COALITION FOR HUMAN RIGHTS IN DEVELOPMENT



Uncalculated Risks

Threats and attacks against human rights defenders and the role of development financiers

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May 2019

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COALITION FOR HUMAN RIGHTS IN DEVELOPMENT

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Threats and attacks against human rights defenders
and the role of development financiers

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This report is an initiative of the Defenders in Development Campaign which engages in capacity building and collective action to ensure that communities and marginalized groups have the information, resources, protection and power to shape, participate in, or oppose development activities, and to hold development financiers, governments and companies accountable. We utilize advocacy and campaigning to change how development banks and other actors operate and to ensure that they respect human rights and guarantee a safe enabling environment for public participation.

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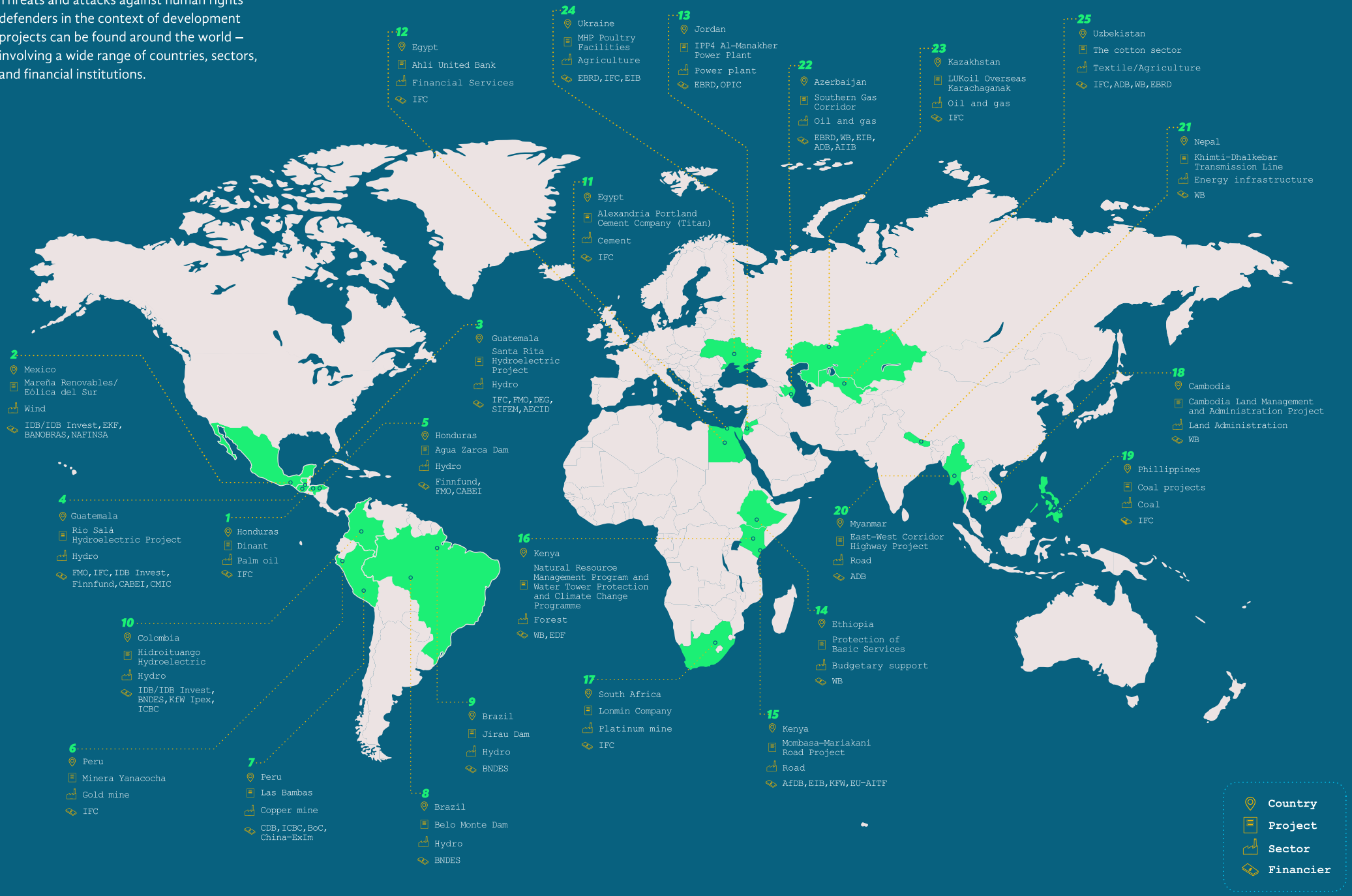
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> 25 CASE STUDIES

Threats and attacks against human rights defenders in the context of development projects can be found around the world – involving a wide range of countries, sectors, and financial institutions.

COALITION FOR HUMAN RIGHTS IN DEVELOPMENT



FINANCIER ACRONYMS

ADB	Asian Development Bank
AECID	Spanish Agency for International Development Cooperation
AfDB	African Development Bank
AIIB	Asian Infrastructure Investment Bank
BANOBRAS	Banco Nacional de Obras y Servicios Públicos
BOC	Bank of China
BNDES	Brazilian Development Bank
CABEI	Central American Bank for Economic Integration
CDB	China Development Bank
China Ex-Im	Export Import Bank of China
CMIC	Mexican Fondo de Fondos
DEG	Development Bank of Germany
EBRD	European Bank for Reconstruction and Development
EDF	European Development Fund
EIB	European Investment Bank
EKF	Danish Export Credit Agency
EU-AITF	EU-Africa Infrastructure Trust Fund
Finnfund	Finnish Fund for Industrial Cooperation
FMO	Dutch Development Bank
ICBC	Industrial and Commercial Bank of China
IDB	Inter-American Development Bank
IDB Invest	Inter-American Development Bank Invest
IFC	International Finance Corporation
KfW	German Development Bank
KfW Ipex	German Export Credit Bank
NAFINSA	Nacional Financiera
OPIC	Overseas Private Investment Corporation
SIFEM	Swiss Investment Fund for Emerging Markets
WB	World Bank

Executive Summary

Inclusive and sustainable development requires an environment where all people are free to express their views, to exercise their rights, and to fully participate in the decisions impacting their lives and their communities. Every day, indigenous peoples, communities, social movements, journalists, and individuals are doing essential work protecting their lands and resources from destruction, fighting for equal access to housing and education, exposing corruption and abuse of power, and advocating for investments that reach the poor. Yet today these **human rights defenders are increasingly subjected to threats and attacks for their efforts**, including harassment, physical violence, criminalization, arbitrary detention, and killing. What's more, these **threats and attacks are increasingly taking place in the context of activities undertaken in the name of development**.

Through 25 case studies, ***Uncalculated Risks*** explores the nature of the threats and attacks against defenders in development, and examines the role of development finance institutions (DFIs) in mitigating or exacerbating these risks.

THE FINDINGS

Threats and attacks against human rights defenders in the context of development activities are widespread – involving a broad range of countries, types of defenders, sectors, types of investments, and development financiers.

Though they take many different forms, threats and attacks often start with the labeling of communities, groups, and individuals as "anti-development." Increasingly governments and businesses are utilizing the law to harass and criminalize defenders in an effort to silence them. Stigmatization and criminalization may quickly escalate into more violent attacks.

The imposition of development activities without the consent or meaningful consultation of local communities and marginalized groups is one of the key root causes of threats for defenders in development. The process of engagement with local communities is as important, if not more so, than a project's physical impacts. In some project contexts, including those where civil society space or fundamental freedoms are curtailed, meaningful participation may not be possible.

Development finance institutions have a duty to respect human rights and to ensure that their investments are not putting people at risk. Yet too often, development interventions exacerbate risks for defenders due to lack of adequate attention to the rights and interests of local communities and marginalized populations, and to the contextual risks and power imbalances that may cause them to bear negative impacts or to be made vulnerable.

DFIs continue to finance projects which cause significant harm to local communities, despite social and environmental safeguards and human rights commitments. Risk and impact assessments often fail to account for social impacts or their distribution on vulnerable groups, and overlook risks stemming from the broader human rights context. Hardly any DFIs systematically examine the enabling environment for public participation and human rights defense.

Early warning signs of potential threats to defenders are often missed or ignored. DFIs rely heavily on client reporting or on assumptions of functioning domestic regulatory and legal systems, without adequate due diligence and on the ground monitoring. Communities and defenders also lack access to project information and transparency that would enable early communication of risks and concerns.

While grievance, accountability and whistleblower mechanisms can provide an avenue for addressing certain concerns, none is entirely adequate or sufficient for addressing defender related threats. Without adequate safeguards to prevent reprisals, these mechanisms can put defenders at greater risk.

DFIs can and have taken action to decrease risks for defenders under threat or to facilitate dialogue between affected communities and other actors. DFIs have a wide range of resources and influence that can be utilized to change the risk equation for defenders under threat, including engagement with governments and companies, public statements in support of the rights of defenders, investigations, suspension of financing, visitation of defenders in jail, and provision of remedy.

Unfortunately, DFIs often remain silent in the face of threats and attacks, or responses come too little, too late. DFIs miss opportunities to proactively create moments of leverage to support the rights of communities and defenders and are reluctant to effectively utilize the leverage they have. Defenders and communities are left without protection or remedy for harm.

Several DFIs are beginning to grapple with threats to defenders in development. Various independent accountability mechanisms have developed guidelines to prevent and address reprisals against those who file complaints. Some DFIs have published position statements against retaliation; others are developing early warning systems and risk screenings to identify threats to defenders.

But much more is needed.

Effectively addressing the shrinking space for participation in development processes and the growing threats to defenders will require not only a change in policy and practice, but a fundamental shift to place human rights and local communities at the center of how development is conceived and implemented.

FROM THE CASES

In **Kenya**, forest service guards implementing a conservation project **shot at and burned the homes of indigenous people** defending their right to live on their lands.

In **Guatemala,** indigenous communities opposing a hydroelectric project have been **subjected to smear campaigns, and face multiple spurious criminal convictions**.

In **Uzbekistan**, labor monitors investigating child and forced labor in state-run cotton fields have been **beaten, detained and institutionalized** for their work.

In **Colombia**, social movements challenging a dam that displaced thousands have been **harassed and illegally detained; several leaders and their family members have been killed.**

In **South Africa**, when labor unrest erupted over squalid conditions at a platinum mine, **police forces launched a militaryesque operation that left 34 dead**.

In **Jordan**, the head of an organization of villagers impacted by pollution from a power plant was **detained and threatened by local police for filing complaints**.

In **Peru**, the government has used **emergency decrees and military force to quash protests and labor strikes** around a copper mine, leading to several deaths.

In **Nepal**, indigenous communities peacefully protesting the construction of a transmission line through their villages were **beaten and detained by police and forced to sign** commitments not to oppose the project.

In **Mexico**, the failure to adequately consult indigenous peoples around a proposed wind farm **divided communities, leading to intimidation, judicial harassment, and physical attacks**.

TO ADDRESS THE GROWING THREATS TO DEFENDERS IN DEVELOPMENT, DFIS AND STATES MUST:

1

Respect rights and avoid harm. Ensure that development activities respect human rights, including by undertaking robust human rights due diligence to avoid adverse impacts, screening projects for reprisal risk prior to approval, developing protocols, contractual requirements, and other necessary leverage to identify, prevent, and mitigate risks for defenders, and conditioning investment decisions and disbursements on the ability to prevent abuses, ensure an enabling environment for defenders, and adequately address human rights impacts.

