

Policy Analysis

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Our review shows that while KfW has strong obligations under international law, it has not yet developed robust internal policies and practices that are commensurate with the scope of its obligations and its activities.

In the following section, we first present the key human rights obligations according to international law and standards. We then provide a brief overview of some key aspects of the environmental and social policies adopted by the KfW Group (further details can be found in Annex A). Finally, we outline the main concerns around the gaps and shortcomings of KfW policies, particularly regarding reprisal-related issues.

KfW's human rights obligations

As a public-law institution, KfW is expected to comply with German laws and regulations, as well as international laws and treaties ratified by Germany.⁸ As KfW is wholly owned by the German government, the state's extraterritorial human rights obligations also apply to the Bank's activities.

Under international law, KfW should respect the rights to freedom of opinion and expression, freedom of peaceful assembly, freedom of association, the right of access to information, and the right of Indigenous peoples to FPIC in the context of its international investments. KfW also has a legal obligation to prevent, address, and remedy reprisals against HRDs in the context of its activities.⁹

These obligations emanate from various international conventions and treaties, including: *the International Covenant on Civil and Political Rights*; *the International Covenant on Economic, Social and Cultural Rights*; *the European Convention on Human Rights*; *the Ramsar Convention on Wetlands of International Importance*; *the Convention on Biological Diversity*; *the Aarhus Convention*; and *the Declaration on Human Rights Defenders*, among many others.¹⁰

The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) – a body of 18 independent experts that monitors implementation of the *International Covenant on Economic, Social and Cultural Rights* – has repeatedly affirmed states'

⁸ "Law Concerning Kreditanstalt für Wiederaufbau," KfW, November 1948 (most recently amended in June 2020), <https://www.kfw.de/PDF/Download-Center/Law-Concerning-KfW/KfW-Gesetz-DE-EN.pdf>.

⁹ In particular, according to the *Declaration on Human Rights Defenders*, Germany must take "all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration". See: *Declaration on Human Rights Defenders*, UN, 1998, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

Additionally, under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), parties should ensure that "persons exercising their rights to participate, access to information and access to justice in environmental matters in conformity with the Convention shall not be penalized, persecuted or harassed in any way for their involvement." See: *Aarhus Convention*, UN Economic Commission for Europe, 1998, <https://unece.org/DAM/env/pp/documents/cep43e.pdf>.

¹⁰ See e.g.: "UN Treaty Body Database," UN, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx.



extraterritorial obligations in the context of their business activities. States are required to take steps to prevent and redress rights violations that occur outside their territories, when they are linked to the activities of business entities over which the state can exercise control.¹¹

The UN CESCR and other UN Special Procedures have also explicitly reaffirmed DFIs' human rights obligations and pointed out the need for them to adopt a human rights policy.¹² In its most recent concluding observations on Germany, the CESCR recommended that the "State party adopt a regulatory

framework that ensures that all companies domiciled in the State party or under its jurisdiction identify, prevent and address human rights abuses in their operations not only in Germany but also abroad, and that such companies can be held liable for violations."¹³

The UN *Guiding Principles on Business and Human Rights* also establish that "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations."¹⁴ They also state that they should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.¹⁵

In 2023, Germany adopted a law on human rights due diligence in the context of business enterprises, which also applies to the KfW Group.¹⁶ Under the *Act on Corporate Due Diligence for the Prevention of Human Rights Violations in Supply Chains*, companies are required to identify human rights and environmental risks within their own operations and those of their direct suppliers, and to take appropriate preventive measures. The law also stipulates that if a company is alerted to human rights violations or environmental risks, it must take appropriate action to prevent, end, or minimize the potential impact.

¹¹ "General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities," E/C.12/GC/24, UN CESCR, 2017, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context>.

¹² See e.g.: "Financialization of development cooperation" in "The Routledge Handbook on Extraterritorial Human Rights Obligations," R. Herre and S. Backes, December 2021, <https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9781003090014-21/financialization-development-cooperation-roman-herre-stephan-backes>.

¹³ "Concluding observations on the sixth periodic report of Germany," UN CESCR, November 2018, Paragraph 8, <https://docs.un.org/en/E/C.12/DEU/CO/6>.

¹⁴ "Guiding Principles on Business and Human Rights Principle," (hereinafter, UNGP), UN, 2011, Principle 2, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹⁵ UNGP, principle 4.

