

Jakarta, September 27, 2022

Subject: Complaint against ING bank related to Cirebon Coal Power Plant Unit 1 and 2. Ineffectiveness of ING's grievance mechanism and unsatisfactory meeting with Indonesian community representatives.

To:

Steven van Rijswijk, CEO, Member Executive Board, Management Board Banking ING Group

Tanate Phutrakul, CFO, Member Executive Board, Management Board Banking ING Group

Ljiljana Čortan, CRO, member Executive Board, Management Board Banking ING group

Hans Wijers, Chairman Supervisory Board ING Group

Mike Rees, Vice-chairman and member Supervisory Board ING Group

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Dear Sir and Ma'am,

On the 23th of June, representatives of the affected communities from Cirebon Coal Power Plant, ResponsiBank, and representatives of ING held a meeting in Jakarta. This meeting was agreed upon after a long process in which ResponsiBank and ING exchanged letters and emails regarding ING's involvement in financing Cirebon Coal Power Plant Unit 1 and Unit 2. Following these complaint letters to ING in 2017 and 2018, in April 2021 ResponsiBank filed a complaint at ING's Chief Compliance Officer. In response to the complaint, ING indicated that they set up an independent team to review the concerns of ResponsiBank. The report and findings of that independent team were not shared with the affected communities, nor with ResponsiBank.



With this letter ResponsiBank and the affected communities want to express their disappointment to ING, related to the ineffectiveness of the complaint procedure of ING as well as the meeting held on the 23th of June which did not reach any of its intended aims.

ING’s ineffective grievance mechanism

It is laudable that ING has set up its own grievance mechanism. However, by having tested this grievance mechanism as an end user we have found many flaws related to the UNGPs effectiveness criteria of a grievance mechanism. (1) The mechanism has no clear indicative time frames, which made the process take very long without clarity to the community about steps taken by ING. In the end more than a year passed between the complaint filed and a meeting agreed upon with the community. (2) The mechanism does not contain public information about the procedure it offers; (3) The mechanism does not provide public information demonstrating that the mechanism that ING offers is working, is effective and can be trusted; (4) there are no procedures in place to enable feedback from users/ potential users; (5) ING only reluctantly agreed upon an independent facilitator to enable a facilitated/mediated dialogue; (6) The mechanism does not seek to ensure that parties have reasonable access to sources of information necessary to engage on fair, informed and respectful terms since ING did not provide any information on its due diligence related to this project; (7) the annual report of ING and the website of ING does not mention any outcomes of the complaint mechanism and does not provide information about which (categories of) complaints were filed and how they were handled.

As the first user of this mechanism, we rate the grievance mechanism of ING has highly ineffective.

Aims of meeting not reached

Overall, the community is very disappointed about the meeting on the 23th of June and does not feel heard by ING. ING mainly repeated during the meeting it did everything according to the books while not disclosing any evidence to support this. ING did not show any willingness to be more transparent on how “robust” their due diligence has been. ING did not show any willingness to do anything substantial in support of the community. ING communicated in the meeting it was proud of having financed the project.

The community rates the meeting as very dissatisfying as well since none of the 5 aims that were set for the meeting were achieved. See the 5 points in the mutually agreed TOR of June 2022 (attached)

- (1) Understand what information was available at the time of the decision of financing Cirebon 2 and what measures ING as lead arranger has taken to prevent undesired environmental and social consequences resulting from Cirebon Coal Power Plant Unit 1 and Cirebon Coal Power Plant Unit 2?**

ING only made some overall vague statements but did not provide any proof. ING only mentioned in broad terms that the process went according to the books but did not disclose any detailed information. This aim was not achieved.

- (2) Understand the point of view and the interests of both parties, acknowledging the different roles and capacities, with the aim of reaching common ground in addressing problems that are mutually recognized?**

The community does not feel heard at all. ING left many questions that were raised during the meeting by the community, unanswered. ING repeated several times that everything went well by referring to the policies of the company. ING did not give any proof that it did any check on that paper-reality and also did not want to acknowledge that they have been taking decisions based unilaterally on information fed to ING by the company. ING cannot prove or does not want to prove it listened to other stakeholders next to the company, during its due diligence process.

