's Environmental Policy; but in some cases it might not be possible to rule out a causal connection between third-party actions or omission and a breach of the EBRD's Environmental Policy.

7. It should be noted that the IRM does not cover the whole “Access to Justice” pillar of the Aarhus Convention as it is defined in Article 9 of the Aarhus Convention. In addition to access to review procedures in “environmental information” cases (Art. 9.1 Aarhus Convention) and access to review

procedure in “environmental decision-making” cases (Art. 9.2 Aarhus Convention), which have been discussed and compared vis-à-vis the IRM above, there is also Art 9.3 of the Aarhus Convention which defines wider access to justice. It states that: “In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, **members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**”

In other words, according to this article, procedures to challenge acts or omissions, other than in the environmental decision process, should be accessible to members of the public (any private or legal person) and not exclusively to concerned members of the public (who must prove that they are likely to be affected).

There are several uncertainties concerning the Article 9.3 procedure, though. Firstly, it is questionable whether it is suitable for the IRM. Secondly, the position and purpose of the procedure in relation to the procedure referred to in Article 9.2 remains unclear.

Article 9.3 of the Aarhus Convention was supposed to be implemented in the European acquis by a Directive of the European Parliament and of the Council on access to justice in environmental matters. However, the Proposal (COM(2003)624) was not accepted. The procedure anticipated by the proposal was to cover both of the Aarhus Convention Articles' 9.2 and 9.3 procedures. Therefore less strict conditions for *standing* than those required by Article 9.2 were used.

HOW TO MAKE THE IRM FUNCTIONAL

This section presents the principal formal shortcomings of the recourse mechanisms that in our view paralyse its effectiveness. The overview is based on comments from NGOs and civil society submitted during the consultations on the EBRD IRM review in 2003 and the EBRD's response to them²²; the EBRD PIP review in 2006²³ and; the contributions to the "Right to appeal: International Financial Institutions and accountability – on the way to an independent compliance and appeal mechanism for the European Investment Bank" conference organised in November 2007²⁴.

Institutional independence

- The EBRD IRM is conducted by independent experts that give recommendations regarding remedial changes to the EBRD president or the board of directors. However, it is the president or the board of directors who judge the eligibility of the complaint²⁵ and who take a decision on whether the Compliance Review or the Problem-Solving Initiative is conducted.²⁶ Involving the EBRD president in the process creates a conflict of interest because he, as the head of the EBRD management, is typically directly or indirectly involved in the preparation of projects. Also board members may have a conflict of interests regarding complaints coming from the countries that they represent. **The IRM should be able to take a decision about the eligibility of any complaint without the need for approval of any other body within the EBRD.**

Functionality of the IRM

- The IRM determines whether or not any EBRD action, or failure to act in respect of an EBRD operation, have involved one or more material violations of policies.²⁷ Due to this procedure, the IRM cannot judge the suitability, adequacy or quality of policies if these give rise to unacceptable harm nor can it register as eligible complaints raising these issues.²⁸ **The IRM should advise the EBRD on the improvement of lending portfolios, policies and procedures that lead to systematic environmental, social and developmental negative impacts.** For the same reason, the Annual Report published by the CCO should include more than a description of the IRM's activities and a listing of recorded and rejected cases as ruled by Paragraph 67 IRM Rules of Procedure.²⁹ **The annual report should present a quality assessment of the IRM's activities and general recommendations to the EBRD, based on the experience and lessons learned from the cases and the IRM's work.³⁰**
- The IRM function is narrowed to instances of non-compliance with the Environmental Policy, the project-specific provisions of the PIP and "all or part of any Bank policy which may be hereafter adopted by the Board and specifically designated to be within the purview of the IRM compliance review function, together with any related implementing procedure".³¹ The mechanism should be able to review projects' non-compliance with any policies, guidelines, procedures and by-laws established by the EBRD. **The EBRD should prepare a roster of policies and procedures that are placed under the IRM's compliance jurisdiction, including all provisions of the PIP".**
- The CCO considers whether a Problem-solving Initiative or the Compliance Review should be conducted based on the recommendations of the Eligibility Assessor.³² Under the current design of the IRM, the affected communities are therefore not able to select between

²² Independent Recourse Mechanism: Summary of Staff Responses to Public Comments. 2003.
http://bankwatch.org/documents/response_comments_ebrd_irm_03.pdf

²³ CEE Bankwatch Network comments on the EBRD 2006 Public Information Policy Review. April 14, 2006.
http://bankwatch.org/documents/bw_comments_2006_EBRD_PIP_1.pdf

GTI comments on the EBRD 2006 Public Information Policy Review. April 14, 2006.
http://bankwatch.org/documents/GTI_Comments_EBRDPIP_04_06_1.pdf

²⁴ http://www.bankwatch.org/right_to_appeal/index.htm

²⁵ Paragraphs 10. IRM Rules of Procedure

²⁶ Paragraphs 34 and 37. IRM Rules of Procedure.

