

## Planning for and Contributing to Remedy at the EBRD

May 2023

The EBRD does not provide effective remedy to communities negatively affected by its projects.<sup>1</sup> This remedy gap undermines EBRD's commitment to sustainable development and environmental protection. Although project-impacted communities and civil society organizations have long called on development banks to better remediate unintended harms, in recent years, the remedy gap has received increased public attention and scrutiny. This means that banks can no longer claim in good faith that they are meeting their mission without ensuring remedial actions. Without adequate remedy, projects will continue to miss their mark and harm the very communities the bank intends to assist, EBRD will not be able to reach its goal of promoting economic development and social progress in the countries in which it operates, and EBRD's reputation and credibility will increasingly be damaged.

**EBRD should (1) immediately update its policies and practices to guarantee remedial actions, and (2) conduct public consultations on proposed policy and practice changes.**

### Remedy Gap at EBRD

- To examine the state of remedy at EBRD, we analyzed all publicly available management action plans and dispute resolution agreements resulting from its accountability mechanism cases to identify remedial commitments made by EBRD or its clients.
- Complaints that have generated remedial commitments represent 35.7% of eligible complaints, 28.8% of registered complaints, and 5.8% of all complaints.
- Of 52 registered complaints, only 4 have commitments that are known to have been accomplished; an additional 11 complaints have unknown commitment status.<sup>2</sup>
- Accomplished commitments have been produced in only 9.5% of eligible complaints, 7.7% of registered complaints, and 1.5% of all complaints.
- One third of all complaints with commitments (5 out of 15) only have monitoring and operations management commitments, meaning they do not offer substantive remedy to complainants.
- Only three complaints have resulted in direct compensation or social support (2 accomplished, 1 status unknown).

### Remedy Commitments at EBRD

- May 2022: Civil society organizations discussed the remedy gap with board representatives, the Environment and Sustainability Department, and IPAM at the Annual Meeting in Marrakech.
- August 2022: EBRD committed to remedy in its [August letter](#) to civil society organizations, stating the EBRD was looking forward to CSOs' ongoing engagement including "in the preparation of the Remedy Framework, to commence in the coming months."
- November 2022: Civil society organizations met with EBRD representatives and discussed the importance of remedy once again.

### Remedy at IFC

The International Finance Corporation has been the first development finance institution to begin developing a bank-wide remedial framework. IFC released a draft framework on February 21. However, this

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<sup>1</sup> 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 fulfill their human rights obligations to communities.

<sup>2</sup> See Annex 2 for a visual representation of accountability mechanism complaint outcomes

framework failed to introduce meaningful changes to IFC's current [inadequate approach](#) and was roundly [condemned](#) by civil society.

## **Strengthening EBRD's Remedial Commitments**

At the meeting with the Board in November 2022, we understood that the Board was committed to the EBRD's responsibility to contribute to remedy when it contributes to harm. We were asked where we saw room for improvement regarding the EBRD's current practices. In response, we recommend that the EBRD make the following changes:

- ensure that mitigation of and preparation for remedy are **embedded throughout the project phases** (from due diligence to project implementation and beyond);
- adopt a policy commitment that **EBRD itself will contribute financially to remedy** where it has contributed to harm (including in cases of non-compliance as confirmed by IPAM);
- adopt policy commitments that EBRD will **build and use leverage over clients** (including through contractual provisions) to ensure that clients contribute to remedy;
- immediately remediate known harms, either directly or by requiring clients to, including in **projects subject to the IPAM process**. EBRD should begin to address the remedy gap by focusing on projects for which its accountability mechanisms found non-compliance with EBRD policies or where dispute resolution agreements are not yet fully implemented.
- **strengthen EBRD's response to remedial recommendations from IPAM.**

Given IFC's failure to lead multilateral development banks on effective remedy for harm, EBRD now has the opportunity to set a better example. Whether through a standalone policy or as an integrated piece of the new ESP, EBRD must strengthen its remedy commitment to ensure that unintended environmental and social impacts no longer leave project-affected communities worse off than before EBRD's investment.

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## **Annex 1. Recommendations for improving EBRD's remedial actions**

Below are more concrete details of policy and practice improvements that EBRD should adopt.

### **Embedding remedy at every stage**

#### **1. Enabling remedy requires taking action at various different stages of the project cycle.**

These include actions to: (1) prevent harm, (2) supervise project implementation, and (3) respond to harm when it occurs.<sup>3</sup> Some examples of ways in which remedy can be embedded at various stages of the project cycle are outlined below.

### **Preventing harm**

#### **2. EBRD must build remedy into the planning process for every project.**

EBRD's project complaint mechanism found in 2018 that "most complaints relate to the identification, assessment and management of environmental and social impacts at an early stage of project design, along with poor information disclosure." (UN Report, p. 31)

The UN Report 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)

#### **3. EBRD should implement financing mechanisms for remedy, both for itself and its clients.**

Remedy funds would be used to provide compensation, restoration and protection measures, and to support affected communities harmed by projects. Where EBRD itself has contributed to harm, it is responsible for contributing financially to remedy. The EBRD should put financing mechanisms in place to ensure that funds are available in these circumstances.<sup>4</sup> At a minimum it should set up a reserve fund for itself, and ensure that clients have contingency funds available.

