

A Dangerous Enterprise:

Development Finance and the Fight for Human Rights

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Executive Summary

Across Latin America and the world, governments and investors are pushing for a dramatic increase in investments in infrastructure, mining, and energy projects to address global development needs and fulfill the Sustainable Development Goals.

Finance is critical for the realization of human rights and sustainable development. But when development interventions fail to engage with local communities and safeguard their human rights, development becomes a dangerous enterprise.

Too often these investments are designed and executed without the participation or respect for the human rights of poor or marginalized communities – arguably the very people who should be development’s priority beneficiaries.

Social movements and civil society groups who try to influence development decisions or voice concerns increasingly find themselves subjected to threats and attacks as governments move to criminalize protest and crackdown on human rights and environmental groups.

For this reason, civil society groups around the world have joined together to call on development financiers and their shareholders to ensure that their activities do not contribute to human rights violations, to safeguard human rights and environmental defenders, and to support an enabling environment for public participation in development.

Introduction

Across Latin America and the world, governments and investors are pushing for a dramatic increase in investments in infrastructure, mining, and energy projects to address global development needs and fulfill the Sustainable Development Goals.¹ While the need for development finance is indeed great, too often these investments are designed and executed without the participation or respect for the human rights of poor or marginalized communities – arguably the very people who should be development’s priority beneficiaries. While

¹ See Development Committee (2 April 2015), *From Billions to Trillions: Transforming Development Finance*, Development Committee Discussion Note.

development finance has reached new heights, so has inequality.² At the same time as governments are pushing for increased investments, many are rolling back critical social and environmental protections such as environmental licensing requirements or labor laws that can help strengthen development initiatives and mitigate adverse impacts.³ Social movements and civil society groups who try to influence development decisions or voice concerns increasingly find themselves subjected to threats and attacks as governments move to criminalize protest and crackdown on human rights and environmental groups.⁴

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In 2009, the World Bank's International Finance Corporation (IFC) made a \$30 million loan to the Dinant Corporation, a Honduran agribusiness company.⁵ The project was designed to expand Dinant's palm oil plantations and support development of a biogas facility. The project was assessed as a sustainable development initiative with only moderate social and environmental risk.⁶ Instead, between 2009 and 2013, peasant farmers on and around Dinant's palm oil plantations were subjected to violent forced evictions, with over 40 deaths linked to Dinant's security forces.⁷

In another example in 2011, the Inter-American Development Bank (IDB) approved \$72 million in financing for a large-scale windfarm and transmission project in the Tehuantepec isthmus of Oaxaca, Mexico, called the Mareña Renovables Wind Project.⁸ The project was heralded as the biggest windfarm in Latin America, and a boon to renewable energy.⁹ But project implementers

² See Oxfam Briefing Paper, "An Economy For the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped" Oxfam International, January 2016,

https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens-180116-en_0.pdf; and Op-ed by Alicia Bárcena and Winnie Byanyima, "Latin America is the world's most unequal region. Here's how to fix it," Economic Commission for Latin America and the Caribbean, 25 January 2016, <https://www.weforum.org/agenda/2016/01/inequality-is-getting-worse-in-latin-america-here-s-how-to-fix-it/>.

³ See e.g. Paul Shortell "In Need of Investment, Peru Rolls Back Environmental Standards", World Politics Review, 28 July 2014, <http://www.worldpoliticsreview.com/articles/13955/in-need-of-investment-peru-rolls-back-environmental-standards>; and Adriana Brasileiro (2 December 2015), *Proposed law may remove indigenous land rights in Brazil*, Reuters, <http://www.reuters.com/article/us-brazil-landrights-indigeous-idUSKBN0TL17120151202>.

⁴ See "The State of Civil Society Report 2016," CIVICUS, March 2016, <http://www.civicus.org/index.php/socs2016>.

⁵ IFC disclosure portal, Corporacion Dinant S.A. de C.V., (# 27250), <https://disclosures.ifc.org/#/projectDetailESRS/344>.

⁶ *Ibid.*

⁷ See Compliance Advisor Ombudsman, *CAO Audit of IFC Investment in Corporacion Dinant*, 20 December 2013, http://www.cao-ombudsman.org/cases/document-links/documents/DinantAuditCAORefC-I-R9-Y12-F161_ENG.pdf.

⁸ Inter-American Development Bank, "Mareña Renovables Wind Project" (ME-L1107).

