

# EBRD human rights due diligence based on safe and meaningful public participation



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**T**his issue paper highlights the gaps in the European Bank for Reconstruction and Development's (EBRD) project-level due diligence on human rights impacts. It explains why the EBRD must develop effective human rights due diligence and what the fundamental elements and methods of such due diligence are.

The EBRD's regions of operations are facing yet another crisis. The war in Ukraine and the sanctions against the aggressor Russia and its ally Belarus have led to new shocks to the economies of EBRD countries and uncertainties for the livelihoods of people there. Following the global COVID-19 pandemic, this new crisis has further increased pressure on the shrinking space for democracy and basic rights and freedoms, as human rights defenders continue to struggle to have meaningful dialogue in the imbalanced power relations with the private sector or authoritarian governments.

More than ever, we need credible and responsible public finance institutions that will ensure a safe space for public participation and effective safeguards for those affected by their investments. The EBRD has demonstrated that it can respond to crises swiftly and efficiently; the current moment requires the Bank to show leadership and strengthen its human rights due diligence tools and processes.

## Is the EBRD's due diligence preventing human rights violations?

The current EBRD approach to environmental and social due diligence is not effectively preventing human rights violations in the projects the EBRD supports. Cases of reprisals, land grabbing, land expropriation and livelihood loss, forced evictions, failed resettlement processes, discrimination against vulnerable minorities, lack of rights-holders' engagement, ineffective project-level grievance redress mechanisms, barriers to unionisation, forced labour risks and violations of labour rights are still the reality for many EBRD-backed projects.

For more information

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Together with affected communities and human rights defenders, we have documented human rights abuses in numerous EBRD projects.<sup>1</sup> We have assisted harmed individuals in accessing information, dialogue and remedy, both through EBRD project teams and the Independent Project Accountability Mechanism (IPAM). Unfortunately, the EBRD's management and IPAM often deal with the harm after it has already been done, and remedy comes after years of suffering or not at all. This practice cannot be business as usual.

In order to prevent and mitigate the negative human rights impacts of projects, substantial improvements need to be implemented in the form of more transparent and participatory due diligence, in order to implement the aspirations and requirements of the Bank's safeguards policy.

The EBRD should acknowledge the existing gaps and barriers to participation and effective redress for project-affected persons and human rights defenders in the Bank's approach to disclosing information and involving communities and stakeholders in informed and meaningful consultations. Currently, the Bank's heavy dependence on information provided by clients is a major bottleneck, so it needs to integrate engagement with affected people and other stakeholders into the early stages of the appraisal process and throughout the project cycle.

Importantly, these gaps are more pronounced in category B projects, which are considered lower risk even in high-risk countries or contexts. For category B projects, the EBRD's policies do not require the Bank to disclose information or ensure meaningful consultations, and the capacity of clients to do it is often too weak. The increase in EBRD grants for technical cooperation is welcome, especially for projects in the public sector; however, this technical cooperation has not demonstrated effective inclusion of project-affected persons and human rights defenders in due diligence thus far. This raises questions about the effective use of technical assistance grants from various donor funds.

## **Why should the EBRD improve its human rights due diligence?**

As stated in the Bank's 2019 Environmental and Social Policy, the EBRD is committed to respecting human rights in the projects it finances. The Bank requires clients to respect human rights, avoid infringement on the human rights of others and address adverse human rights risks and impacts caused by the business activities of its clients. The policy states that it will seek to strengthen processes to identify and address human rights risks during the appraisal and monitoring of projects.

Although the EBRD relies on national authorities to protect human rights, its human rights standards often do not align with national law or practice, and the gap analyses it conducts do not address these barriers. Governments that have not been strong advocates for human rights, particularly in country contexts characterised by discrimination or repression, are not equipped to validate or implement the EBRD's human rights safeguards for marginalised population groups.

A rights-based assessment, external to host-state processes, can add value for institutions like the EBRD, a bank that is sensitive both to reputational and to legal risks, which sometimes also translate to financial

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<sup>1</sup> For example, Indorama Agro in Uzbekistan, Corridor Vc in Bosnia and Herzegovina, solid waste management projects in Serbia, the Maritsa East coal mine expansion and resettlement in Bulgaria, MHP agribusiness in Ukraine, several Georgian hydropower projects, the Amulsar gold mine in Armenia, and more recently numerous urban development projects like the Almaty Public Transport project

risks or failed projects. One main reason companies and financial intermediaries are expected to ‘respect’ human rights is that states are not sufficiently ‘protecting and promoting’ those rights for all citizens. If the host country’s approach to human rights does not align with the EBRD’s expectations – and the EBRD’s country strategies clearly indicate that human rights risks are present there – gaps arise.

## Human rights due diligence needs to be understood and mainstreamed

The EBRD is committed to respecting human rights in its governance policies. Therefore, human rights-based methodologies must be part of the institution’s due diligence processes.