Ensuring that resources are readily available to implement remedy helps to address harm as soon as it is identified. This better manages risk for EBRD, as leaving harms unaddressed allows them to compound and worsen, which in turn makes them more expensive to remedy and increases legal liability risk.

#### **4. EBRD should develop a responsible exit framework applicable across the full project cycle.**

A responsible exit framework would integrate potential environmental and social impacts of exit within project due diligence from the earliest stages of the project cycle, and would ensure EBRD does not leave behind unremediated harms upon exit (including those arising from the exit).<sup>5</sup>

### **Responding to harm**

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<sup>3</sup> We provide solutions to potential operational challenges at each stage of the project cycle in our [November 2022 brief](#).

<sup>4</sup> There are many financing mechanism options, including ring-fenced funds, escrow, trust funds, contingency funds, insurance, and guarantees and letters of credit.

<sup>5</sup> UN report, p. 115.

**5. EBRD must exercise leverage over clients to provide remedy where harm is being caused.**

Business and Human Rights frameworks make clear that financial institutions are obligated to use their leverage to influence their clients to stop causing harmful impacts, prevent further harm, and remediate any harm that was caused. As a financier of projects, EBRD always has a responsibility to use its leverage, including through contractual provisions, to ensure that its clients provide remedy for harm.

**6. EBRD should commit to implementing IPAM's remedial recommendations.**

The IPAM process should facilitate remedy for affected communities, but this will not happen if EBRD doesn't implement adequate remedial actions. IPAM's procedures allow it to recommend remedial actions when the Bank is found to be non-compliant with its policies<sup>6</sup>, but this doesn't accomplish anything if EBRD ignores the recommendations. EBRD should include and ensure implementation of remedial actions in its responses to findings of noncompliance.

**7. EBRD should finance fact-finding and dialogue processes in support of the IPAM process.**

Too often, accountability mechanism processes fail because their financial institutions won't pay for inexpensive processes in support of the case process. In fact, even at IPAM, dispute resolution has failed and transferred to compliance investigations because neither EBRD nor its client would pay for fact-finding studies to establish a shared understanding of facts so that effective dialogue could occur. Further, after compliance investigations conclude, parties sometimes need limited dialogues between clients and communities to determine how best to implement remedial actions and rectify noncompliance. The EBRD should be prepared to finance these types of processes in support of IPAM cases.

Community engagement in design of remedy

**8. EBRD remedial measures should all be designed in consultation with impacted communities.**

There is no one-size-fits-all approach to remedy. And contrary to prevailing narratives, remedy is not limited to compensation. The framework should clarify that remedy can require some combination of compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>7</sup>

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<sup>6</sup> Project Accountability Policy (2.7)

<sup>7</sup> For definitions and examples of the different types of remedial actions, see [Center for International Environmental Law, Remedying Harm: Lessons from International Law for Development Finance \(March 2022\)](#).

## Annex 2. EBRD accountability mechanism complaint outcomes

Figure 1: Registered Complaints (as of 31 Dec 2022)

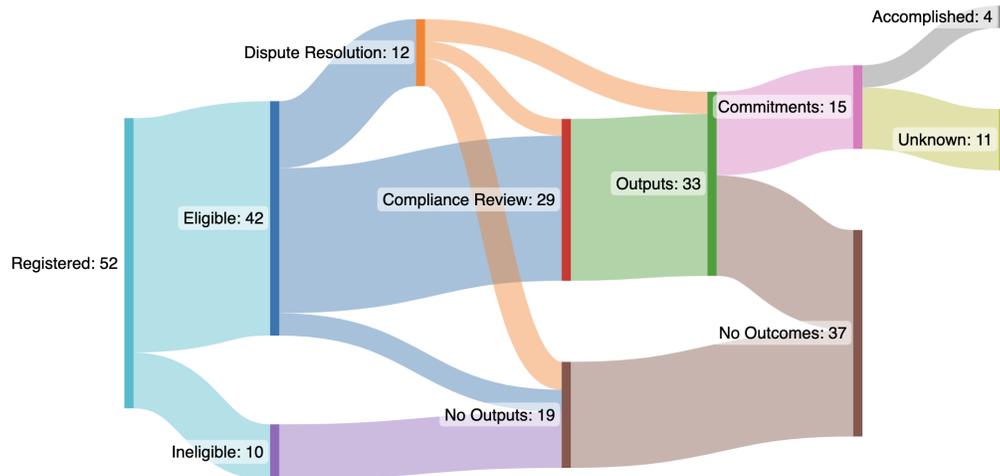


Figure 2: All Complaints (as of 31 Dec 2022)