⁹ See e.g. *Inter-American Development Bank News Release*, "Eolica del Sur to build biggest wind farm in Mexico with IDB support" 24 November 2011, <http://www.iadb.org/en/news/news-releases/2011-11-24/mexicos-marenas-renovables-wind-farm,9708.html>.

violated local indigenous peoples' rights.¹⁰ When communities protested the expropriation of their lands, negative impacts on biodiversity, and disruption of their local fishing economy, they were threatened, physically attacked, and thrown in jail.¹¹

In the Crosshairs

In a 2016 report, Michel Forst, the UN Special Rapporteur on the situation of human rights defenders warned of what he called a “disturbing trend of increasing violence, intimidation, harassment and demonization of the brave individuals and groups who strive to defend and promote environmental and land rights.”¹² Forst highlighted the connection between these attacks and development activities, noting evidence that “most of those facing threats are those opposing land grabbing, extractive industries, industrial timber trade and large-scale development projects.”¹³ According to the watchdog group Global Witness, more than three environmental and human rights defenders are killed each week.¹⁴ Latin America tops the list as the most dangerous region for environmental human rights defenders.¹⁵

These defenders, often indigenous or women, many of whom do not consider themselves activists, are on the frontlines of sustainable development. They work to safeguard and develop their communities and to protect their environment. They are essential for a sustainable development future, yet they are the ones caught, as Peter Bosshard of International Rivers has said, in the crosshairs of development.¹⁶

Attacks against defenders in the context of development activities can take many forms.¹⁷ In some cases, individuals or groups who speak up are labeled as anti-development or subjected to public smear campaigns. They may be brought up on false charges, receive threats or be subjected to illegal surveillance or blackmail. Non-governmental organizations may be threatened with loss of funding or deregistration, or have their members banned from travel.

¹⁰ Independent Consultation and Review Mechanism, *COMPLIANCE REVIEW REPORT, MAREÑA RENOVABLES WIND PROJECT*, disclosed 14 September 2016, <http://www.iadb.org/document.cfm?id=40671375>.

¹¹ See Independent Consultation and Review Mechanism, *COMPLIANCE REVIEW REPORT, MAREÑA RENOVABLES WIND PROJECT*, disclosed 14 September 2016, <http://www.iadb.org/document.cfm?id=40671375>; and Rosa Rojas, “Denuncian campaña de intimidación en contra de indígena de Tehuantepec,” *La Jornada*, 5 December 2013, <http://www.jornada.unam.mx/ultimas/2013/12/05/denuncian-campana-de-intimidacion-en-contra-de-indigena-de-tehuantepec-6483.html>.

¹² Report of the Special Rapporteur on the situation of human rights defenders, United Nations, 3 August 2016, [A/71/281](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

¹³ Report of the Special Rapporteur on the situation of human rights defenders, United Nations, 3 August 2016, [A/71/281](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

¹⁴ Global Witness, “On Dangerous Ground” June 2016, <https://www.globalwitness.org/en/reports/dangerous-ground/?gclid=CLrJ3-SF480CFUZbhgodNDAAWQ>.

¹⁵ Global Witness, “On Dangerous Ground” June 2016, <https://www.globalwitness.org/en/reports/dangerous-ground/?gclid=CLrJ3-SF480CFUZbhgodNDAAWQ>.

¹⁶ Peter Bosshard, “In the Crosshairs of Development,” *Mongabay*, 2 May 2016, <https://news.mongabay.com/2016/05/in-the-crosshairs-of-development/>.

¹⁷ See Human Rights Watch, “At Your Own Risk: Reprisals Against Critics of World Bank Group Projects,” 22 June 2015, <https://www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects>; and Report of the Special Rapporteur on the situation of human rights defenders, United Nations, 3 August 2016, [A/71/281](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

Protests may be violently repressed. Leaders may be targets of unlawful detention, sexual violence and other violent attacks, enforced disappearance, and killings. The attacks may come from government officials, companies, private security forces, or third parties.

Reconfiguring the Development Equation

While development banks have in many cases contributed to human rights abuses, in other cases, these institutions have helped to prevent them. Over decades, civil society has fought to secure social and environmental protections within development banks. These protections include policies on access to information, standards for environmental management, and requirements that governments or companies consult with local communities. They also include independent grievance mechanisms which can help to provide remedy where policies are violated or communities are harmed. These reforms have been critically important in improving development processes and outcomes, especially where governments or corporate actors are not transparent or accountable, or where civil society space is restricted.