2

Ensure an enabling environment for participation. Ensure that communities, defenders, and other at-risk groups are able to access information and fully and effectively express their views on, protest, oppose, and participate in development decisionmaking and activities without fear, and that development projects secure and maintain the free prior and informed consent of indigenous peoples or good faith broad community support of other communities, beginning at the earliest stages of design and preparation.

3

Listen to defenders and monitor for risks. Maintain a direct feedback loop with communities, establish active oversight and systematic, independent and participatory monitoring systems for human rights impacts and reprisal risks, and ensure that communities, including defenders and other marginalized groups and individuals, have access without fear to effective grievance and independent accountability and reprisal response mechanisms.

4

Stand up for defenders under threat. Combat the stigmatization of defenders by vigorously reaffirming their critical role in sustainable development, and work with defenders under threat to develop and execute an effective plan of prevention and response that utilizes all necessary leverage with companies, authorities, financiers and relevant actors to safeguard defenders and their right to remain in their territories and communities and continue their defense efforts, to investigate and sanction abuses and prevent recurrence, and to provide effective remedy and accountability for harm.

Our 5 Ps of Reprisal Risk, DFIs' Leverage Toolbox, Reprisal Prevention and Response Process, and Policy Recommendations can help show how.

Introduction

Inclusive and sustainable development requires an environment where all people are free to express their views, to exercise their rights, and to fully participate in the decisions impacting their lives and their communities. Every day, communities, social movements, journalists, and individuals are doing essential work – protecting their lands and resources from destruction, fighting for equal access to housing or education, exposing corruption and abuse of power, and advocating for investments that reach the poor. Human rights defenders are a cornerstone of sustainable development. Yet today their critical work comes at an unacceptable cost. Human rights defenders are increasingly subjected to threats and attacks for their efforts – including harassment, physical violence, criminalization, arbitrary detention, and killing. What's more, these threats and attacks are increasingly taking place in the context of activities undertaken in the name of development.[1] In 2018 alone, of the at least 321 defenders killed for their work defending human rights and fundamental freedoms, three quarters (77%) were defending their land, environmental or indigenous rights, often in the face of large investments, extractive industries and big business activities, or what can be considered development contexts.[2]

This study focuses on the role of the Development Finance Institutions (DFIs) which bankroll and provide technical assistance to governments and companies around the world implementing development activities. **DFIs have an obligation to respect human rights and to ensure that their investments are not putting defenders at risk**. Moreover, given their development mandates, DFIs should have a compelling interest in fostering an enabling environment where local communities and the most marginalized groups in our societies are able to participate in development processes and shape their development paths without fear.

Around the world, as respect for human rights, civic space, and the rule of law deteriorate, so do the conditions for development. DFIs – through their investments, policy recommendations, capacity building, and standard-setting – can have a powerful impact on the landscape for human rights and their defenders, for better or for worse. Unfortunately, too often we see DFI investments causing or contributing to violent attacks against defenders because of a failure to adequately account for the human rights of local communities and marginalized groups, and the contextual risks and power imbalances which can cause these groups and individuals to disproportionately bear the costs of development interventions or to be made vulnerable. When threats and attacks do occur, DFIs are often unable or unwilling to take the necessary action to minimize or remedy the harm suffered.



CASE 16/ GUATEMALA, RÍO SALÁ
Press conference against criminalization of indigenous authorities in San Pablo, San Marcos.

Prensa Comunitaria

To address this challenge, defender protection advocates and accountability groups came together to launch the Defenders in Development Campaign.[3] The Campaign uses collective action to ensure that communities and marginalized groups have the information, resources, protection and power to shape, participate in, or oppose development activities, and to hold development actors accountable. We engage with DFIs and their government shareholders to tackle the root causes of threats against defenders, and to press for changes in policy and practice to ensure that development activities advance and respect human rights, promote a safe and enabling environment for public participation, and safeguard defenders.

Given the retrenchment away from human rights around the world, growing competition for scarce resources, and DFIs' increasing investments in risky projects and fragile and conflict affected states, the threats to defenders in development are only set to become more acute. While we do see some DFIs beginning to grapple with this issue, effectively addressing it will require not just policy changes, but a fundamental reshaping of the predominant development model to truly embrace a participatory, accountable, and rights-respecting approach.

Using This Report

Uncalculated Risks aims to provide an analytical foundation for joint learning on the nature of threats faced by defenders in the context of development activities, the role that development finance institutions presently play, and how they might better prevent and minimize these threats while promoting participatory, rights-respecting development.

Part I of the report provides an overview of the nature of the threats facing defenders in the context of development activities, while Part II explores the role of development financiers and the policy and practice changes that could make a difference for defenders. Part III contains 25 case studies of threats and attacks against defenders, exploring both what happened to the defender as well as what role DFIs played in contributing to or mitigating harm. In Part I and Part II, individual case studies are referenced in brackets where they serve to illustrate a larger trend or finding. An annex provides concrete recommendations for development actors.

The case studies featured in this report were selected to present a diversity of types of defenders, geographic locations, sectors, financiers and types of financing, forms of attacks, and responses by DFIs. They should not be used for quantitative analysis or for generalizing about specific DFIs. Examples where DFIs took successful action to avoid or mitigate reprisal risk were solicited from DFIs, yet may be underrepresented in this report, as those stories are generally not publicized by the DFIs or by activist groups. This is an area ripe for future research.

The case studies were researched by Campaign participants and consultants under the editorial direction of the Coalition for Human Rights in Development, utilizing public reports, project documents, interviews with defenders and advocacy organizations, and input from civil society groups, development financiers, independent accountability mechanisms, and companies. We acknowledge and appreciate the thoughtful contributions we received from all parties.

>Cases Studies Table

Region	Nº	Country	Project	Sector	Financiers	Attacks on Human Rights defenders
LAC	1	Honduras	Dinant	Palm oil	IFC	“Killings of farmers and land rights activists”
	2	Mexico	Mareña Renovables/Eólica del Sur	Wind	IDB / IDB Invest, EKF, BANOBRAS, NAFINSA	“Criminalization, threats and attacks against members of indigenous peoples movements”
	3	Guatemala	Santa Rita Hydroelectric Project	Hydro	IFC, FMO, DEG, SIFEM, FONPRODE	“Fueling conflict in indigenous communities”
	4	Guatemala	Rio Salá Hydroelectric Project	Hydro	FMO, IFC, IDB Invest, Finnfund, CABEI, CMIC	“Criminalization of indigenous communities”
	5	Honduras	Agua Zarca Dam	Hydro	Finnfund, FMO, CABEI	“Killing of Tomás García, Berta Cáceres, and attacks on COPINH and the community of Rio Blanco”
	6	Peru	Minera Yanacocha	Gold mine	IFC	“Aggression against Máxima Acuña-Atalaya de Chaupe and violent repression of protests”
	7	Peru	Las Bambas	Copper mine	CDB, ICBC, BoC, China Ex-Im	“Use of emergency decrees and militarization to silence indigenous communities”
	8	Brazil	Belo Monte Dam	Hydro	BNDES	“Intimidation and corruption to silence indigenous communities, environmental activists and government regulators”
	9	Brazil	Jirau Dam	Hydro	BNDES	“Killing of Nilce de Souza Magalhães and threats to activists”
	10	Colombia	Ituango Hydroelectric Project	Hydro	IDB/IDB Invest, BNDES, KfW Ipex, ICBC	“Attacks, criminalization and killings of grassroots activists”
MENA	11	Egypt	Alexandria Portland Cement Company (Titan)	Cement	IFC	“Intimidation and judicial harassment of workers and local community”
	12	Egypt	Ahli United Bank	Fiancial services	IFC	“Retaliatory freezing of Egyptian human rights lawyer’s assets ”
	13	Jordan	IPP4 Al-Manakher Power Plant	Power plant	EBRD, OPIC	“Intimidation of Mr. Al-Daboubi, East Amman Society for Environmental Protection (AESEP)”
AFRICA	14	Ethiopia	Protection and Promotion of Basic Services	Budgetary support	WB	“The arrest of Pastor Omot Agwa”
	15	Kenya	Mombasa- Mariakani Road Project	Road	AfDB, EIB, Kfw, EU-AITF	“Intimidation of community complainants”
	16	Kenya	Natural Resource Management Program and Water Tower Protection and Climate Change Programme	Forest	WB, EDF	“The killing of Robert Kirotich, shooting of Elias Kimaiyo, and violent evictions of the Sengwer of Embobut”
	17	South Africa	Lonmin Company	Platinum Mine	IFC	“Massacre of workers at Marikana Mine, South Africa”
ASIA	18	Cambodia	Cambodia Land Management and Administration Project	Land Administration	World Bank	“Tep Vanny and the community of Boeung Kak Lake”
	19	Phillipines	San Miguel Power Coal projects	Coal	IFC	“Killing of Gloria Capitan”
	20	Myanmar	East-West Corridor Highway Project	Road	ADB, China-ASEAN Investment Fund	“Intimidation of Karen farmers in a conflict zone”
	21	Nepal	Khimti–Dhalkebar Transmission Line	Energy infrastructure	WB	“Intimidation of indigenous Peoples in Sindhuli District, Nepal”
ECCA	22	Azerbaijan	Southern Gas Corridor	Oil and gas	EBRD, WB, EIB, ADB, AIIB	“Jailing of Ilgar Mammadov, journalists and anti-corruption activists”
	23	Kazakhstan	LUKOIL Overseas Karachaganak	Oil and gas	IFC	“Harassment and intimidation of Svetlana Anosova, village of Berezovka, Crude Accountability staff “
	24	Ukraine	MHP Ukraine	Agriculture	EBRD, IFC	“Assault of community activists”
	25	Uzbekistan	The cotton sector	Textile/Agriculture	IFC, ADB, WB, EBRD	“Detention and abuse of Elena Urlaeva and other independent labor monitors”

Centro de Medios Independientes



Part I:
Defenders in Development

Case 4 / GUATEMALA, RÍO SALÁ
Indigenous land rights activists imprisoned in San Marcos, Guatemala.

Part I: Defenders in Development

WHO ARE DEFENDERS IN DEVELOPMENT?

The UN defines human rights defenders as individuals or groups that, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights.[4] By defenders in development, we mean all human rights defenders impacted by development activities and those doing the critical work of sustainable development. They may be individuals (Mombasa, Basic Services), communities (LMAP, Las Bambas), indigenous peoples (East-West, Río Salá, KNRM), journalists (SGC), workers (Titan, Lonmin), activists and advocates (MHP, AUB), mothers (Lukoil), youth (Hidroituango), civil society organizations (IPP4), social movements (Agua Zarca, Jirau) or public officials (Belo Monte).

More than who they are, human rights defenders are defined by their actions. Defenders advocate for a clean and healthy environment, to safeguard their lands and livelihoods, and for the right to practice traditional cultures. They fight for a voice in decision-making, to access health care and education, to have decent work and adequate food, to combat corruption, and to access justice. Defenders in development are all those who seek to participate in, shape or oppose specific development interventions to ensure that rights are respected and that development activities are accountable, equitable, and effective. Defenders need not be professional human rights advocates or outspoken leaders. In the context of development, defenders are often collectives rather than individuals. Indigenous communities, such as those highlighted in some of our cases (Río Salá, KNRM, KDTL), who choose to stay on their lands and to practice their livelihoods and cultures against extreme pressure, are in exercising their human rights, defending them.