<http://www.ebrd.com/about/integrity/im/about/procedur.pdf>

²⁷ Paragraph 22. IRM Rules of Procedure

²⁸ Independent Recourse Mechanism: Summary of Staff Responses to Public Comments. 2003

²⁹ Paragraph 67. IRM Rules of Procedure

³⁰ 2003 EBRD IRM review. Public Comments

³¹ Paragraphs 1 (aa). IRM Rules of Procedure

³² Paragraphs 22 and 42. IRM Rules of Procedure

Problem-solving Initiative and Compliance Review. **The complainants should have the right to determine the mechanism under which redress should be sought.**

- Problem-solving Initiative warranty is subject to, among others, the amenability of the Affected Group and the Relevant Parties and on the IRM's expectations of whether the Problem-solving Initiative is likely to have a positive result.³³ **The EBRD should include a commitment for participation in Problem Solving Initiatives into all project agreements; if a project sponsor refuses to participate in it, the IRM should disseminate a press release about this and EBRD should refuse any future cooperation with the given project sponsor.**

Restricted scope of work

- The EBRD IRM combines the Problem-Solving Initiative (this assists in resolving the complaint or grievance to the satisfaction of all parties involved with the project) and Compliance Review (assessment of the EBRD's compliance with relevant policies and procedures).³⁴ Experience with the IFC CAO has shown that combining problem-solving and compliance audit are too difficult and, at times, mutually exclusive. **There should be a clear distinction between the problem-solving and compliance review functions within the EBRD's IRM. These windows should operate independently of one another.**
- The EBRD IRM's powers are limited to project-specific complaints.³⁵ A complaint is found eligible only when it identifies the existing – or likely to be existing – direct and adverse effects of EBRD-financed projects. This provision excludes that the EBRD IRM processes complaints related to non-disclosure where no direct harm of a project is manifestable. The fact that the disclosure compliance related appeals are currently processed by the Secretary General's office raises doubts about conflict of interest because the office is at the same time responsible for management. **The EBRD IRM should oversee compliance with disclosure principles put forward by the PIP and the Environmental Policy independent of the EBRD Management.**³⁶

Eligibility limitations

- In order to comply with eligibility criteria, the complaint must be filed by an affected group comprising of “two or more individuals with a common interest who are, or are likely to be, directly and adversely affected by a Bank-financed project.”³⁷ This eligibility criterion prevents civil society organisations, trade unions and other interest groups and individuals from accessing the EBRD IRM. **This eligibility criterion should be removed and be reformulated fully in line with the Aarhus convention.**
- The EBRD IRM requires complainants to prove direct adverse and material effect that a project has, or is likely to have, on them.³⁸ The guidelines however fail to specify what “direct and material effect” means, leaving it to the deliberation of the IRM staff. The requirement to prove a “direct adverse and material effect” stands as a structural obstruction to complaints related to the “representation of the environment” or appealing against the non-disclosure of information. **The IRM should not require complainants to demonstrate direct material harm if the complaint addresses environmental damage or rejection of information.**

Disclosure

- The IRM officers' access to EBRD staff and information during investigation, assessment or review are subject to exceptions based on confidentiality as ruled by the EBRD's PIP.³⁹ **The IRM officers should have full access to relevant EBRD staff and documents.**
- The CCO's communication of ineligibility indicating the applicable reason or reasons for non-registration are made available to the complainant only.⁴⁰ **Complaints that are found manifestly ineligible and the CCO's communication of ineligibility should be made publicly available on the IRM website, unless the complainant disagrees.**

³³ Paragraph 43 (b and c). IRM Rules of Procedure

³⁴ Introduction. IRM Rules of Procedure

³⁵ Paragraph 18. IRM Rules of Procedure

³⁶ GTI Advocacy Notes to EBRD on Appeals, Exceptions and Board Transparency. 3 May 2006.