¹⁶ "German Act on Corporate Due Diligence Obligations in Supply Chains," BMZ, January 2023, <https://www.bmz.de/resource/blob/154774/lieferkettengesetz-faktenpapier-partnerlaender-eng-bf.pdf>.

Summary of various KfW's environmental and social policies

In the table below, we provide a short overview of key aspects of KfW policies, looking at both the KfW Group as a whole and its units or subsidiaries operating internationally (KfW Development Bank, IPEX-Bank, DEG).

This table does not reflect KfW's ability to live up to the commitments set out in its policy statements.

Indeed, as the cases below illustrate, members of the KfW Group have repeatedly failed to do so. Further details on the specific policies of the KfW Group, including those of its units and subsidiaries, can be found in Annex A.

	KfW Group (* applying to KfW Development Bank, IPEX-Bank and DEG)	KfW Development Bank	IPEX-Bank	DEG
Reprisals	The KfW Group does not have any specific policies or statements on reprisal issues. It is unclear to what extent their referral to World Bank and International Finance Corporation (IFC) policies also includes the application of their standards on reprisals.			
Human rights	<ul style="list-style-type: none"> Protects and respects international human rights within its sphere of influence and employs appropriate procedures to exclude its participation in human rights violations. Commits to actively supporting the implementation of international human rights. Contributes to the realisation of human rights, and uses its influence to strengthen human rights awareness and set a good example through its own actions. 	<ul style="list-style-type: none"> Supports the implementation of human rights in its business operations. Should assess human rights risks, following the guidelines of the German Federal Ministry of Economic Cooperation and Development (BMZ). Requires a detailed Human Rights Impact Assessment (HRIA) in case of critical human rights risks/ violations. 	<ul style="list-style-type: none"> Commits to protect and fulfil international human rights, in compliance with KfW Group's declaration on human rights and international standards such as the UN Guiding Principles on Business and Human Rights. 	<ul style="list-style-type: none"> No specific commitments, but it references EDFI and other international standards.
Participation, stakeholder engagement and FPIC	<ul style="list-style-type: none"> Recognises the need to account for "the perspective of the parties concerned" in order to mitigate E&S risks. Refers to international standards that guarantee the right to participation. No explicit reference to stakeholder engagement, participation, or FPIC. 	<ul style="list-style-type: none"> Explicitly required to involve affected people, and involves public disclosure, as part of ESDD, it is carried out by the "executing agency" – ie. the client. 	<ul style="list-style-type: none"> Stakeholder engagement, as part of the client's ESMS, is carried out by the client itself, who should also be responsible for disclosing the outcomes. In case of risks for Indigenous Peoples, FPIC is required. 	<ul style="list-style-type: none"> DEG expects project partners to provide adequate information to the affected people and consult them, but there are no specific references to Indigenous Peoples and their right to FPIC.

	KfW Group (* applying to KfW Development Bank, IPEX-Bank and DEG)	KfW Development Bank	IPEX-Bank	DEG
Environmental and social standards	<ul style="list-style-type: none"> Subjects projects to an environmental and social impact assessment (ESIA), "in accordance with international standards". Commits to promote human rights in its "business processes, management practice and strategic decision-making". "Takes into account" relevant OECD, IFC, World Bank and European Development Finance Institutions (EDFI) standards as well as Equator Principles. Uses an exclusion list on high risk sectors. Recognises human rights protection as integral to ESIA. Recognises the need to pay special attention to vulnerable and disadvantaged groups, including Indigenous communities. 	<ul style="list-style-type: none"> Depending on the risk level, different environmental and social assessments are required (in line with national laws, as well as the World Bank Group standards). All medium to high risk projects require an in-depth Environmental and Social Due Diligence (ESDD) process. There are specific plans if the project leads to significant loss of livelihood or involuntary resettlements. When risks cannot be mitigated to an "acceptable" level, the project does not qualify for funding. 	<ul style="list-style-type: none"> Considers the Equator Principles, the environmental and social requirements of the OECD Common Approaches, and IFC Performance Standards as a binding framework for certain projects. The risk categorisation and assessment is mostly based on information provided by the client, as it relies on its Environmental and Social Management System. 	<ul style="list-style-type: none"> It follows international standards and uses EDFI standards as a benchmark, but there are no specific requirements or criteria for risk categorization.
Transparency	<ul style="list-style-type: none"> Provides "the greatest possible transparency" about their work reports. Regularly reports "on the impact of [their] activities on human rights and the implementation of this statement in a transparent, understandable manner." 	<ul style="list-style-type: none"> There is a Transparency Portal, but information is very minimal and only available in German. The executing agency should be responsible for publishing project documents, but clear requirements are lacking. 	<ul style="list-style-type: none"> The client is responsible for publishing project information, and no information can be disclosed without its consent. For higher risk projects, the clients may be required to publish the environmental and social compatibility study. 	<ul style="list-style-type: none"> DEG has a Disclosure Policy and publishes basic data about projects. It also publishes an annual account of results of its work, and an assessment of its compliance with relevant environmental and social guidelines.
Accountability	<ul style="list-style-type: none"> Anyone who feels negatively affected can submit a complaint. The complaint mechanism is designed "in accordance with international human rights standards and requirements of the German Supply Chain Due Diligence Law." 	<ul style="list-style-type: none"> There is no independent mechanism, but concerns can be raised (using a form available only in English and German) to the KfW Group mechanism. 	<ul style="list-style-type: none"> The policy only mentions project-level grievance mechanisms. Complaints can also be made to KfW's Central Evidence Unit. 	<ul style="list-style-type: none"> DEG has an Independent Complaints Mechanism (ICM), shared with Proparco and FMO.

