

Planning for and Contributing to Remedy at the EBRD

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When projects result in unintended environmental and social harm, development banks do not guarantee that those harms will be remedied. When banks do remedy harm, it's a result of sustained campaigns by the very individuals who were harmed. In February 2022, the UN raised attention to this remedy gap and how it undermines development banks' missions in its report, [Remedy in Development Finance](#). The UN Report, and the experiences of communities not receiving remedy even when they bring cases to banks' independent accountability mechanisms, set out why remedy is so urgently needed and how banks can meet the moment.

The International Finance Corporation is the first development finance institution to begin to put a bank-wide [remedial framework](#) in place. **EBRD management and the Board should follow suit by (1) committing to establish a remedial framework that covers all projects; and (2) conducting public consultations on that remedial framework.**

Below are recommendations for key elements of a remedial environment that the EBRD should adopt.

1. Remedy must be built into the planning process for every project.

The UN Report advocates for the “protect, respect, and remedy” framework for development finance institutions to uphold their human rights obligations and provides templates for how remedy can be embedded in every step of a project.

“If commitments to remedy (including but not limited to financial compensation) are part of contingency planning from the beginning of the project cycle, this would promote more timely and granular inquiries into: (a) the likelihood and severity (scale, scope and remediability) of potential impacts; (b) the scope and effectiveness of available remedial mechanisms (including national GRMs, insurance arrangements and ring-fenced funds; (c) what remedy gaps may be foreseen; and (d) the roles that the client and bank, as appropriate, may play in filling those gaps.” (UN Report, p. 4)

2. EBRD should implement financing mechanisms for remedy.

Any contribution to harm requires a contribution to remedy. The EBRD should put financing mechanisms in place to ensure that funds are available in these circumstances. There are many financing mechanism options, including ring-fenced funds, escrow, trust funds, contingency funds, insurance, and guarantees and letters of credit. At a minimum the EBRD should set up a reserve fund.

“Ring-fenced funds are more likely to provide accessible, rapid and reliable reparations and therefore deserve priority consideration in the remedial toolkit of DFIs.” (UN Report, p. 82)

3. EBRD must exercise leverage over clients to provide remedy.

Business and Human Rights frameworks draw a distinction between causing, contributing to, and having a direct linkage to harm. DFIs typically fall into the “contributing to” or “direct linkage” categories, meaning part of their obligation

under the UNGPs is to use their leverage to influence the client to stop causing the harmful impact, prevent further harm, and remediate the harm that was caused.

“DFIs can build and exercise leverage through a thoroughly consulted action plan that covers remedial measures, backed by explicit remediation requirements in safeguards and legal agreements. Other options may include working with syndicated banks or other investors in the client company to pressure the client to take action, engaging with national authorities, providing incentives for bringing each project back into compliance (such as tying compliance to the prospect of repeat loans), extending closing dates and providing extended capacity support for the client, where needed.” (UN Report, p. 4)

4. EBRD must engage effectively with IPAM and adequately finance its processes and recommended outcomes.

The IPAM process must lead to remedy for affected communities. EBRD should include and ensure implementation of remedial actions in its responses to findings of noncompliance and problem solving agreements and should be prepared to engage with and finance processes related to the IPAM case process, including dialogues and fact-finding experts.

Contact:

Margaux Day
Policy Director
Accountability Counsel
margaux@accountabilitycounsel.org