ING clearly does not recognize the problems of the community. ING communicated that it is proud of having financed the project and is until today in support of the project. Common ground can only be reached if there is complete transparency from both sides. The community and ResponsiBank have given complete openness while ING has not provided any openness. This aim was not achieved.

- (3) Facilitate a dialogue between ING and local communities to enable them to voice their aspirations and concerns regarding Cirebon Coal Power Plant Unit 1 and Cirebon Coal Power Plant Unit 2.**

A dialogue is based on openness and trust. ING has refused to give that openness so there was no real dialogue. This aim was not achieved.

- (4) Depending on the (outcome of the) previous points, the parties can discuss potential next steps.**

ING suggested follow-up steps that were not aligned to the demands and needs of the community. Such as (1) requesting the company (PLTU Cirebon) to have a grievance mechanism in the company/project 2, while ING at the same time is of the opinion that the company is already having a robust grievance mechanism; (2) Requesting the company (PLTU Cirebon) for transparency on technical data in a way community can understand.

The community has been very open with ING about the issues with trust and the lack of independent monitoring mechanisms at the company level. A solution to that problem does not seem to be that the company will give even more unchecked data to the community. Independent external verification of those data is required (3) ING will continue the review of the project (PLTU Cirebon). The community does not see much use of that since this ‘‘monitoring’’ did not support them in any way in the past. Secondly ING has not been transparent about what it has been monitoring exactly, so there is low trust that transparency of monitoring will improve.

Despite the fact that ResponsiBank and the community have suggested other much more useful follow-up steps, none of them were taken up by ING as follow-up steps. This aim was not achieved.

(5) Parties expressed the intention to conclude their dialogue with a joint statement and will explore the direction of such a statement.

Due to the lack of openness and therefore lack of real dialogue no joint statement was possible. This aim was not achieved.

Unresolved issues from the meeting

According to ING, ING has done everything that needed to be done. ING conducted an impact assessment of the project; ensured that there is a grievance mechanism in place and ensured that the project complied with the law. There are many unresolved issues related to these 3 statements by ING, according to the communities.

(1) ING seems not to have monitored the effectiveness of grievance mechanism of Cirebon

When human rights abuses occur, those who are harmed are entitled to effective remedy. Grievance mechanisms are processes established to allow affected stakeholders to raise complaints or concerns with relevant parties and to have those complaints or concerns addressed and resolved. Under the UNGPs, businesses, including individual banks, have a responsibility to establish or participate in effective operational-level grievance mechanisms. In the case of an impact, stakeholders might raise their concern and seek remedy through national court systems, regulatory or administrative bodies, community level mechanisms, project level mechanisms, site-based company mechanisms, corporate-level mechanisms, mechanisms of financing institutions etc.

During the meeting the grievance mechanism of the company (PLTU Cirebon) was discussed. Since the company never communicated about the existence of a grievance mechanism, this grievance mechanism was never used by any community member and the community made use of other mechanisms to show their concern. However ING seemed very confident of the effectiveness of the grievance mechanism of the company, stating that *ING felt comfortable financing the project because the company had appropriate measures in managing risks of the project. For instance, it had a grievance mechanism in place to address community concerns.*

The community would like to receive clarification on this, since it contradicts their own reality.

Also, we would like to stress to ING that the UNGP guidelines clearly state that when impacts occur, parties connected to that impact have a responsibility to take action to address those impacts, including by focusing on remedy, whether or not those grievance mechanisms are present, effective or utilized.

Questions remaining: What proof did ING have related to the effectiveness of this grievance mechanism? How many complaints did the company say it received through this mechanism? And why did ING not act on the discrepancy between complaints received through the company grievance mechanism and the many complaints from the community through other means (demonstrations, public complaints in media and in court)?

(2) Lack of transparency and proper communication, creating a power disbalance

During the whole process ING has not given any openness and there was a general lack of transparency. This while the community gave full insights in its own monitoring reports, creating a disbalance in information and thus power.

How does ING suggest the community can trust that ING has conducted a thorough and robust due diligence process if no evidence is given? Who can independently assess whether this has been done in a robust way if there is no transparency on the process?

ING stated that they have not taken into account any information that came to them through ‘external’ sources. That is quite contradictory to doing a robust due diligence process according to the OECD guidelines. The OECD guidelines state clearly that any due diligence process should be informed by engagement with stakeholders and by checking external sources.