For development finance institutions (DFIs), Human Rights Due Diligence is an ongoing process necessary to ensure that they respect, protect, and work toward fulfillment of human rights. This involves **identifying** human rights risks and impacts directly or indirectly connected with the DFI’s activities; **preventing** human rights abuses; **mitigating** adverse human rights impacts, and **maximizing** positive human rights impacts where possible; **accounting** for how human rights are impacted and impacts are addressed, and **remediating** any adverse impacts.

*-Human Rights Due Diligence for Development Finance Institutions, Coalition for Human Rights in Development<sup>2</sup>*

Human rights due diligence typically consists of:

- **a screening of human rights risks**, conducted in-house. Such an assessment would be a prerequisite for the EBRD to determine whether there is a need for an impact assessment conducted by the client (as described below).
- **human rights impact assessment (HRIA)**, required from the client when risks are identified. Such an assessment should be conducted with a methodology based on the meaningful engagement of rights-holders (as described below).
- **continuous and progressive monitoring** by the Bank of the situation on the ground, including the disclosure of contact points so that affected right-holders can express their concerns (anonymously or publicly) about the project.

## Meaningful engagement of rights-holders is key

There is no human rights due diligence without engaged rights-holders. Regardless of whether they are single individuals or large communities, there are always people whose indispensable rights can be harmed by projects financed by the EBRD or the substandard performance of its clients. In order to avoid this, meaningful public participation has to be:

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<sup>2</sup> Coalition for Human Rights in Development, [Human Rights Due Diligence for Development Finance Institutions](#), June 2017.

- **timely** – it begins early in the project planning process to gather initial views on the project proposal and inform project design; it continues on an ongoing basis.
- **two-way communication** – it encourages stakeholder feedback, particularly as a way of informing project development and engagement by stakeholders in the identification and mitigation of environmental and social risks and impacts.
- **transparent** – it is based on the prior disclosure and dissemination of relevant, objective and easily accessible information in a timeframe that enables consultations with stakeholders; it is documented by the client.
- **accessible** – it is undertaken in a culturally appropriate format, in relevant local languages, with respect for stakeholders’ decision-making processes; it supports active and inclusive engagement with project-affected parties, including disadvantaged or vulnerable groups.
- **safe** – it is free from external manipulation, interference, coercion, discrimination, and intimidation.

A number of examples expose the EBRD’s problems with the meaningful engagement of rights-holders, even under the current safeguards.

The **Corridor Vc motorway in Bosnia and Herzegovina** is an example of the bad practice of neglecting timely public consultations on the actual routes for some sections (e.g. around Mostar). Between 2011, when public consultations were held, and the adoption of the project-level spatial plan by the Federation of Bosnia and Herzegovina’s parliament in early 2017, major changes to the route took place. Unfortunately, communities did not have a chance to take part in the consultations for the new route.<sup>3</sup>

For **Georgia’s Kvesheti-Kobi Road project** (part of the North-South Corridor), despite the EBRD’s claims about stakeholders’ engagement, the opinions of major rights-holders with expertise on the cultural heritage of the impacted Khada Valley have not been sufficiently taken into account. This breaches the practice of two-way communication.<sup>4</sup>

In the **Indorama project, located in Uzbekistan**, the EBRD did not conduct a focused human rights impact assessment, and there was a substantial problem with accessibility of the public participation processes. The environmental and social impact assessment (ESIA) consultations in 2020 were conducted online, which was highly questionable considering the significantly low proliferation of the internet and smartphones in the region. Information on public consultations provided by the company did not contain any detailed evidence, such as records from the meetings, evidence of media communication, or how the outcomes of focus group discussions were considered by the project team.<sup>5</sup>

To conclude, not only should the EBRD improve its procedures for meaningful engagement with rights-holders, but it must also ensure their proper implementation by the Bank’s project teams and clients.

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<sup>3</sup> More in the paper [‘Corridor Vc motorway, Bosnia and Herzegovina’](#)

<sup>4</sup> More in the paper [‘Will Georgia’s North-South Corridor boost trade, or make it dependent on Russia?’](#)

<sup>5</sup> More in the paper [‘Indorama Agro project, Uzbekistan: unmitigated human rights violations persist’](#)

## Recommendations

In order to fulfil its commitment to respect human rights in its projects, the EBRD must develop and implement proper human rights due diligence that will:

- ensure, prior to project risk categorisation, a thorough Bank-led or commissioned analysis of human rights risks and make its methodology and conclusions accessible for each project public;
- ensure proper assessment of the impacts via human rights impact assessment (HRIA) or other contextual analyses, if the risks are identified; make these additional assessments public;
- provide safe and meaningful public participation, which is timely, a two-way process, transparent, accessible and safe, to all rights-holders; ensure that proper procedures are in place and there is regular capacity building and regular evaluations of procedures to ensure they provide for safe and meaningful public participation.

## Signatories

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