CASE 4/ GUATEMALA, RÍO SAIÁ
San Marcos Community Protest.

Norma Sancir

While defenders who criticize or scrutinize development interventions are often described as "anti-development", this is far from the truth. Most defenders want and fight for access to social services, sustainable infrastructure, access to energy, more democratic institutions, and the ability to maintain and strengthen their livelihoods and cultures. What defenders often oppose, are development interventions and investments that are forced on them rather than created with them, without respect for their priorities or their rights, and often leaving them to pay the costs while others reap the benefits.

WHAT THREATS DO THEY FACE?

The threats and attacks experienced by human rights defenders may take many different forms. However, they often start from the same seed– **smear campaigns or stigmatization** used to delegitimize a defender's character or motivation. This may take the shape of stories in the media (Río Salá, Titan), anonymous leaflets (MHP), or YouTube videos (Lukoil). Defenders are often characterized as "anti-development" troublemakers (Santa Rita), or criminal elements, connected to the mafia, guerrilla, or narcoterrorism (Río Salá). This not only serves to delegitimize the defender, but it can also fuel attacks or signal to security forces, corporate actors, and third parties that future attacks will likely go unpunished.

Smear campaigns often escalate to more overt **harassment**, such as verbal or written **threats, and surveillance** (Mombasa, Mareña, Basic Services). Those who speak out may be subjected to **labor retribution**, threatened with losing job opportunities or being blacklisted for advancement

(IPP4). Communities who oppose a project or are affiliated with an opposition party may be denied public services such as medical care or access to development benefits (Mareña).

Increasingly, indigenous communities and other defenders are being **criminalized** or subjected to spurious charges (LMAP, Río Salá, Belo Monte, KDTL, Mareña).[5] This strategy of "**judicial harassment**" not only serves to deter individuals or civil society groups from continuing their activism, but it also forces individuals, communities and organizations to divert scarce human and financial resources away from their organizing work to fight off legal challenges (Bambas, AUB).

More and more, countries are moving to characterize specific development projects as in the "national interest", allowing the **suspension of fundamental freedoms** and the application of harsh penalties for those seen to challenge investments (Bambas). Many countries are utilizing **anti-terrorism laws** to charge activists (Basic Services). **Crackdowns on journalists** or human rights monitors, especially those exposing corruption or otherwise challenging projects which directly benefit dictatorial regimes, is common in many countries (SGC, Cotton). In the same vein, our research has found raids by security forces and **seizure of assets or property**, including documents, computers or cameras which contain evidence of corruption or other illegality (KNRM, Basic Services, Cotton).

Repressive regimes are increasingly using **legal restrictions** against NGOs and civil society organizations to curtail and silence opposition. Since 2012, 72 countries have proposed or enacted more than 144 restrictions on civil society.[6] Measures include restrictions on assembly or receipt of foreign funding, as well as prohibitive registration requirements that make it impossible for civil society organizations to operate (AUB). Once these restrictions are in place, the threat of de-registration or prosecution can press civil society groups into self-censorship.

With criminalization comes **detentions and arrests**. Detention can be used as a scare tactic to deter activists, or to delegitimize them in the public eye (Cotton, Belo Monte). In other cases detention is used to coerce communities to agree to end their opposition (KDTL, IPP4). Often, defenders are subjected to detention or charges for years without trial or actual conviction (Basic Services, East-West, LMAP, Bambas).

Repression of protests, land occupations, or labor actions by public and private security forces (Titan, Yanacocha) is common, including in some cases deadly use of force (KDTL, LMAP, Agua Zarca, Dinant, Lonmin). Often protests or unrest are used as an excuse to impose **states of emergency or other restrictions on freedom of assembly**, such as curfews or prohibitions against gathering in groups (Santa Rita, Titan, Bambas) or for the **militarization of communities**, including the utilization of public armed forces as private security detail (Santa Rita, Belo Monte, Dinant). Our research has also shown the use of judicial restraining orders to criminalize protest (Belo Monte).

In many of our cases, defenders are subjected to targeted **physical attacks**, ranging from beatings (MHP, KNRM, Cotton), to torture and killings (Agua Zarca, Coal, Hidroituango, Jirau).

Women defenders may experience an additional layer of danger. For women defenders, threats and attacks are often accompanied by **gender-based violence**, torture, and harassment (Hidroituango, Agua Zarca). An example is a case where female labor monitors were subjected to body cavity searches (Cotton). An insidious trend of '**reputational exploitation'** against women defenders is also growing, wherein photos or videos are digitally manipulated to make it appear that the defender has done something scandalous (LUKoil). Women defenders are also more likely to have their children or families threatened or attacked (Coal, Mareña). Militarization of communities also often includes sexual violence and rape, which largely go unreported.

Attacks on defenders are very rarely singular events. Instead they occur as a series of incidents that often start as relatively minor, escalating as the perpetrator tries increasingly violent measures to silence the defender. According to Front Line Defenders, the vast majority of killings of defenders (a full 90%), were preceded by specific threats directed at them or other defenders in the area.[7] This means that seemingly low-level incidents, such as defamatory news stories or vague warnings, must be taken seriously and addressed not only for their direct impacts, but for the escalating attacks that could likely follow.

WHO IS PERPETRATING THESE ATTACKS AND WHY?

Due to a high degree of impunity in many countries, the majority of threats and attacks against defenders are not prosecuted, and therefore it is often



Turkhan Kerimov (RFE/RL)

CASE 22/AZERBAIJAN, LUKOIL
Ilgar Mammadov detained during 2013 protest rally in Baku.

difficult to identify the specific perpetrators. Often the person carrying out an attack – the person printing the fliers for a smear campaign or pulling the trigger of a gun – is doing so at the behest or the perceived interest of someone more powerful (Agua Zarca, MHP, Mareña, Coal). **Development projects often feed into a much larger political, economic, and resource power structure, especially in countries where much of the land and businesses are in control of a small number of elite with links to armed groups and cartels.**

Nevertheless, the cases we examined give an idea of the range of actors conspiring to silence defenders. These include local or national government authorities (LUKoil, Basic Services, Mareña, SGC, IPP4, Hidroituango, Mombasa), military or police forces (East-West, LMAP, KDTL, Bambas, Santa Rita, Lonmin, Cotton, Titan, Bello Monte, KNRM, Yanacocha), paramilitary or armed actors (Hidroituango) judicial authorities (AUB), private security personnel (Dinant), hired hit men (MHP, Coal, Mareña, Agua Zarca, Hidroituango), project implementer executives or company employees (Agua Zarca, Río Salá, Mareña, Lonmin), pro-company unions (Lonmin, Mareña), landholders (Dinant, Santa Rita), and local elite (Santa Rita, Río Salá).

There can be any number of different motivations for attacks against defenders in development contexts. Several of our cases describe threats and attacks that are orchestrated **to prevent or deter opposition to development activities** or investments. In some cases this means literally removing communities from their land to facilitate a project (KNRM, Yanacocha). In other cases it means detaining striking workers (Titan) or manufacturing consent by forcing communities to ratify support for a project (KDTL). We found more than one instance where authorities or companies have attempted to silence activists because **they believed that is what investors wanted**. Threats and attacks may also occur as a means of **preventing transparency or scrutiny** that could hinder a project, such as attacks on journalists, activists, or officials exposing corruption or illegal activity (SGC, Lukoil, Belo Monte). Threats may also take place in the context of a **struggle over access to development benefits or conflict over distribution of costs and benefits** within a community (Mareña). In some cases threats and attacks linked to a development project may be meant to silence human rights activism entirely unrelated to the project itself (AUB).

THE CONNECTION BETWEEN THREATS TO DEFENDERS AND DEVELOPMENT FINANCE

In the reality of today's world, threats and attacks can occur in even the best designed development project. In most cases, they are the product of a variety of different factors and triggering events, such as lack of rule of law, existing community conflict, the presence of armed groups, political rivalries, resource scarcity or tenure insecurity, or systematic discrimination. Yet too often, development interventions exacerbate risks for defenders due to lack of adequate attention to the rights and interests of local communities and marginalized populations and to the contextual risks and power imbalances that may cause them to bear negative impacts or to be made vulnerable.

As our cases evidence, DFIs can cause, contribute to, or be linked to threats and attacks in a variety of ways. DFI investments may directly or indirectly benefit companies, contractors and governments implicated in attacks (KNRM, SGC, Agua Zarca, East-West, Cotton). Development interventions may, through their adverse impacts or distribution of impacts, fuel conflict or protest, putting defenders at risk (Coal, Mareña, KDTL, LMAP, Lonmin). DFI investments may fail to adequately address the risk of retaliation against communities or workers (IPP4, Mombasa, KDTL). Similarly, investments in sectors rife with corruption and weak rule of law may increase the risk for whistleblowers (Jirau, Belo Monte, LUKoil). Government authorities may crack down on fundamental freedoms, or criminalize indigenous peoples, activists or workers in an effort to facilitate investments (IPP4, SGC, Bambas, Río Salá). In some cases DFIs may be invested in companies that are utilized to silence defenders, such as the use of ICT infrastructure to surveil activists, or the use of private banks to unlawfully freeze activists' assets (AUB).

CASE 6/PERU, YANACOCHA
Máxima Acuña has been fighting to defend her land rights against a mining development



EarthRights International

The connection between a DFI and an attack that takes place in the context of its investments will vary greatly depending on the nature of the attack and the nature of the DFI's involvement. In some cases the connection with the DFI is more direct, such as where DFIs have an active role in the design of a given project or in its financial viability (KNRM). Where DFIs hold equity shares in companies perpetrating abuses, they may even have a profit relationship with the alleged perpetrator (Yanacocha, Titan). In other cases a DFI's involvement may be more removed, such as when financing through investment funds, third-party banks, or financial intermediaries (Coal, Río Salá).

THE HUMAN RIGHTS OBLIGATIONS AND RESPONSIBILITIES OF DEVELOPMENT FINANCIERS

Human rights, including the rights of all people to life, liberty and security, the right to expression, to peaceful assembly, and to participate in decisions that affect them, are codified in binding international treaties. Those persons and groups who strive to defend human rights are afforded special recognition. The United Nations Declaration on Human Rights Defenders shows how human rights law is applied to ensure defenders are able to do their critical work without reprisal.[8]