Key concerns

While KfW has policies, guidelines and principles for assessing the social and environmental impacts of its projects, these are overall quite vague. Additionally, due to a systematic lack of transparency, there is no way of understanding if the safeguards are adequate to prevent and address negative human rights impacts (including reprisals).

In particular, the analysis of KfW policies raises the following concerns:

- **KfW's safeguards are very general, lack clarity, are non-committal and open to interpretation.**

They are supplemented by references to stronger regulations and standards developed by other banks and organizations. The bank suggests they have an internal mechanism for them to determine what standards apply. However, project-affected communities are left in the dark, as it is difficult for someone on the outside to untangle and navigate exactly what standards apply to which activities of different subsidiaries of the KfW Group, and what are the relevant internal processes. For example, IPEX-Bank safeguards state that "standards derived from European Union environmental legislation may also be applied."¹⁷ There is no clarification on when this would be the case, not even on the project page.

- There is not a specific policy or statement on **reprisals**. It is unclear to what extent the Bank's referral to World Bank and IFC policies also includes the application of their standards on reprisals.
- The KfW Group as a whole does not have an external **independent complaint mechanism** – only an internal procedure that lacks provisions

to ensure independence. Only DEG has a complaints procedure that provides for a degree of independence,¹⁸ the Independent Complaints Mechanism (ICM), which is shared with FMO and Proparco.

- A search of the Bank's websites reveals a **lack of comprehensive and relevant information about the projects**, and some types of project documents that are regularly disclosed by some major multilateral banks are not published by KfW Development Bank and its subsidiaries. KfW's transparency commitments are vague and broad, and they fail to indicate which type of information and documents need to be disclosed (e.g. social and environmental impact assessments, consultation results, appraisal documents, etc.). Additionally, as the disclosed information is not available in local languages, it is insufficient to ensure adequate access to information on the project impacts. The IPEX-Bank Transparency Guideline does not meet either national or international standards related to the right to access public information held by public entities, since it requires the client's consent for the disclosure of any project-related information.
- KfW's environmental and social safeguards **rely too heavily on the client** to determine environmental and social risks, allowing the Bank to shirk responsibility for harms caused in the context of its projects. The fact that KfW relies on its client's own risk-assessments is particularly concerning in case of reprisals, as these are generally carried out by the client itself or by third parties linked to the client and acting on their behalf.¹⁹

¹⁷ "Sustainability Guideline of KfW IPEX-Bank," KfW IPEX-Bank, Section 3.4.1, https://www.kfw-ipex-bank.de/pdf/About-KfW-IPEX-Bank/Social-responsibility/Environmental-and-social-sustainability/2020_10-Nachhaltigkeitsrichtlinie-KfW-IPEX-Bank-2020.pdf.

¹⁸ Accountability Counsel and several other CSOs have raised concerns about ICM's level of independence from management. See: "CSOs Call for the Defense of the Independence of IFI Accountability Mechanisms", Accountability Counsel, October 2023, <https://www.accountabilitycounsel.org/2023/10/csos-call-for-the-defense-of-the-independence-of-ifi-accountability-mechanisms/>.

¹⁹ See e.g.: "Misplaced Trust: Why development banks should not rely on their clients to address reprisal risks," Coalition for Human Rights in Development, July 2023, <https://rightsindevelopment.org/misplaced-trust/>.