But while many development banks have adopted stronger social and environmental protections, they still often fail to ensure meaningful consultation or to effectively identify and mitigate human rights risks. In the Dinant palm oil investment, an internal investigation in 2013 revealed that the IFC failed to identify blatant extreme human rights risks, including the presence of serious land conflicts and allegations linking Dinant to violence and drug activity, and failed to address these risks even when brought to their attention.¹⁸ In the Mareña Renovables windfarm investment, the IDB failed to ensure meaningful consultations with local indigenous communities or to anticipate the potential for conflict.¹⁹

When Honduran indigenous leader Berta Cáceres was killed in 2015 for her opposition to a dam project, the issue of defenders in development was thrust into the spotlight like never before.²⁰ Cáceres was part of a movement of indigenous communities fighting against the Agua Zarca dam and myriad other development projects being implemented on their territory without their consent. Cáceres had received numerous death threats for her activism, and among those arrested for her death was the head of security for the dam company.²¹ The Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), the organization Cáceres led, and its allies targeted their campaigns at the Honduran government, which is notorious for its abuses against indigenous and land rights activists, and at the dam company, Desarrollos Energéticos SA. But they also targeted the international development banks who provided the financing for the Agua

¹⁸ See Compliance Advisor Ombudsman, *CAO Audit of IFC Investment in Corporacion Dinant*, 20 December 2013, http://www.cao-ombudsman.org/cases/document-links/documents/DinantAuditCAORefC-I-R9-Y12-F161_ENG.pdf.

¹⁹ Independent Consultation and Review Mechanism, *COMPLIANCE REVIEW REPORT, MAREÑA RENOVABLES WIND PROJECT*, disclosed 14 September 2016, <http://www.iadb.org/document.cfm?id=40671375>.

²⁰ See Jonathan Watts, "Berta Cáceres, Honduran human rights and environment activist, murdered," *The Guardian*, 4 March 2016, <https://www.theguardian.com/world/2016/nov/15/berta-caceres-murder-honduras-international-investigation>.

²¹ See Nina Lakhani, "Berta Cáceres murder: four men arrested over Honduran activist's death" *The Guardian*, 2 May 2016, <https://www.theguardian.com/world/2016/may/02/berta-caceres-murder-four-men-arrested-honduras>.

Zarca project – the Dutch Development Bank - FMO, the Finnish development financier - Finn Fund, and the Central American Bank for Economic Integration - CABEI – calling on these banks to pull their funding from Agua Zarca, to suspend their financing in Honduras of any other projects that infringe on human rights, and to use their leverage to press for justice for Cáceres’s murder.²² Organizing an international mobilization and media campaign, staging loud protests outside of bank headquarters, and conducting targeted advocacy with government shareholders, campaigners were able to shine an intense spotlight on the dire human rights situation in Honduras. They succeeded in getting the banks to suspend their financing.²³ Groups are pressing FMO to withdraw from Agua Zarca and to develop mechanisms to safeguard human rights defenders. The institution has recently adopted a policy statement “recognizing the need to protect dissenting voices,” but has yet to operationalize this commitment.²⁴

There is still much work to be done to actually bring justice for the killings of Cáceres and other human rights and environmental defenders and to remedy the devastation that these flawed investments enabled. But like Cáceres’s, communities around the world who find their human rights undermined to make way for new energy or infrastructure investments, are following the money to identify important avenues for advocacy and accountability.

A Platform for Change

Civil society groups around the world have joined together to call on development financiers and their shareholders to “do everything within their powers to support an enabling environment for public participation” and to “ensure that their activities do not cause or contribute to human rights violations.”²⁵ This advocacy involves several key demands.

First, financiers should commit to ensuring that the activities they finance respect human rights. The commitment should include, as UN Special Rapporteur Forst has urged, a “zero-tolerance” approach to attacks on environmental human rights defenders and others who seek to participate in or criticize development initiatives.²⁶ It should also go beyond mere project lending to include policy reforms supported by the banks. While development banks actively promote the creation

²² See Joint NGO letter to Dutch Minister for Foreign Trade and Development Cooperation, 14 March 2016, http://www.bothends.org/uploaded_files/inlineitem/3160317_Letter_Minister_Ploumen_Agua_Zarca_final_pdf.pdf.

²³ See BothENDS, Arrest of DESA staff member for murder of Berta Cáceres seems last straw for FMO, 13 May 2016, <http://www.bothends.org/en/News/Laatste-nieuws/newsitem/461/Arrest-of-DESA-staff-member-for-murder-of-Berta-C%C3%A1ceres-seems-last-straw-for-FMO?category=Water%2CLand%2CGeld>.

²⁴ See, Joint NGO letter to Dutch Minister for Foreign Trade and Development Cooperation, http://www.bothends.org/uploaded_files/inlineitem/3160317_Letter_Minister_Ploumen_Agua_Zarca_final_pdf.pdf; Coalition for Human Rights in Development, Coalition Urges Dutch Development Bank to Strengthen Human Rights Protections, 16 November 2016; <http://rightsindevelopment.org/news/coalition-urges-dutch-development-bank-to-strengthen-human-rights-protections/>; and FMO Sustainability Policy, January 2017, <https://www.fmo.nl/sustainability-policy>.