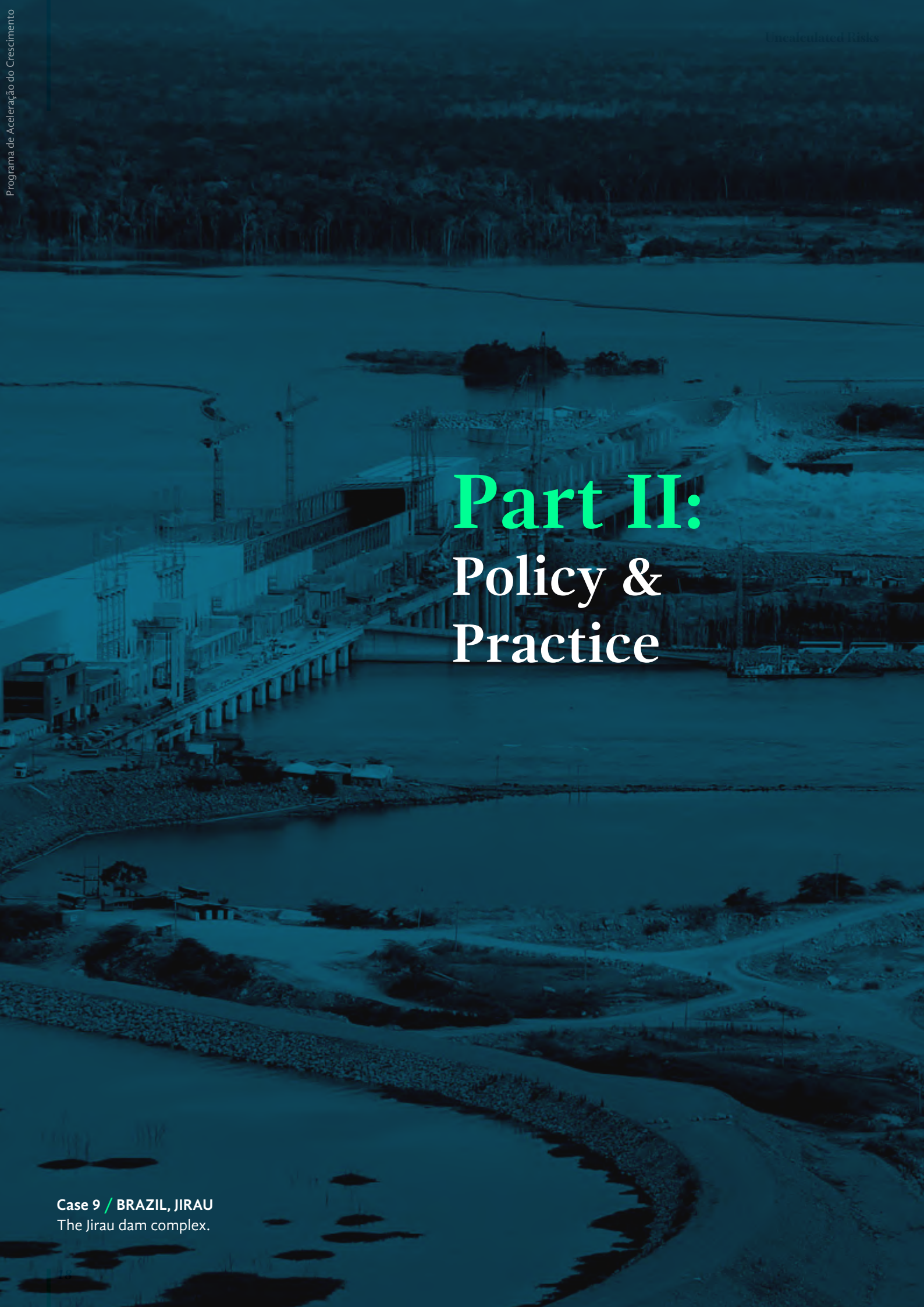
Under international law, DFIs have at a minimum the responsibility to respect human rights and to prevent, mitigate, and to help provide access to remedy for any threats and attacks against defenders in the context of their investments.[9] Many DFIs have additional human rights obligations depending on the nature of the institution.[10] In addition, DFIs' government shareholders have their own human rights obligations which they carry with them in their actions and decisions as members and owners of DFIs.[11]

As development actors, DFIs also have a compelling mission driven responsibility to advance the realization of human rights, especially of the most poor and vulnerable, and to ensure meaningful public participation and respect for fundamental freedoms in the activities they support. As both human rights and development experts have noted, respect for the human rights of freedom of expression, assembly, and association is crucial for achieving participatory, sustainable, and accountable development.[12] Research by the World Bank and others has demonstrated that having a strong enabling environment for civic space and public participation correlates to higher levels of economic growth and human development, and leads to more successful development interventions.[13]

To effectively deliver inclusive and sustainable development, DFIs should **adopt a human rights-based approach.** At a minimum, DFIs should **respect human rights and undertake robust human rights due diligence** to ensure that their activities are not causing or contributing to rights abuses or to threats or attacks against defenders.[14] DFIs should **respect and protect the rights of individuals and communities to participate in development decision making**, and to express their views on or protest development proposals without reprisal. And when threats and attacks occur, DFIs should **investigate the incident, and use their leverage and resources to mitigate harm, prevent recurrence, and help ensure access to effective remedy, including accountability.**

Programa de Aceleração do Crescimento

Part II:
Policy & Practice



Case 9 / BRAZIL, JIRAU
The Jirau dam complex.

Part II: Policy & Practice

ASSESSING AND AVOIDING ADVERSE IMPACTS

Where a development initiative causes harm, such as forced evictions or environmental degradation, individuals and communities are compelled to defend their rights, leaving them vulnerable to reprisal. In this sense, **the best prevention against defender attacks is to select and design projects so as to avoid adverse environmental and human rights impacts.** Our cases show that despite most DFIs having social and environmental safeguards, and many having human rights commitments, they continue to finance projects that harm communities and the environment. Ultimately the problem lies in an inadequate prioritization of human rights and human development impacts.

Though this is starting to shift, **DFIs – from their institutional cultures to their operational systems – are for the most part tooled to prioritize economic growth rather than human development impact.** One area where this is evident is in how DFIs make financing decisions. For DFIs, a project's risk analysis, and resultant risk classification, has a fundamental impact on whether the project moves forward, as well as determining the level of due diligence and stakeholder engagement required – from what project documents must be disclosed, to whether third-party expertise is engaged, or whether free, prior, informed consent (FPIC) must be obtained. Unfortunately, risk and impact analysis is still generally geared toward corporate or financial risk, or the risk of significant physical and environmental impacts.

Human Rights Commitments

Many DFIs have human rights requirements within their operational policies or founding documents. The U.S. Overseas Private Investment Corporation (OPIC), for instance, is required by policy to ensure that its projects "avoid prejudice and discrimination and respect human rights".[15] The European Investment Bank (EIB) restricts its financing to projects that respect human rights.[16] West African Development Bank policy provides that environmental and social due diligence measures "deal with…the protection of human rights…".[17] The European Bank for Reconstruction and Development (EBRD) "will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements."[18] German KfW states that the institution "will not be party to any human rights violations in any form whatsoever within its own sphere of influence," and that it is "committed to using the tools at its disposal to actively support the implementation of international human rights."[19] The Caribbean Development Bank's Exclusion List prohibits financing for projects "which result in limiting people's individual rights and freedom, or violation of human rights."[20]

At the same time, very few DFIs have operationalized human rights due diligence to effectively identify and avoid adverse human rights impacts. While some institutions require assessment of human rights impacts, there is still a lack of understanding as to what constitutes human rights due diligence, and an overreliance on the Performance Standards of the International Finance Corporation (IFC) as a stand-in. In general, human rights concerns are still sidelined in investment decisions at DFIs.

National regulatory frameworks and practitioner **capacity to accurately assess social impacts, and especially human rights risks and impacts, is still weak across the development field.**

There are several ways in which DFI-financed projects fail to account for human rights risks and impacts. Many of the cases we examined were assumed not to carry significant social impacts because they did not have a significant physical footprint or environmental impact (Agua Zarca, Santa Rita). Four, for instance, were certified under the UN Climate Change Convention's Clean Development Mechanism (Dinant, Santa Rita, Mareña, Jirau). Yet **environmental sustainability does not equate to social sustainability.** Similarly, small investments may be part of a complex of investments with significant cumulative impacts (Jirau). DFIs tend to underestimate the potential adverse impacts of non- brick and mortar projects such as regulatory reforms, programmatic lending, technical studies or budgetary support, often not requiring impact assessments, despite the fact that these activities can have far reaching human rights implications. Our case studies also show that **some of the most potent human rights risks stem not from a project's construction or operation, but from the laying of groundwork**, from exploration and licensing, to engagement with local communities and authorities (Agua Zarca, Mareña, Santa Rita).



Goldman Environmental Prize

CASE 5/HONDURAS, AGUA ZARCA
Berta Cáceres was killed in 2016 for her opposition to a dam project.

Impact assessments also often fail to adequately consider how impacts are distributed. **Defenders and other marginalized groups will often be more vulnerable to project impacts, either because they are more exposed or have less resources to resist or recover.** Where project impacts create winners or losers, or an inequitable distribution of impacts or benefits, they can cause conflict as well as vulnerability.

Even where a project itself does not cause significant direct adverse impacts, it may exacerbate reprisal risks existent in the broader project context. In our case studies, **many projects evidenced a lack of attention to contextual risks** - those stemming from the country or local context, or the project sector (Santa Rita, Cotton, Hidroituango, KNRM, Dinant). While several financiers are beginning to take a closer look at contextual risks such as governance, land tenure, or conflict, **hardly any systematically examine the enabling environment for public participation and human rights defense**. In some cases, DFIs entered into investments in projects even after defenders critical of the project or client had been killed (Dinant, Agua Zarca).

Impact assessments conducted by corporate or public sector clients, or consultants hired by them, have an inherent tendency to understate human rights risks associated with those actors. While most DFIs conduct risk assessments on potential clients, often those assessments are limited to corruption, or rely largely on civil or criminal convictions, an inadequate indicator in countries with weak rule of law. Risk assessments also often fail to anticipate the human rights record or potential impacts of **upstream or downstream partners, suppliers and contractors, as well as additional players** operating in the area, such as armed groups, or cartels (Hidroituango).

A lack of attention to contextual risk and risks related to project clients, partners, or third parties additionally can mean that assessments fail to follow impacts to their logical end. Assessments may identify a risk of forced eviction, for instance, but are much less likely to consider the risk of resulting violence or repression of protests. These more **secondary human rights impacts are then left unmitigated**. Militarization and criminalization, for instance, are rarely considered in project impact assessments, despite the fact that our and others' research demonstrates that these are relatively common secondary effects of development interventions.

The available options for a DFI to prevent, mitigate, or remedy a threat or attack against a defender will depend in part on the **leverage it has with the players involved in the harm or over the situation of vulnerability facing defenders.** DFIs often point to a lack of leverage, either due to the fact that they are not a policing force, they are not directly implementing development projects, perhaps they are only a minority lender or shareholder, or they only have an indirect investment in the activity in question. They may have little leverage with a well-resourced client, or with perpetrators such as armed groups or unknown assailants. They may have political constraints

stemming from their shareholders. It is true that these limitations on leverage complicate DFIs' ability to safeguard defenders once threats arise. For this reason, leverage should be taken into account in early stage due diligence before an investment is made. **The lack of adequate leverage in a risky project environment is a reason not to go forward with that investment, not a justification for avoiding due diligence**.

A key challenge for DFIs is effectively utilizing the leverage they do have to prevent and respond to threats and attacks. Though the most obvious source of leverage for a DFI is money, leverage goes beyond the power of the purse. It can be thought of as a range of resources, relationships, and influence that can be used to encourage or compel a specific action by a government or business client, partner, or other influential party, or to otherwise alter the situation of vulnerability, in order to mitigate risks for defenders or remedy harm. **DFIs' leverage toolbox includes normative influence, financial leverage, legal leverage, diplomatic or political leverage, convening power, and technical expertise and development resources**. [See A DFI's Leverage Toolbox]

WHAT CAN BE DONE

To avoid adverse human rights impacts, DFIs will need to **operationalize a commitment to respect human rights and safeguard defenders through robust screening, assessment, due diligence, and use of leverage.**

- **Asses and avoid significant adverse human rights impacts**. As a bottom line, DFIs have to be willing to steer away from activities and investments that are unable to ensure rights are protected. This means **requiring assessment of the full range of human rights and reprisal-related impacts**, including differentiated impacts on defenders and other marginalized or vulnerable groups, and evaluating impacts based on their human rights significance (scope, scale, and irremediability).[21] Ultimately, it means **making human rights a determinant factor in investment strategies and decisions**. Civil society groups have long called for DFIs to divest from certain sectors or types of investments where social and environmental risks cannot be adequately mitigated, such as large-scale dams. DFIs should also develop robust safeguards to prevent some of the key root causes of threats for defenders, such as land-grabbing, or abuses by private security forces.