[http://www.bicusa.org/bicusa/issues/GTI%20Memos%20on%20EBRD%20PIP%20\(3May06\).pdf](http://www.bicusa.org/bicusa/issues/GTI%20Memos%20on%20EBRD%20PIP%20(3May06).pdf)

³⁷ Paragraph 2. IRM Rules of Procedure

³⁸ Paragraph 1 and 8. IRM Rules of Procedure

³⁹ Paragraph 65. IRM Rules of Procedure

⁴⁰ Paragraph 16. IRM Rules of Procedure

- The Problem-solving Completion Report is released only upon the prior approval of the parties. The release of the Problem-solving Completion Report and the Compliance Review Report are subject to the provisions on confidentiality of the PIP.⁴¹ **All IRM assessments and reports should be publicly released. If a Party rejects that the Problem-solving Completion Report is made publicly available due to “business confidentiality”, the disclosure should be subject to public override examination as ruled by the “Clarifications regarding “confidential information” as set out in box 2 of the PIP”.**⁴² The potential non-disclosure of the Compliance Review Report should be subject to the same examination.
- **All assessments, reports and recommendations produced by the IRM should be made publicly available in order to ensure full transparency.**

Legalistic nature of communication and communication of timings and extensions

- The communication between the IRM and complainants is very legalistic. The IRM's correspondence refers to the procedures and policy, and thus it is very difficult for the complainants who do not have legal support to understand. **The IRM should change its communication practices.**
- While it is recognised that the processing of complaints may require substantial amounts of time and extensions with regard to the timelines set in the procedures, **the IRM should communicate delays and alternate schedules to the complainants.**

Promotion of the IRM

- **The IRM should devise a concise strategy on promoting its often important role in the countries of operation,** in particular to communities potentially affected by the projects, through public consultations, the bank's resident offices, promotional materials and other creative means.
- **The IRM should ensure the equal access to the accountability mechanism to women and other segments of the population that might be disadvantaged in their outreach and the access of information.**⁴³

⁴¹ Paragraphs 48b and 40. IRM Rules of Procedure

⁴² <http://www.ebrd.com/about/policies/pip/clarify.htm>

⁴³ See recommendations made in: *Gender Justice: A Citizen's Guide to Gender Accountability at International Financial Institutions*. Gender Action; CIEL. 2007.
http://www.genderaction.org/images/Gender%20Justice_Final%20LowRes.pdf

SELECTED IRM RESOURCES

EBRD

- Independent Recourse Mechanism website. EBRD.
<http://www.ebrd.org/about/integrity/irm/>
- Independent Recourse Mechanism. Rules of Procedure. EBRD. April 6, 2004.
<http://www.ebrd.org/about/integrity/irm/about/procedur.pdf>
- Independent Recourse Mechanism. Annual Report for 2004-2005. EBRD.
<http://www.ebrd.org/about/integrity/irm/about/report05.pdf>
- Independent Recourse Mechanism. Annual Report for 2006. EBRD.
<http://www.ebrd.org/about/integrity/irm/about/report06.pdf>
- IRM register
<http://www.ebrd.com/about/integrity/irm/register.htm>
- Independent Recourse Mechanism. The guide to making a complaint about an EBRD-financed project. EBRD. July 2004. <http://www.ebrd.com/about/policies/irm/irm.pdf>

Stakeholders' Comments on the IRM

- Independent Recourse Mechanism: Summary of Staff Responses to Public Comments. 2003.
http://bankwatch.org/documents/response_comments_ebrd_irm_03.pdf
- Comments from the former chairs of the World Bank Inspection Panel - Richard E. Bissell and Jim MacNeill - on the EBRD Appeal and Compliance Mechanism. January 15, 2003.
http://bankwatch.org/documents/ebrd_irm_wbcomments.pdf
- FoEI comments on the Proposal for an Independent Recourse Mechanism at the EBRD. FoEI. January 2003. <http://www.foei.org/publications/financial/ebrd.html>
- Empowering People: The Need for an EBRD Appeals/Compliance Mechanism. CEE Bankwatch Network. June 20, 2001. http://bankwatch.org/documents/ebrd_appealsmech_1.pdf
- Considerations in Establishing an Independent Accountability Mechanism at the EBRD. CIEL. February 20, 2002. http://bankwatch.org/documents/ebrd_ciel_compliance.pdf
- Both ENDS comments on the Proposal for an Independent Recourse Mechanism at the EBRD. BothEnds. November 25, 2002.
http://bankwatch.org/documents/comm_irm_bothends_11_02.pdf
- Joint Comments on the EBRD's proposed Independent Recourse Mechanism. Bank Information Centre (BIC), CIEL, CEE Bankwatch Network. January 29, 2003
http://bankwatch.org/documents/cmnt_irm_joint_01_03_1.pdf
- Comments on EBRD Environmental Policy Review by Independent Environmental Service on North Caucasus. January 8, 2003.
http://bankwatch.org/documents/cmnt_ep_ies_01_03.pdf
- Empowering People: The Need for an EBRD Appeals/Compliance Mechanism. CEE Bankwatch Network. June 20, 2001. http://bankwatch.org/documents/ebrd_appealsmech_1.pdf