²⁵ “International Financial Institutions’ responsibility to ensure Meaningful and Effective Participation,” July 2016, available at www.rightsindevelopment.org/participationstatement.

²⁶ Report of the Special Rapporteur on the situation of human rights defenders, United Nations, 3 August 2016, [A/71/281](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281.

of an enabling environment for private business, they are largely silent on the need for an enabling environment for human rights and participation. In fact, many of the macroeconomic reforms that development financiers promote on behalf of private sector development, such as labor flexibilization, privatization of public services, or land market reforms, can actually undermine the environment for human rights and fundamental freedoms. In recent years, several governments and development finance institutions have adopted policy requirements on human rights, but there are many more who have yet to make such a commitment.²⁷ Civil society will need to come together to press financiers to respect human rights in all of their activities and to in their research, diplomacy, and technical assistance, promote and highlight the benefits of an enabling environment for human rights and fundamental freedoms. Several development banks' independent accountability mechanisms have adopted or initiated processes for the creation of guidelines and protocols to reduce the risk of retaliation against individuals or communities who file complaints with these grievance mechanisms, and to respond effectively if retaliation does occur.²⁸

Second, development actors must ensure that communities are involved early on in development decisions. This will require that governments reform their national and local planning processes to be open and accountable, and that civil society be supported to meaningfully engage in those processes. Governments also need to ensure that indigenous peoples' rights to self-determination and community decisionmaking processes are respected. At the project level, development financiers should establish and strengthen requirements for free, prior and informed consent and consultation, and mechanisms for participatory design, implementation, monitoring, and evaluation. This includes devising and implementing creative measures to ensure participation of groups who may be marginalized or particularly vulnerable to adverse impacts, or where civic space might be limited. Communities also need targeted support to be able to identify financiers and relevant policies and decisionmakers amid increasingly complex financing arrangements.

Third, financiers should require and undertake human rights due diligence to assess and address human rights risks. While several development institutions have adopted commitments on human rights, there is still a great lack of understanding of how to operationalize these commitments. Institutions like the U.S. Overseas Private Investment Corporation (OPIC), the World Bank's International Finance Corporation, and FMO are now wrestling with how to undertake effective human rights due diligence. Advocates are working to develop and promote tools and

²⁷ See Coalition for Human Rights in Development, Utilizing National Action Plans to Promote Human Rights Due Diligence in Development Finance and Public Financial Institutions, January 2017, <http://rightsindevelopment.org/NAPsBriefer.pdf>.

²⁸ See World Bank Inspection Panel, Guidelines to reduce retaliation risks and respond to retaliation during the Panel process, 30 March 2016, <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20Guidelines.pdf>; And International Finance Corporation, Compliance Advisor Ombudsman, Consultation Draft: CAO Approach to Complainant Protection, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjA6dbEzsfRAhUCQSYKHbYfAeUQFgghMAE&url=http%3A%2F%2Fwww.cao-ombudsman.org%2Fdocuments%2FconsultationDraft-CAOApproachtocomplainantsunderthreatApril2016.pdf&usg=AFQjCNGGAE7f1egxCHMV53suh6Eisa9SbA&cad=rja>.

methodologies for participatory human rights-informed risk analysis.²⁹ Where risks are identified, development actors must take effective measures to mitigate and prevent adverse impacts. For the banks, this can include establishing loan covenants that provide additional training for security personnel or prohibit unlawful use of force, capacity building for project implementers, additional third party monitoring measures or feedback mechanisms, or closer technical cooperation with human rights defender groups and UN and regional human rights bodies.

Fourth, when violations do occur, financiers should be ready to respond quickly and effectively to limit harm and to provide remedy. Some examples of past engagement by development banks include the re-design of harmful projects or withdrawal of financing, engagement of international monitors, use of diplomatic pressure to secure the release of individuals unlawfully detained for their criticism of a development project, or facilitation of reparations processes. But these actions are too few and far between. In many cases development banks deny their responsibility for human rights violations or their obligation to provide remedy. When they do respond, they may prefer a quiet exit that does not actually provide relief to local communities. Advocacy is needed to press the banks to proactively identify a toolbox of available response measures and when needed, to employ whatever measures are necessary, including utilizing their leverage with governments, other financiers, companies, and third parties.

As Latin America and other regions look toward increasing financing for development, we will also need more solidarity and resources to support frontline communities and civil society groups struggling to defend their rights. We will need sustained campaigns bringing in new allies across different sectors to make development processes more accountable and to translate policy changes into real outcomes. It is not a small task. But by reconfiguring development finance, we can help to ensure that development is not a dangerous enterprise.

²⁹ See Coalition for Human Rights in Development, Human Rights Due Diligence Project, www.rightsindevelopment.org/hrdd.