- **Screen all projects for human rights and defender risks prior to approval.** DFIs should screen all projects for human rights and defender risks, examining the following five overlapping layers of risk. Both the significant presence of any individual risk factor or the combination of several risk factors should be considered a red flag.

The 5 Ps of Reprisal Risk

Place:
restriction of fundamental freedoms, militarization, discrimination, insecure land tenure, weak rule of law, conflict or post-conflict, resource scarcity, corruption, impunity, threats against defenders or lack of protection frameworks, restricted civic space

Project:
significant adverse impacts, especially on vulnerable populations, disparate distribution of costs and benefits

Process:
inadequate information disclosure, consultation or engagement, lack of broad community support or FPIC, coercion, distrust, representation challenges, opposition or concerns

Players:
government or corporate client/contractor's poor human rights record or capacity, use of security personnel, presence of armed groups, organized crime, corruption

Population:
presence of defenders at risk or vulnerable groups, discrimination, stigmatization or attacks, legal insecurity, representation challenges, low capacity, conflict or tension

Screening for Defender Risks

Many DFIs are beginning to change how they assess risks.

The IFC recently developed new requirements to screen projects for contextual risks and factor these risks into decision-making. The institution also reports making efforts to better capture and present contextual risks in project documentation and for discussion by the Board of Directors, and to identify the limitations of private sector clients to address these risks.[22]

EBRD is piloting the use of a heatmap to profile client countries based on publicly available human rights statistics and information sources examining the following areas: labour rights; life, liberty and security of person; rule of law; voice and accountability; environment; corruption; land rights; access to safe drinking water; access to information; freedom of association and assembly; and ethnic minorities and indigenous peoples.

The Dutch development bank FMO is currently developing an early warning system to identify defender risk through an initial desk-based screening at the appraisal stage to assess contextual risk, and where this screening identifies a high or medium degree of risk for defenders, following with a more in-depth screening utilizing site visits to meet with key stakeholders, including communities and human rights groups, and additional desk research.[23]

Finnfund reports utilizing publicly accessible information from NGOs and research institutions such as Human Rights Watch, the Open-net initiative, the ACLED data base on conflicts, and the Business and Human Rights Resource Centre portal, as well as consulting with civil society groups. The assessments also apply checklists, including the "Human Rights Compliance Assessment Quick Check" of the Danish Institute for Human Rights.[24]

Inter-American Development Bank (IDB) guidance on social impact assessment recommends examination of the following contextual risks: conflict, fragility and violence; human rights abuses; gender inequality; political instability; ethnic and religious tensions; legal protection and rule of law; potential for elite capture; opposition or distortion of project by influential stakeholders; corruption and weak governance; natural disasters and climate effects; and legacy issues involving past history.[25]

OPIC consults with the US State Department regarding country-level human rights contexts, examining public participation, fundamental freedoms, conflict, and discrimination, among other factors. OPIC considers high risk those projects that are in locations, industries, or sectors with historical issues related to adverse impacts, projects with demonstrated local opposition, environments of fragile security or history of security personnel abuses, legacy of gender or ethnic discrimination/violence, or country contexts where national human rights laws are below international standards.[26]

• **Where project screening identifies significant reprisal risk, trigger heightened due diligence.** Based on screening and ongoing monitoring, **projects should be assigned a reprisal risk classification**. DFIs should ask:

- *What is the level of reprisal risk, and can it be mitigated to avoid rights abuses and reprisals?*
- *Can the project reasonably ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate in development decisions and activities?*
- *Will we have sufficient leverage to prevent and address any human rights abuses that may occur?*

If the answer to these questions is "No", the project should be rejected or redesigned. If the answer is "Yes", human rights due diligence should be applied according to the level of risk present. For projects identified as carrying significant reprisal risk, a robust assessment will need to be made by the DFI in consultation with project affected communities as to whether the risks can be sufficiently mitigated so as to avoid human rights abuses and prevent reprisals.

A **significant reprisal risk** classification should trigger the following:

1) **in-depth assessment of human rights impacts**, with attention to threats to defenders

2) **heightened human rights due diligence**, including additional monitoring, and dedication of relevant human rights expertise,

3) a **higher level of reprisal-sensitive stakeholder engagement**, and a direct line of communication with affected communities,

4) a **reprisal prevention and response plan**, and

5) establishment of a **reprisal monitoring and response system.**

These elements are explained further below.

• **Establish a project-specific reprisal prevention and response plan.** Just as DFI projects with environmental risks are required to develop disaster preparedness and emergency response plans, projects which have been identified as having significant risk of reprisals should develop a **reprisal prevention and response plan** either as a standalone plan or as part of the social and environmental management and stakeholder engagement plans. The plan should identify first, the stakeholders at risk and the sources and nature of potential threats. This information can be drawn from the *5Ps of Reprisal Risk* analysis. Next, the plan should identify the available mitigation and response measures, including what leverage the DFI has or can establish with the relevant sources of threat or other influential parties [See A DFI's Leverage Toolbox].

Through this exercise, it is possible to anticipate potential reprisals and whether or not sufficient leverage exists to mitigate harm and prevent abuses. The prevention and response plan should identify specific protocols and reporting channels for different types of threats or risk scenarios, similar to a standard emergency response plan. It should also include the stakeholder engagement measures that will be used to decrease the vulnerability or increase the capacity of specific at-risk groups or individuals [see Reprisal-Sensitive Engagement below].

A DFI's Leverage Toolbox

> **NORMATIVE INFLUENCE**

- Conveying a commitment to human rights and public participation and a prohibition against reprisals in all engagement with clients, governments and the public
- Using research to highlight the development benefits of inclusive processes, and of human rights and those who defend them
- Identifying defenders as legitimate stakeholders and identifying communities as valuable sources of information on development impacts and strategies
- Publicizing experiences and lessons learned in managing defender risks, including the record of clients and third parties

> **LEGAL LEVERAGE THROUGH POLICY AND CONTRACTUAL PROVISIONS**

- Including within exclusion lists, projects which violate human rights, or contracting with parties with a record of abuse
- Requiring respect for human rights, due diligence to prevent reprisals, and protection of whistleblowers
- Requiring reporting of national legislative changes impacting public participation in development decisionmaking
- Mandating immediate suspension of relationships with third parties where there is reasonable risk of linkage to human rights abuses

A DFI's Leverage Toolbox

- Requiring prompt and effective investigations by law enforcement or human rights authorities, and prosecution of reprisals
- Requiring compliance with international standards for use of security personnel
- Prohibiting direct or indirect support to non-state armed groups
- Requiring prompt reporting of grievance logs or any public opposition, defender threats, or legal challenges involving the project or project affected communities
- Requiring verification of free, prior and informed consent, broad community support, and meaningful consultation
- Requiring third-party audits or regular reporting on the enabling environment for human rights and public participation
- Reserving the right to ask for reasonable project design adaptations to respond to community concerns
- Establishing sanctions or other compliance measures for inadequate stakeholder engagement or management of human rights risks
- Debaring abusive companies or agencies from future contracts

> FINANCIAL LEVERAGE

- Awarding investments and contracts to clients who prioritize human rights and participation
- Withholding approval of projects with significant adverse human rights impacts or inadequate defender protections
- Withholding disbursement of funds for mismanagement of threats or inadequate stakeholder engagement
- Suspending funds or instating a moratorium on projects or sectors with unacceptable risk, while pursuing risk mitigation strategies
- Cancellation of project funding or divestment either after failed attempts at mitigation, as a mitigation strategy, where mitigation is not feasible, or due to the severity of the threat or impact
- Utilizing trust funds or grants to finance more inclusive stakeholder engagement or defender protection
- Exercising equity investor voting rights and strategies such as assigning accountability for human rights performance to fund managers, establishing a system of internal benchmarks and reporting, or requiring disclosures
- Financing remedy or reparations for harms, including through up-front remedy or reserve funds

> TECHNICAL EXPERTISE AND DEVELOPMENT RESOURCES

- Modifying project design or process to ensure respect for human rights and protection of defenders
- Increasing oversight or supervision
- Investigating any threats or attacks
- Cooperating with judicial or state-based non-judicial mechanisms

A DFI's Leverage Toolbox

- Providing capacity-building or technical assistance for community or defenders
- Providing capacity-building or technical assistance for project implementer, contractors, or security forces
- Facilitating emergency protection support, legal assistance, or extraction of threatened defenders
- Facilitating remedy or reparations for harms
- Setting strong standards regarding acceptable human rights impacts, conduct of security forces, stakeholder engagement, FPIC, conflict management
- Providing model contracts, good practices, stakeholder engagement plans etc.
- Supporting standard-setting among clients or within sectors, such as access to information laws, whistleblower protections, responsible commodity chains
- Supporting efforts to strengthen domestic institutions, such as judiciary, environmental enforcement, ombudsmen

> DIPLOMATIC OR POLITICAL LEVERAGE

- Engaging governments and companies linked to a threat or attack, or located in the country where defenders are at risk, e.g. to express concern for a general increase in threats, or to call for guarantees of protection or impartial investigation of specific attacks
- Engaging companies' host governments in investigations or accountability
- Engaging governments which may be able to assist with investigations or protection, including alerting foreign missions at the UN or regional institutions, and engaging embassies in the country where the defender is located
- Issuing public statements in support of the rights of defenders and the expression of all viewpoints, including dissenting views
- Accompanying the community at key moments, such as during consultations or engagement with government or company representatives
- Observing defenders facing trial, or visiting defenders in detention to raise profile and advocate for due process
- Associating or disassociating with certain actors, efforts, or plans based on their human rights commitment or record

> CONVENING POWER

- Engaging relevant government ministries, including human rights ombudspersons
- Establishing negotiating platforms or facilitating mediation to address community grievances
- Establishing multistakeholder collaborations for monitoring or problem-solving
- Engaging other investors in collaborative action, or for private sector lenders, pairing private investments with public sector assistance to support an enabling environment
- Bringing in influential or expert third parties, such as human rights bodies, religious institutions, or civil society experts

• **Utilize and increase available leverage to prevent harm.** Within their contracts with clients, DFIs should incorporate requirements to avoid human rights abuses, to ensure an enabling environment for defenders, and to prevent, investigate and provide access to remedy for reprisals, tying these requirements to disbursement of funds and including contract termination as a consequence for lack of compliance. While the approval and disbursement of project funds are the most obvious "moments of traction" for DFIs to secure commitments around human rights and reprisals, there are others, including contract negotiation, procurement processes, monitoring visits or reports, approval of project plans, approval of additional funding or technical assistance, evaluations, project inaugurations, and other publicity moments.[27] The World Bank, for instance, which encourages procurement bids to include a commitment to provide an environment free of retaliation and to protect whistleblowers, could elevate this suggestion to a requirement.[28] Project implementation or supervision plans can also build in additional moments of traction -- identifying conditions that will trigger enhanced monitoring, engagement of experts, or compliance measures. Increasing and effectively utilizing leverage often requires proactive, creative approaches such as engaging project partners in capacity building, joining together with other minority shareholders, or providing incentives and resources. For instance, contract provisions could be combined with technical assistance to ensure a client's adherence to UN Guiding Principles on Business and Human Rights and UN Voluntary Principles on Security and Human Rights.