Redress mechanisms analysis

- Complaint and Redress Mechanisms in International Organisations: Background Research for the Complaint and Redress Dimension. Global Accountability Project. January 2005.
<http://www.oneworldtrust.org/documents/Complaint%20and%20Redress%20Sector%20Paper.pdf>
- Accountability Mechanisms in other Multilateral Financial Institutions. Dr. Maartje van Putten. January 2007.
http://www.bankwatch.org/right_to_appeal/presentations/mvanputten_final.pdf

International and governmental resources on MDBs accountability

- **Strengthening the International Financial Architecture.** Report from G7 Finance Ministers to the Heads of State and Government. 8 July, 2000. <http://www.g7.utoronto.ca/finance/fm20000708-st.html>
- **US Congress International Banking Environmental Protection Act of 1989 (Pelosi Amendment)** [http://thomas.loc.gov/cgi-bin/query/z?c101:H.R.2777:](http://thomas.loc.gov/cgi-bin/query/z?c101:H.R.2777)

Citizen toolkits

- **Strategic Guide.** Strategic tips for filing complaints with international financial institutions. FoEI. April 2004. http://www.foei.org/publications/pdfs/strategic_guide.pdf

ANNEX I LIST OF CASES SUBMITTED TO THE IRM IN 2004-2008⁴⁴

Complaint	Substance	Submitted by	Date of submission	Steps taken	Reasons	Result
Strategic Environmental Assessment of the EBRD Energy Policy review	Complaint about the failure of the EBRD to conduct a strategic environmental assessment for the review of its Energy Policy	“CEE Bankwatch Network” and “Association Tereza” NGOs, Czech Republic	15 December 2004	Rejected as manifestly ineligible	“The complaint is related to the adequacy or suitability of an EBRD policy”	-
Sakhalin II	Communities claim to suffer the negative effects from the construction of the oil and gas facilities on fishing and they seek the IRM’s Problem Solving Function in compensatory negotiations with the project sponsor.	Authorised representatives on behalf of local fishermen and fishing enterprises and local enterprises, Sakhalin	26 July 2005	Eligible for further processing towards the Problem-solving initiative, but not warranting a Compliance Review	“It is quite clear that [the complainants] expect a Problem Solving Initiative”	Implementation of a Problem Solving Initiative delayed pending a decision on the project as ‘fit for purpose’; ultimately postponed until the investment was no longer under consideration; thus the IRM suspended the PSI. Negotiations between the project sponsor and the affected community started by the IRM ultimately lead to the resolution of the majority of concerns outside of the scope of the PSI.

⁴⁴ Details on cases gathered from the IRM register at: <http://www.ebrd.org/about/integrity/irm/register.htm>; the IRM Annual Reports at: <http://www.ebrd.org/about/integrity/irm/about/index.htm>; and CEE Bankwatch Network’s archive

BTC Pipeline, Azerbaijan	Complaints against the project sponsor for damages to personal property and violating EBRD policies	Authorised representatives on behalf of residents of Gyrakh Kesemenli village, Azerbaijan	16 August 2005	Eligible for further processing, but not warranting a Compliance Review	"There is no indication that the Bank has failed to comply with the Bank's Environmental Policy in a material way"	No Problem Solving Initiative recommended because "it was unlikely that it would lead to a resolution" between the affected group and project sponsor.
Kaufland Polska	Complaint against the project sponsor for failing to safeguard the rights of its employees	National trade union "Inicjatywa Pracownicza", Poland	23 September 2005	Rejected as manifestly ineligible	"The complainant was a trade union and therefore not an Affected Group within the definition given to that expression by IRM"	-
Kaufland Polska	Complaint against the EBRD's refusal to disclose project-specific documents on Polish Kaufland and the failure to process an appeal to this request	Affected individual (member of Polish Green Network)	3 October 2006	Rejected as manifestly ineligible	"IRM is not a procedure for resolving appeals against adequacy or suitability of an EBRD policy, specifically it appealed against bank's decision to deny disclosure of documentation under the PIP"	-
BTC Pipeline, Georgia (Akhali Samgori village)	Complainants are seeking or rectifying insufficient compensation for damages to the land and irrigation system resulting from pipeline construction	Residents of Akhali Samgori village, Georgia through authorised representatives	1 November 2006	Complaint held eligible for further processing towards a Problem-solving Initiative but not warranting a compliance review. Independent	The problem-solving function "could usefully operate in tandem with, and exercise a positive influence on, efforts to complete any ongoing processes, with a view to securing a mutually acceptable accommodation".	Due to the litigation in respect to the same land matter before the Georgian courts, the project sponsor withdrew from the Problem-solving initiative, claiming there was a risk that the PSI "...duplicates, or interfere with, or may

