

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON  
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,  
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

**Black font, red font, and grey text-boxes** are replicated from the Draft Regulations text.

**Blue font** represents commentary or edits proposed by The Pew Charitable Trusts.

**Regulation 101**

**Complaints relating to Inspections**

[1. A Contractor who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing to the SecretaryGeneral, who will transmit the complaint promptly to the Compliance Committee who shall consider the complaint as soon as practicable.]

1. [bis] A person aggrieved by an action of an Inspector [or a Contractor][or any organ or official of the Authority] under this Part may complain in writing, [providing evidence] to the [Secretary General]/[Compliance Committee], [who shall report to the [Compliance Committee]/[Commission]/[Chief Inspector] [or where the Compliance Committee is implicated in the complaint to the Ombudsperson] to consider the complaint as soon as practicable.

[1. ter The Secretary-General shall acknowledge in writing, within 7 Days, receipt of every complaint submitted under this Regulation, specifying the date of receipt.]

2. The [Compliance Committee]/[in consultation with the Chief Inspector] [shall] [may] take such [reasonable]/[appropriate] action as is necessary in response to the complaint, in accordance with applicable Standards and the [Authority's] Inspectors' Code of Conduct.

3. The Compliance Committee shall [submit] a report to the Council describing the complaint and the action taken in response to such a complaint. [The Council can review the report and decide on what additional actions to be taken.]

[4. The Secretary-General shall provide, as soon as possible, information to the complainant on the follow-up given to the complaint.]

[5. Disputes concerning the handling of complaints shall be settled in accordance with Regulation 106].

**Comments**

- It has been suggested to support and complement the procedure for handling the complaints, in particular in relation to the complainants, and therefore paragraphs 1 ter, 4 and 5 has been inserted.
- It has been suggested to broadening the scope of paragraph 1 bis to reflect that various ISA staff may take action in relation to inspection and compliance.
- It has been suggested to include an Ombudsperson in paragraph 1 bis.

We appreciate the idea to broaden this complaint mechanism to any person or matter relating to inspections and compliance. Though it does open the question: what avenues are open to complainants who may have legitimate issues with other aspects of activities in the Area or the ISA's functions? We would prefer to see a **general policy in place that enables receipt of any complaints, and establishes a secure, confidential, independent and efficient mechanism to investigate and address these**. This would include appointment of an independent Ombudsperson as

a constructive approach to enable any complaints pertaining to ISA staff or representatives to be independently investigated.

In **paragraph (2)**, we do not think it correct that the Compliance Committee would necessarily respond to complaints ‘*in accordance with the Inspector Code of Conduct*’. It should be in accordance with an institutional complaints policy and procedure. This would also help clarify the meaning in (2) of ‘*reasonable*’ or ‘*appropriate action*’. For a complaints procedure to be effective and fair, it needs to be underpinned by a well-defined policy, follow a standardised process with clear roles and responsibilities assigned, have data and complainant confidentiality protections in place, and identify available pathways to remedy and recompense.

Steps should also be taken to ensure the Compliance Committee is not hearing and dealing with complaints that pertain to its own actions, direction and decisions: an **Ombudsperson** could assist with this.

We are concerned that **paragraph (3)**, which brings the Council into the chain of accountability for each complaint about inspections, may be rather heavy-handed. What if the complaint was minor, has been settled, or was found to be spurious? Perhaps this is a matter that could be left to the Compliance Committee’s general annual reporting requirement, rather than requiring individual reports for each complaint?

We are also unsure whether it is legally correct to direct a dispute about a complaint over an inspection to ITLOS – which seems to be the effect of **paragraph (5)**. (Paragraph (5) refers to DR106, which refers to section V of part XI of UNCLOS, which sets specific and limited grounds for the types of claims that can be brought to ITLOS (Article 187) that would not seem likely to be triggered in the context of handling by the ISA of a complaint about an inspection matter.