• **Signal expectations including through a reprisals policy.** One of the simple steps DFIs can take to prevent reprisals is to make clear, both in private and public communications with clients, authorities, other stakeholders and the public, that the expression of differing viewpoints on development activities, including protest, is a critical aspect of participatory development. Several DFIs, namely FMO, IFC, Finnfund, and EBRD, have recently adopted policy positions on reprisals. This is a welcome first step, but to be successful, these efforts will need to be effectively communicated to project stakeholders and backed by operational procedures, resources, capacity, and most importantly, an institutional commitment to act.

Position Statements

FMO's Position Statement on Human Rights states that "FMO values freedom of expression, the added value of civil society, and recognizes the need to protect dissenting voices", and "does not condone violations of human rights by its clients, including oppression of, or violence towards, those who voice their dissenting opinion in relation to FMO activities and the activities of FMO's clients." The approach also includes engagement with clients around defender risks prior to contracting, use of contractual provisions to ensure reporting, and where threats materialize, development of an action plan including use of leverage to address risks.[29]

In 2018, the IFC released a Position Statement on Retaliation Against Civil Society and Project Stakeholders. The statement affirms that the ability of stakeholders to engage freely with IFC and its clients is important for the realization of human rights and "essential to promoting positive development outcomes" and that "IFC does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or our clients." It additionally commits to the development of internal protocols and staff guidance which will be key to operationalizing the statement.[30]

Finnfund's Human Rights Position Statement, adopted in 2019, lays out several commitments around human rights due diligence and the assessment and management of human rights impacts. According to the statement, "Finnfund does not accept threats, or other forms of pressure or retaliation against whistleblowers, human rights defenders or other stakeholders." The statement pledges that Finnfund will "seek to use and build leverage and ability to positively influence our investees and our business partners to take steps to assess the human rights impact of their activities; prevent, mitigate or take corrective actions; and provide remedies to those whose human rights have been adversely impacted."[31]

EBRD's Retaliation against Civil Society and Project Stakeholders Communication, released in 2019, states that EBRD does not tolerate actions by clients or other project counterparties that amount to retaliation against those who voice their opinion regarding the activities of the EBRD or its clients. The communication also states that EBRD "works with its clients to build and maintain a constructive dialogue with locally affected communities, CSOs and other stakeholders" and to ensure respect for human rights, and lays out a multi-pronged approach to handling threats or reprisals, including through enforcement measures and potential debarment (see Whistleblower box).[32]

REPRISAL-SENSITIVE ENGAGEMENT WITH COMMUNITIES AND DEFENDERS

Lack of meaningful consultation and engagement with local communities, and marginalized groups within them, is one of the key root causes of threats for defenders in development contexts. What our case studies show is that **the process of engagement with local communities during the scoping, design and implementation of a development project is as important, if not more important, than the project's physical impact.**

There is a significant power imbalance between the companies or government agencies implementing development projects, and the communities and individuals who will be most impacted by them. **Where civil society space or fundamental freedoms are curtailed, this power imbalance is even more acute.** If the community has a past history of mistreatment or does not trust the entity conducting the consultation, if there is a presence of police or security forces, or for other reasons people are not able to participate or voice their opinions without fear of reprisal, meaningful engagement is not possible. Transparency and accountability also suffer. Project proponents are more likely to be able to disregard community decisions or to manipulate consultations (Mareña, Bambas). Project proponents are also more likely to be able to divide communities or civil society groups, securing agreement of local or traditional authorities through pressure or corruption (Mareña, Belo Monte).



APIITDTT

CASE 2/MEXICO, MAREÑA
Indigenous communities protest a wind farm.

One of the key predictors for defender attacks is where opposition to a project is ignored or discounted -- critics are labeled as a minority, criminal elements, anti-development, illegitimate outside interests, influenced by activists with agendas, or uninformed (Agua Zarca, Santa Rita, Río Salá). **How a DFI characterizes those critical of development projects can have a powerful impact on how communities are treated by governments, businesses and other actors.** IDB guidance on stakeholder engagement, for instance, states that those who express concerns or criticism against a project or authorities should be protected from retaliation.[33] At the same time, the same guidance characterizes those who oppose a project as "those who can negatively affect project outcomes."[34] The framing by DFIs of local communities as project critics, obstacles, or opponents can put those communities at risk and inadvertently give project partners the impression that silencing defenders is part of ensuring the success of the project.

When projects are rushed through without good-faith consultations with local communities, they can generate opposition or conflict that may not have existed otherwise (Bambas). Most DFIs have requirements for meaningful consultation or Broad Community Support (BCS), and increasingly DFIs are adopting requirements for FPIC of indigenous peoples. Yet most consultations come too late, when projects are already designed and licenses are authorized (Mareña). When communities, and marginalized or vulnerable groups within them,

are not afforded meaningful participation in the evaluation, selection, design, implementation, and monitoring of development activities, adverse impacts are more likely to go undetected and unmitigated. In some of the cases we examined, DFIs did not require in-depth consultation or FPIC for projects with small physical footprints because they were presumed not to have significant adverse impacts (Agua Zarca, Santa Rita). This is despite the fact that often the social impacts of a project cannot be known without meaningful consultation.

Too often development financiers rely on a project implementer's reporting without adequate verification and without attention to whether meaningful consultation is possible given the broader context or the parties involved (Santa Rita). Where community consent is manipulated or consultation processes are not meaningful, this can lead to a breakdown in the social cohesion in and among communities, sowing discord and leading to greater risk of conflict and attacks against defenders (Agua Zarca, Mareña, Santa Rita). The impact of this division and conflict can be significant and long-lasting even if the project itself never moves forward.

WHAT CAN BE DONE

• **Assess the environment for public participation.** In addition to the pre-approval reprisal risk screening described above, **DFIs should assess the enabling environment for meaningful engagement and public participation as part of their country assessments, and throughout the life of a project**, flagging risks for defenders. Used together with an assessment of the project implementer's history, capacity, and relationship with the affected community and at-risk groups, and the existing human rights or reprisal risks, DFIs can determine whether adequate conditions exist to manage risks and ensure meaningful participation, and also which aspects of stakeholder engagement are appropriate to leave to the implementing agency and merely monitor, versus those which should be undertaken by the DFI or a third party.

• **Play a direct role in stakeholder engagement. Where there is significant human rights or reprisal risk or where the implementer does not have adequate capacity or trust with the local communities, DFIs should play an active role in stakeholder mapping, consultation, and ongoing engagement and monitoring**, actively seeking out critical voices and independently verifying the adequacy of information provided by clients. Project teams should **maintain a direct communication and feedback channel with the community**, in addition to the use of third-party intermediaries. The IDB's Guidance on Meaningful Stakeholder Consultation states that it may be appropriate for bank staff to undertake independent consultations with key stakeholders when there is a potential for retaliation, or when there are low levels of trust between project affected people and government or project authorities. "In such cases, IDB could undertake confidential discussions to ensure a full understanding of relevant issues and concerns," conveying key recommendations to the borrower, while protecting anonymity. "Such discussions and separate consultations may also provide a better basis for IDB's own documentation and support to the project, and its advice and support to the borrower."[35]

• **Seek out and identify at-risk groups, including defenders. DFIs should ensure that stakeholder mapping exercises explicitly identify defenders or those at risk of reprisal.** These could be indigenous communities, marginalized populations, political opposition, landless farmers, women workers, or those who have already spoken out against the project. KfW, for instance, states that "human rights or environmental defenders may be identified as vulnerable groups and targeted within the stakeholder engagement plan accordingly."[36] DFIs should consult with civil society groups as part of the stakeholder mapping process, and due to the prevalence in many countries of government controlled civil society groups, rely on multiple national and international sources.

• **Ensure adequate conditions for participation of at-risk groups and defenders.** Where risk assessments identify threats to defenders, or stakeholder mapping identifies defenders at risk, stakeholder engagement plans will need to be tailored to increase the capacities and decrease the vulnerabilities of specific at-risk groups, and to mitigate and address differentiated risks and impacts. In its Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management, the Independent Consultation and Investigation Mechanism (MICI) of the IDB provides a useful template to **consider defenders' capacities and vulnerabilities in order to address power imbalances** in stakeholder

engagement.[37] Certain groups, for instance, may be more vulnerable because of lack of access to communications infrastructure or lack of information about their rights, issues that the stakeholder engagement plan can be designed to address.

The following measures can additionally help **ensure that engagement is free from intimidation or coercion**:

- Actively disclose the involvement of the DFI, its prohibition of reprisals, as well as the availability of grievance and reprisal mechanisms
- Ensure and verify that affected communities have access to information in a language and format that is understandable to them, and in a timeframe that allows them to meaningfully engage and shape decision-making
- Allow defenders and at-risk groups to establish the mode of engagement that will be most conducive for their safe and meaningful participation
- Ensure that military or security forces or other potential sources of intimidation are not present
- Find creative ways to meet with at-risk individuals or groups, including allowing anonymous participation (e.g. not utilizing sign-in sheets or photographs) or participation that does not require in-person attendance (e.g. online or telephone communication)
- Find ways to consult with members of minority groups, including those marginalized because of their opposition to a project, apart from other segments of the community which might cause intimidation
- Consult in public locations or in the context of other events that allow the participant to go unnoticed, in extreme cases facilitating community members' travel to another location where they are free to speak, or speaking with defenders in exile
- Pay attention specifically to risks for women defenders and different engagement needs that stem from intersecting identities and vulnerabilities
- Ensure the confidentiality of at-risk stakeholders participating in consultations or other engagements and the security of related data and communication channels

• **Recognize the limits.** In certain project contexts it is not possible to ensure meaningful participation, even with creative solutions. There may be a point at which risk reduction strategies such as anonymity make it impossible for a DFI to actually verify the results of a consultation process. Extreme measures, such as holding consultations in a hidden location, are not suitable for ongoing engagement. Where the local population does not trust the project proponent or has already experienced a violent attack, community members or vulnerable groups may not feel free to speak their minds regardless of how well designed the consultation process is. Similarly, if there is a significant lack of capacity or good will on the part of the implementer, and lack of sufficient leverage of the DFI, risks will likely not be manageable. **Where the project cannot reasonably ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate meaningfully in development decisions and activities, it should be re-designed or should not proceed until an adequate enabling environment can be restored.**

• **Ensure broad community support or FPIC.** Broad community support and FPIC should be required for projects that will impact local communities, even if those impacts are presumed to be benign or positive. Meaningful consultation and consent processes requires significant allocation of time, expertise, and resources which often necesitates modification of the standard project budget and timeline. **The existence of broad community support or FPIC should be assessed and independently verified**, including through regular site visits. Where a project is operating in a restricted environment or there is a history of conflict or risk of reprisals against local communities, additional steps must be taken to ensure and independently verify that community decisionmaking processes can proceed free from fear or intimidation, recognizing that intimidation need not stem from explicit threats, but may instead manifest as a latent environment of fear or social control. DFIs should publicly voice support for defenders and for the community's right to decide. When tracking community decisionmaking and reporting and verifying FPIC or BCS results, DFIs must also ensure confidentiality of information that could place individuals or communities at risk.

