



23 January 2017

To: Sir Suma Chakrabarti  
EBRD President  
One Exchange Square  
London EC2A 2JN  
United Kingdom

To: Board of Directors  
EBRD  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Re: Project Complaint Mechanism (PCM), follow-up from 17 November meeting between CSOs and the Board of Directors

Dear President Chakrabarti and Members of the Board of Directors:

This letter follows up on a 17 November meeting on accountability and the Project Complaint Mechanism (PCM) between the EBRD Board of Directors and civil society representatives from Accountability Counsel, CEE Bankwatch Network, OT Watch and the Centre for Research on Multinational Corporations (SOMO). We would like to again thank the Directors for joining the meeting, engaging in the discussion and reaffirming the Board's commitment to accountability and a robust PCM.

At that meeting we discussed the challenges and obstacles the PCM faces in effectively and efficiently delivering both accountability and redress to complainants affected by the Bank's investments. Specifically, we raised **concerns about the PCM's status within the institution and its independence, actual and perceived.**

While we appreciate the Board's efforts to preserve the PCM's independence during the recent restructuring, it remains true that the PCM is one of the few independent accountability mechanism that does not have a direct line of communication to the Board. The PCM should not have to report to the Board through an intermediary.

The absence of a PCM director at the senior management level not only calls into question the PCM's independence and significance with which the EBRD treats these issues, but it also has more practical consequences. Our recent experience with the IPP4 (Jordan), Oyu Tolgoi (Mongolia), Energy Resources (Mongolia), Altain Khuder (Mongolia) and Turk Traktor (Turkey) cases

demonstrate **the lack of a consistent approach by PCM experts, undermining the predictability, equability and legitimacy of the mechanism**. In essence there is not one but multiple PCMs, and a complainant does not know which one he or she will encounter until the complaint is filed. For example:

- Failure of Compliance Review experts to follow Terms of Reference proposed by eligibility assessments: in the case of IPP4, the Terms of Reference indicated that the compliance review should analyse the effective implementation of relevant principles and rules of international law related to environment, corporate responsibility and public access to environmental information, yet it appears the compliance expert considered the highest international standards to be outside the remit of the review; In the Oyu Tolgoi and Energy Resources case, the Terms of Reference indicated that an indigenous peoples expert should be hired to assess questions related to PR7, yet no such experts have been consulted at any point in the process;
- Difference in evidentiary standards and placing the burden of proof unduly on complainants: we have witnessed a troubling pattern, in several ongoing cases, whereby the testimonies of complainants regarding their experience of project impacts are excluded from consideration in the compliance review process. We look forward to providing more information on specific cases as the compliance reviews are finalized and come before the Board;
- Lack of standards for site visits: in the case of Altain Khuder, no site visit was conducted, although complainants requested it and findings of fact were made in the investigation without verification.

In conclusion, our experience not only with these cases, but across IAMs at various institutions, shows that although the PCM has a number of good features – for example the ability of experts to conduct site visits and the opportunity for complainants to comment on drafts – these features are not consistently utilised or embedded in a robust, independent structure. This creates uncertainty for complainants, who cannot know how their complaint will be handled or whether anyone will be held to account, what standard of evidence will be applied or whether they will have an opportunity to demonstrate impacts through an in-person site visit. This lack of consistency also detracts from the utility of the mechanism internally. The President and Board of Directors cannot trust that the same level of scrutiny is applied to each case, which may affect how both findings of compliance and findings of non-compliance should be interpreted by Bank leadership to improve operations.

As a result, the PCM is unable to consistently deliver either redress or accountability, and the Bank is unable to effectively learn lessons from poorly implemented projects in order to make more sustainable investments. Therefore we recommend:

- An early revision of the PCM Rules of Procedure, to reflect these most recent case experiences.
- The creation of a senior management position for the PCM Director, similar to that of the Vice President of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC), which will give the PCM greater legitimacy among its users, more resources to provide remedy and identify problematic projects and direct access to EBRD's decision-makers.

In the meantime:

- The PCM should be removed immediately from the Office of the Chief Compliance Officer and Risk Department and report directly and independently to the Board;

- The PCM Officer should provide its quarterly report directly to the Audit Committee. The briefing should include, for example, the status of its case docket, implementation of management action plans, emerging trends, budget and financial information, etc.;
- The PCM should immediately establish a stakeholder advisory group, similar to that of the IFC's CAO; and
- The PCM should adopt its own guidelines for handling complaints in order to improve internal consistency.

We are looking forward to continuing the dialogue with the Board during the finalisation of the above PCM cases and working with you to ensure a strong and effective accountability framework at the Bank.

Sincerely,

Kindra Mohr, Accountability Counsel

Fidanka Bacheva-McGrath, CEE Bankwatch Network

Sukhgerel Dugersuren, OT Watch

Kristen Genovese, SOMO