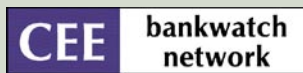
				fact-finding undertaken by the Problem-solving facilitator.		be impeded by, any process pending before a court". The IRM terminated the PSI on the grounds that it would not lead to a resolution of the underlying dispute
Vlore Thermal Power Generation Project, Albania	Complaint against the Vlorë thermal power plant disruptive effect on tourism and fishing and project violation of the Environmental Policy requirements on EIA and sustainable development	Authorized representative on behalf of the affected individuals who are also either members or supporters of the Civic Alliance for the Protection of the Vlorë Bay	11 April 2007	Compliance Review warranted. The Compliance Review Report released in April 2008.	The Compliance Review 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 [..]"	The Compliance Review Report identified " [...] a material violation of the Environmental Policy warranting remedial changes to the Bank's practices and procedures so as to avoid a recurrence of the same or similar violation in the future [...]". The IRM set out recommendations relating to the EBRD practices and procedures.
BTC Pipeline Georgia (Atskuri village)	Complainants are seeking compensation for lost harvests and damage caused to the land, irrigation system and houses by the pipeline construction	Residents of Atskuri village, Georgia through authorised representatives	6 July 2007	Complaint held eligible for further processing towards a Problem-solving Initiative but not warranting a compliance	The nature of the complaint leads to good faith resolution; independent fact finding and dialogue facilitation may bring effective dialogue; the EBRD's ongoing relationship with BP	Pending

				review. Independent fact-finding undertaken by the Problem-solving facilitator.	leads to sufficient leverage to facilitate effective dialogue between the parties.	
EBRD Country Strategy for Kazakhstan	Complaint against the EBRD's non-disclosure of the 2006 Public Information Policy entry-in-force date and confusing procedures for consultations over the Kazakh Country Strategy resulting from the non-disclosure	"Green Salvation", "Kazakhstan International Bureau for Human Rights and Rule of Law", "EcoMuseum" NGOs, Kazakhstan	3 November 2006	Rejected as manifestly ineligible	"IRM is not a procedure for resolving appeals against EBRD's refusal to disclose project-specific documents under the PIP"	-
Unknown*	-	-	2004/2005**	Rejected as manifestly ineligible	"The EBRD was not involved in financing the project"	-
Unknown*	-	-	2004/2005**	Rejected as manifestly ineligible	"IRM is not a procedure for resolving appeals against related to procurement matters"	"The complaint was redirected to Director of the Bank's Procurement and Purchasing Department for his review"

□ The Annual Reports of the Chief Compliance Officer state that it would be inappropriate to disclose the details of the complaints that were held by [the CCO] to be manifestly ineligible for registration under the IRM. Cases deemed 'manifestly ineligible' by the IRM's Annual reports are not explained in detail and Bankwatch failed to gather any background information on them, hence they are marked accordingly as 'unknown' in the above table. Bankwatch was however able to gather information on cases deemed 'manifestly ineligible' by the IRM's Annual report for 2006 and 2007.

** Date of submission stays unspecified by the IRM's Annual reports. An indicative date of 2004/2005 or 2007/2008 is used instead in the above table.

Unknown*	-	-	2007/2008**	Rejected as manifestly ineligible“The complaint related to a disagreement between contractor and project sponsor”	-	-
Unknown*	-	-	2007/2008**	Rejected as manifestly ineligible	“The complaint was submitted by NGOs which, alone, do not qualify as an affected group”	-



CEE Bankwatch Network
Jicinska 8
Praha 3, 130 00
Czech Republic
Email: main at bankwatch.org
<http://www.bankwatch.org>