• **Make clear that all opinions are valid and avoid stigmatization. DFIs should be unequivocable with staff, project partners, authorities, and the public that those who raise concerns about a development project are stakeholders with a right to be heard.** Negative labels such as "project opponents" should be avoided. DFIs should be wary of any dismissal of certain concerns or stakeholders as illegitimate. Even if a stakeholder's concerns about the potential impacts of a project appear to be unfounded, that fear itself carries a real impact for that individual and their community, can signal larger failures in community engagement or a lack of understanding of community realities, and can quickly escalate if not addressed. DFIs should take every opportunity to reaffirm the important role that defenders play in sustainable, inclusive development. DFIs should make protection of defenders and meaningful participation a core component of dialogue with states and engagement with businesses, and proactively and publicly denounce any stigmatization of critical voices.

Hearing Dissent

EIB states that in certain projects where they have noted that the concerns of an affected community are raised by one or more individuals they have purposefully and explicitly advised the client against singling out those individuals, "emphasising instead the representative role of those persons and redirecting the attention of our clients to addressing the wider social issues at hand." In investments featuring opposition by certain groups, the Bank's project teams have personally met with those stakeholders and offered to broker mediation.[38]

IDB's guidance on meaningful stakeholder engagement notes, "[t]he important point for meaningful stakeholder consultation is to ensure that different views, including from those who oppose the project, are heard and given serious consideration in decision-making. It is not unusual that project authorities are reluctant to consult with some groups who they see as irrelevant, or who may be opposed to the project. Efforts should be made to overcome such reluctance and to encourage a more open and inclusive consultation process, including with political opponents."[39]

• **Provide strong oversight, clear guidance, and capacity building to clients.** DFIs should require reprisal-sensitive engagement throughout the lifespan of all projects. Most DFIs' policies require that consultation be free from intimidation or coercion. However, **there is still a need for specific guidance and capacity building for both clients and staff regarding how to conduct and verify reprisal-sensitive stakeholder engagement, especially in restricted contexts**, such as how to maintain confidentiality in digital communications, how to diffuse conflict, or how to minimize risk exposure during site visits. The IDB's consultation guidelines consider some strategies to address risks of conflict and reprisal.[40]

• **Building community capacity.** Part of the role of development financiers should be to rebalance the power differential between communities and project implementers, governments, companies, security forces, and related economic and political interests so as to ensure meaningful participation. While financiers often do substantial work to build the capacity of government or corporate clients, there is little attention paid to boosting the capacity of communities to meaningfully participate in development processes. In addition to building communities' understanding of the project, relevant players, and anticipated impacts, DFIs should also ensure that communities are aware of their rights and avenues for shaping the development process. Capacity building should include supporting community decision-making processes, and boosting relevant skills such as negotiating, community-led research, accessing information, and project monitoring.

MONITORING AND GRIEVANCE REDRESS

Threats to and attacks against defenders often occur on a continuum of escalating tension, making early intervention essential. A 2017 IDB study tracking four decades of the Bank's investments found that, in many cases, conflicts escalated because community concerns accumulated, unresolved.[41] Too often, early warning signs, including threats against defenders, are missed or ignored (Agua Zarca, Hidroituango).

DFIs typically employ several different means of monitoring for social and environmental impacts or community concerns. These include **reviewing client reporting, direct monitoring through site visits, and third-party or multi-stakeholder monitoring.**



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CASE 11/EGYPT, TITAN
Workers protest a cement company.

In general, however, DFIs struggle with sufficient oversight, relying more on client or government reporting than on direct monitoring. Human and financial resources allocated for site visits in general are insufficient, and where visits do occur, the client often shapes what is seen and who is heard. Monitoring efforts may also be limited to reviewing progress toward narrow project benchmarks rather than seeking out community concerns. Some DFIs are beginning to explore greater use of third-party auditing or multi-stakeholder monitoring panels for high-risk projects, though participatory monitoring with communities is still rare. Third-party monitoring should not, however, be used as a replacement for staff site visits in difficult project environments.[42]

In addition to monitoring, DFIs utilize various mechanisms whereby communities and individuals may raise concerns. **While these grievance and accountability mechanisms can help in the early identification of problems, none are entirely adequate for addressing threats to defenders.** In general, it is not clear where concerns of reprisals should be raised, and the use of grievance mechanisms that lack proper safeguards may actually put defenders at greater risk.

Many DFIs have **Independent Accountability Mechanisms (IAMs)** which are mandated to address social and environmental complaints from project affected persons or other concerned parties, either through mediation or compliance investigation. IAMs are increasingly receiving complaints involving threats and attacks against defenders or where the complainants express concerns about potential reprisals. In response, several IAMs have developed guidelines for the prevention and mitigation of reprisal risks, and are building staff capacity in risk analysis and reprisal sensitive engagement. Despite these efforts, **IAMs have structural limitations in terms of their ability to address threats to defenders.** In most cases, DFIs fail to inform local communities of the availability of the IAMs as a recourse mechanism. IAM complaint processes also are not designed for rapid response and for the most part these mechanisms do not have the capacity or mandate to deal with reprisals that arise outside the context of a complaint process or which may not involve a lack of compliance with DFI policies. IAMs also lack the power to actually compel action from their parent institutions.

More recently, many DFIs have begun requiring **project level grievance mechanisms (PLGMs)** for more early identification of grievances. These PLGMs are generally operated by the company or government implementing the project, though in some cases they may be operated by third parties or through multi-stakeholder arrangements. **PLGMs, however, generally lack the capacity to address complex human rights issues and may be viewed as illegitimate** or ineffective in cases where reprisal risk is connected to the project or project implementer. In one of our case studies, the government entity hosting the grievance mechanism was involved in threats to project complainants (Mombasa). Other grievance mechanisms run by bank management raise similar concerns regarding legitimacy, independence, and capacity to handle defender threats.

Most DFIs additionally have **whistleblower mechanisms** as part of their integrity and anti-corruption units. These mechanisms receive and investigate allegations of "corrupt, fraudulent, coercive or collusive practices," which can include threats or reprisals. Different from IAMs, these mechanisms typically have a strong sanctions function; individuals and corporate entities found to have engaged in proscribed practices can have their contracts cancelled or be debarred from future contracts. The African Development Bank (AfDB)'s whistleblower policy also requires clauses to be included in loan and grant agreements undertaking to take punitive action against persons who engage in retaliation.[43] Debarments are disclosed publicly, and under a collective agreement among five major MDBs, honored by the other institutions.[44] Complaints are received through hotlines, with provisions in place for ensuring confidentiality or anonymity, and to some extent dealing with security concerns. **Whistleblower mechanisms, however, are not designed to interface with communities or defenders, and until now their use has been limited to addressing allegations of fraud, corruption, or workplace retaliation by firms or individuals.**

Whistleblower Policies

AfDB's whistleblower policy provides protection from retaliation for those raising a range of misconduct allegations, including: unlawful acts, gross waste, mismanagement, abuse of authority, substantial threats to public health or safety, failures to comply with statutory obligations, and coercive acts.[45] While complaints that arise related to the Bank's compliance with its social and environmental policies are handled by the Bank's Independent Review Mechanism (IRM), the IRM director is to coordinate with the Office of Integrity and Anti-Corruption to ensure that complainants at risk of retaliation will be protected by the Bank's Whistle Blowing and Complaints Handling Policy, in addition to engaging with management.[46]

EBRD's Retaliation against Civil Society and Project Stakeholders Communication released in early 2019 clarifies that threats or harm undertaken with the intent to improperly influence the actions of another in connection with a Bank project constitutes a "coercive practice" subject to sanction, including possible debarment, under EBRD's Enforcement Policy and Procedures. Instances of retaliation that fall outside that policy will be addressed through a separate process, including raising the issue with the client or relevant party, making known EBRD's position against reprisals, and taking follow-up action.[47]

FinnFund and KfW are also beginning to extend their whistleblower mechanisms to project affected populations.[48] These mechanisms consist of a team of grievance managers which accept confidential reports of alleged misconduct by the institutions or their clients, including breaches of law or activities contrary to the institution's or their clients' policies.

WHAT CAN BE DONE

To effectively safeguard defenders and capture threats before they materialize, projects will require approaches that **blend passive receipt of grievances and warnings with active participatory monitoring, ensuring that defenders and civil society are aware of and have access to effective reprisal monitoring and response mechanisms.**

• **Strengthen transparency for all projects and sub-projects.** In order for DFIs to provide effective oversight and to be able to identify problems early on, they will need to **rectify the lack of transparency in their investments, especially those made through funds and financial intermediaries**. Both clients and bank staff should be required to disclose to the public and to project affected communities, in an accessible manner and in local languages, the existence of bank financing, and the availability of IAMs, PLGMs and reprisal monitoring and response systems.

• **Establish a monitoring and response system for human rights abuses and reprisals. In all projects, project teams should be required to maintain a direct line of feedback with affected communities** and to affirmatively work with them and the client to address concerns and criticism before risks materialize. DFIs should **appoint a vice president-level unit responsible for human rights and reprisals**. Each point of stakeholder contact (the client, DFI staff, PLGM, IAM and whistleblower mechanisms) should be required to immediately report to this unit any protest, opposition, threatened or executed lawsuits, non-compliance with standards or suspension or revocation of social or environmental approvals, violence or conflict, human rights abuses, threats, or reprisals. The unit should also oversee a reprisal and abuse hotline and online system that is well publicized, accessible to communities in relevant local languages, and capable of rapid response. For projects where risk screening has identified significant reprisal risk, the unit should actively solicit information from each point of stakeholder contact as well as reviewing periodic risk analysis updates with the project team, while overseeing project-specific third-party, participatory or multistakeholder reprisal monitoring mechanisms that are able to be "on the ground". It is critical that this unit build the necessary in-house capacity to address human rights and defender threats, in addition to forging formal relationships with defender protection experts.

• **Address reprisal risks within grievance and accountability mechanisms.** DFIs' pre-appraisal screening should include an assessment of the ability of individuals and groups to easily and safely lodge a complaint with the PLGM and IAM, and project approval should be predicated on a positive finding. DFIs should develop explicit requirements on identifying, assessing and preventing reprisal risk within the policy requirements for PLGMs and within the terms of reference for IAMs. PLGMs should be required to allow anonymous complaints, to disclose the existence of the IAM or reprisal mechanism as an alternative, and to immediately report any risk of or actual retaliation directly to the human rights and reprisals unit. PLGM operators should also be screened to ensure they haven't previously engaged in abuse or intimidation and that there exists an adequate level of trust with the community. DFIs should actively monitor PLGM logs and operations and cross-reference this information through their direct feedback loop with communities. Policy and contractual agreements should provide for sanctions for any PLGM involvement in reprisals or mismanagement of reprisal risks. DFIs should utilize community-driven PLGMs to better meet communities' needs, and work to address power imbalances in grievance and accountability processes, including by facilitating the accompaniment of communities and defenders by multilateral and human rights organisms.

IAMs should be required to accept confidential complaints, and to develop and implement policies and internal guidance for identifying, assessing, preventing and responding to reprisal risks, drawing from and expanding upon the guidance and tools already developed within the IAMs network. Reprisal risk assessment should be required for all complainants, and also for outreach and engagement activities, and reprisals should be a standard discussion item for all problem-solving or compliance activities. IAMs will need to build internal capacity to be able to effectively manage reprisal risks, and DFIs will need to increase their responsiveness to concerns raised by IAMs and work with them to safeguard defenders.

Addressing Reprisal Risks for Complainants

Several independent accountability mechanisms (IAMs) are showing leadership in addressing the reprisal risk for complainants and others who may interact with the mechanisms, including civil society groups, or interpreters or drivers assisting with mediations or investigations.