The OECD guidelines state as well clearly that communication on the due diligence process is key. Enterprises should account for how they identify and address actual or potential adverse impacts and should communicate accordingly. Information should be accessible to its intended audiences (e.g. stakeholders, investors, consumers etc.) and be sufficient to demonstrate the adequacy of an enterprise's response to impacts. In cases where a bank is causing or contributing to a human rights impact, they should be prepared to communicate relevant information to impacted rights holders in a timely, culturally sensitive and accessible manner while respecting client confidentiality. It is clear that ING has fallen short of the adequacy of information shared with the communities.

(3) Non-Compliance with law/ corruption case

It is at least remarkable to notice that a corruption case related to this company is not seen as providing enough ground to ING to take any steps. This while numerous media articles have been published about corruption allegations. In fact the trial will start at the court district this month. For further information:

- <https://news.mongabay.com/2020/11/indonesia-coal-power-plant-cirebon-korea-land-pollution-corruption/>
- <https://www.thejakartapost.com/indonesia/2022/02/27/police-to-drop-criminal-charges-against-corruption-whistleblower-in-cirebon.html>
- <https://www.liputan6.com/news/read/5055733/kpk-kasus-suap-bos-hyundai-sudah-dalam-tahap-prapenuntutan>
- <https://nasional.okezone.com/read/2022/08/10/337/2645342/kpk-periksa-mantan-bos-pt-cirebon-energi-prasarana-terkait-suap-perizinan?page=2>

(4) Use of technology

ING stated during the meeting that *ultra-supercritical technology is applied, which is believed to be the best and most efficient technology for a coal-fired plant (similar technology is used in coal-fired power plants in the Netherlands).*”

We would like this further clarified by ING to understand how ING came to this conclusion, based on which evidence? Also, this would apply to Cirebon 2, but not to Cirebon 1, which continues to pollute the air and water of the surrounding communities with outdated technology.

(5) Lack of data on social issues.

ING mentioned during the meeting that there was no clear data on social impacts and that it is Beyond ING's legal obligation to check and verify information from external sources (news, etc) regarding impacts.

This is quite remarkable since ING mentioned it did a 2-year study before financing the project. Why did ING not make sure there was enough data on social impact? What social risks came to the fore during ING's 2 years of research? Due diligence is first and foremost meant to avoid adverse impacts to happen so can the communities conclude that ING failed to do a proper risk assessment related to social impact?

(6) Unanswered questions by ING during the meeting

The following questions were asked during the meeting. However, ING did not respond to these. The communities would still like to receive a written answer to these questions.

- What did ING do to verify information?
- Did ING ever communicate and discuss ResponsiBank's complaint with the CFPP company?
- Why did not all syndicated banks discuss among themselves and agree to release those reports publicly?
- How does ING ensure that the project it finances comply with standards?
- What were the indicators used in assessing the Cirebon CFPP project?
- Does ING still need to tranche the Cirebon PLTU project? What is the percentage of remaining funds that ING still has to transfer and will it reconsider stopping this transfer?
- What were the results of the investigation conducted by ING before the meeting with the community and ResponsiBank?

(7) Unsatisfactory follow-up steps

The follow-up steps proposed by ING are quite unsatisfactory and do not respond to the needs of the community. Will ING still consider giving follow-up to the suggested steps by ResponsiBank?

- Set up meetings with all lenders – facilitated by ING.
- Further investigation by an independent team.
- ING did say, according to the minutes, that it *Agrees to bring more transparency to identify impacts on the ground*, however this was not captured in the next steps. How does ING intend to bring more transparency into this project towards the stakeholders if ING does not disclose any reports?



We want to express our gratitude to ING for having made the time to come and meet with the affected communities in Indonesia, as well as the fact that ING made it possible for the affected communities to file a complaint at its own grievance mechanism. However, we want to make clear that there is a lot that needs to be improved both in the process as in the intended outcome and willingness to listen to affected communities as well as provide adequate information to have a process that is meaningful, effective, and fair to impacted communities. Up till now we rate this process as neither meaningful, neither effective, nor fair.

We do hope that ING can at least still clarify above issues and questions and consider follow-up actions that have some meaning to the community.

Sincerely,

Ah Maftuchan
Coordinator of ResponsiBank