The World Bank's Inspection Panel adopted guidance on retaliations in 2016 following the arrest of a community member who had worked as an interpreter during a compliance investigation (Basic Services).[49] In 2018, the ADB's Accountability Mechanism, the IFC's Compliance Advisor Ombudsman, and AIIB's Project Affected People's Mechanism followed suit.[50] Several other accountability mechanisms are developing similar guidance.[51]

IAM reprisal approaches tend to focus on three areas: (i) identification and monitoring of retaliation risks; (ii) prevention measures to address and reduce these risks; and (iii) response where retaliation occurs. Under the approaches, IAM staff conduct a retaliation risk assessment for each case they receive, based on discussion with requesters, media reports and public and civil society sources, as well as briefings by country office staff and DFI security personnel.

Risk mitigation measures are then employed, including communicating to project promoters that reprisals will not be tolerated, peaceful dispute resolution and trust-building, establishing safer locations for meetings and methods of communication, and careful selection and use of trusted intermediaries, interpreters, mediators etc. Strategies are undertaken to maintain confidentiality of requesters during the complaint process, as well as during mediation or compliance investigations. In order to not undermine confidentiality, IAM best practice recommends waiving or eliminating DFI requirements that requesters first engage management or project implementers before filing a complaint.

If a threat materializes, IAM staff discuss with the requester, secure their agreement on an appropriate course of action, and approach bank management to collaborate on specific protection strategies. Some IAMs are beginning to engage defender protection groups and other experts to better understand risks and to identify effective strategies for prevention and response.

In 2019, the Independent Consultation and Investigation Mechanism (MICI) of the IDB Group released a Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management.[52] The comprehensive guide includes specific tools and tips for assessing the level of risk to complainants and others associated with IAM activities, developing strategies to reduce risk, responding to alleged threats and reprisals, ensuring safer communication and confidentiality, building internal capacity, and working with parent institutions to increase awareness and responsiveness.

RESPONDING EFFECTIVELY TO THREATS AND ATTACKS

When threats and attacks occur, DFIs have a duty and a critical role to play in helping to mitigate the threat, ensure the safety of defenders, prevent recurrence, and remedy harm. Our research showed examples where some DFIs have frozen funding or decided not to invest in the face of violence in the project area (Dinant, Agua Zarca). We also see cases where DFIs' engagement with clients, authorities, and other parties has likely decreased risks for defenders, including calling for the release of detained defenders (IPP4), calling for the dropping of legal suits lodged against community members, or making clear that intimidation will not be tolerated (Mombasa, MHP). In other cases, DFIs have played an important role in establishing dialogue or mediation processes (KNRM, Dinant), have assisted with securing reparations, or supported capacity building to prevent recurrence (Dinant). Historically, we have seen instances where DFI officials have spoken out publicly against repression of protests, or worked behind the scenes to secure the release and relocation of jailed defenders.[53]

Unfortunately, effective responses by DFIs to instances of threats and attacks against defenders remain isolated and ad-hoc, often depending on the will of individual staff. Responses generally come too late, when the conflict or risk can no longer effectively be mitigated (Agua Zarca, Dinant), or they do not come at all. Development financiers evidence several challenges to taking effective and timely action in response to threats. Often DFIs want to see a clear and unique causal link between the attack and their investment before they will act (Cotton, Basic Services). They may only take action when it is known that their client is behind the attack, despite the fact that in most cases, the specific perpetrator of an attack will never be known. In some of our case studies, DFIs justified continuing an investment because of a lack of criminal conviction, despite the prevalence of impunity for human rights abuses in many countries (Agua Zarca). Similarly, DFIs may point to assertions of legality by national agencies or judiciaries (Bello Monte, AUB, Basic Services). In other cases DFIs cite the high level of complexity surrounding violence or reprisals (Mareña, Hidroituango, Dinant), or there may be concerns with the "legitimacy" of the defenders' claims and work or allegations of unlawful or violent acts by community members or activists (Dinant, Santa Rita). In some cases, DFIs imply that to respond to human rights abuses would fall outside their mandates (KDTL). In other cases, DFIs struggle with a lack of expertise, capacity or understanding of available resources. In many cases DFIs argue that they are unaware of the threats or attacks (Jirau, Lukoil). In others, they may deny responsibility for any harm because the project they financed was never built (Santa Rita, Mareña).

As mentioned above, lack of leverage with clients or other actors is another key obstacle cited by DFIs. Where the DFI is a minority investor, or the perpetrator is not the DFI's direct client, the DFI will have less leverage. Yet where a DFI lacks sufficient leverage in a given situation, this does not relieve them of the duty to act. Rather, the DFI has an obligation to take measures to increase its leverage, ideally before an attack occurs. **Without the proactive development of leverage and a clear protocol or plan for response, DFIs find themselves in intractable situations** when threats arise, often with only a blunt choice of options – staying or leaving – when potentially neither is adequate to safeguard lives and development outcomes.

While we do see a variety of responses by DFIs, the instances of DFIs taking public action are rare. Some reprisal situations will require a non-publicized response, either for effectiveness or for the defenders' own security. In other cases, however, the lack of public action can mean less security for the defenders and a missed opportunity to hold perpetrators to account. In many of our case studies, DFIs eventually terminated or sold off the investment, however without a thorough investigation and accounting of the role of the institution and the client, and without a public statement condemning the abuse or upholding the rights of the defenders (Mareña, Santa Rita, Agua Zarca). **These "quiet exits" do not serve to remedy harm, prevent recurrence, or advance accountability.** Indeed, the exit of a given DFI from an investment, without any accountability for human rights abuses or compliance failures, can actually elevate the risk for defenders who may be blamed for the loss of financing.

Even where a DFI takes strong action to respond to an attack – sanctioning a company or cancelling a project – this does not actually remedy the harm that has been experienced by the community or defenders. Where a community has had their social fabric torn apart through conflict and smear campaigns, or local leaders have been terrorized with surveillance or physical attacks, the harm is long-lasting and in many cases irreparable. **Remedying human rights abuses is neither easy nor inexpensive, and in most countries where DFIs operate, defenders have little chance of finding relief through local justice systems.** As the number of cases mount wherein communities are devastated by ill-planned investments and left without remedy, DFIs will increasingly find themselves in court (Agua Zarca, Dinant).

WHAT CAN BE DONE

When threats materialize there are many ways DFIs can respond to **mitigate the threat, prevent recurrence, and remedy harm to defenders and affected communities**. To be effective, DFIs should be systematic in their responses, prioritizing the informed consent of the defenders and participation of other rightsholders.

- **Establish an institutional reprisals response protocol.** DFIs should adopt **a response protocol commiting them to act promptly to assess and address each allegation of a threat or attack, including by using available leverage, minimizing risk, preventing recurrence, and supporting remedy, accountability and learning.** The protocol should be triggered whenever monitoring processes identify reports of intimidation, harassment, or other threats or attacks, or allegations that a client is not adequately managing defender and reprisal related risks. It should identify the chain of responsibility and flow of information, guiding principles and methodologies for the response and monitoring of progress, as well as relevant resources.

- **Rapidly assess each incident. Upon receiving a report of a threat, the DFI should rapidly assess the situation, including the potential source of the threat, its severity, and the vulnerability of the defenders, in order to ascertain whether immediate action is needed.** The MICI Guide to Address the Risk of Reprisals provides a useful set of questions for assessing specific threats.[54] It is important to note that it is not necessary to "prove" the veracity of the defenders' claims or to establish with certainty where the threat came from in order to take meaningful action such as engaging protection mechanisms or making a public statement in support of the rights of expression or protest. DFIs should use a precautionary approach, recognizing that most threats and attacks come in a series of escalating actions. The first priority should be the security of the defenders and the affected communities, noting that while a threat may target an individual, risk almost always extends to include family members, or other members of the same community or civic group.

- **Establish a specific response plan with the relevant defenders. DFIs should work with the communities or defenders at risk, or their designated civil society supports, to develop a plan for effective and timely action to mitigate the threat.** The participation of the defenders in deciding on the appropriate response is essential in order to prevent unintentionally exacerbating risks. If the project was previously flagged as having significant reprisal risk and has a general reprisal response plan, this can be adjusted with the specific defenders at risk and tailored to the specific threat. It is important to note that women defenders and other marginalized groups may face unique security risks that require different protection measures. The response plan should include who will take which actions, and when, as well as how communication will be maintained with

the defenders to ensure consent and the ability to adapt the response as the situation evolves. DFIs should discuss with the defenders and protection experts whether visibility or anonymity will provide greater security. Responses will often include alerting relevant authorities, national protection mechanisms, human rights institutions, and defender protection organizations. DFIs should use all available leverage to mitigate the risk, including issuing public statements in support of the rights to expression or assembly, and engaging with governments, businesses or influential third parties to minimize the threat and ensure protection. DFIs can also mitigate harm by observing trials or visiting defenders in detention, or facilitating access to embassies or civil society protection resources for emergency relocation, physical security, or medical or psychosocial services. A living catalogue of available response measures could be developed and shared among DFIs. [See A DFI's Leverage Toolkit]

• **Ensure access to effective remedy for harm. Where a DFI has caused, contributed to, or is linked to a human rights abuse or harm experienced by a community or an individual defender, they have a corresponding duty to provide remedy or to use their leverage, including suspension of support, to help ensure access to remedy.** Effective remedy includes prompt and impartial investigations into alleged violations, prosecution of the perpetrators, and provision of redress, including appropriate compensation to victims. DFIs should investigate all allegations of harassment or reprisal, in addition to calling for prompt and thorough investigations by the authorities. In instances where there may be a conflict of interest, DFIs can help facilitate independent investigations.

Because a key component of remedy is the prevention of recurrence, responses to threats and attacks should include public actions or communications, unless defenders determine that such actions would be less effective in mitigating risks. Divestment or disengagement should be utilized where continued engagement poses a significant risk of exacerbating adverse impacts, where effective for mitigation, where attempts at mitigation fail, where mitigation is not feasible, or due to the severity of the threat or impact. The defenders and other potentially affected rights-holders should be meaningfully involved in the decision making process around both engagement and disengagement strategies. DFIs should develop public sanctions lists of government agencies and businesses implicated in reprisals and human rights abuses, and track and report on reprisal incidences as well as their own prevention and response initiatives. **Redress measures should be determined by the communities and defenders which have been harmed and should be proportional to the gravity of the violations and the harm suffered, restoring victims to their pre-violation condition**. Measures can include facilitating reparations or reconciliation processes, payment of legal fees, restoration of ecosystems or livelihoods, or compensation for harm and suffering. DFIs should take proactive steps to create leverage for ensuring remedy, including adding related contractual provisions, or establishing reserve funds to ensure that adequate resources will be available if needed.



CASE 13/JORDAN, IPP4
Communities protest against a power plant.

EASEP



Jeff Vize for former UN Special Rapporteur Maina Kiai

Part III:
The Cases

Case 18 / CAMBODIA, BKL
Activists hold poster
of imprisoned colleague.

Dinant

Honduras

Palm Oil

IFC

Killings of farmers and land rights activists

For decades, the Bajo Aguán Valley in northern Honduras has experienced violent land grabs and killings. Much of the conflict has centered around the palm oil plantations of the Dinant Corporation, one of the valley's largest landowners. Miguel Facussé, a prominent Honduran businessman, was the sole owner of the company until his death in 2015.[55] The International Finance Corporation (IFC) has a long history of supporting Dinant, and from 2009 to 2017 provided financing through multiple channels.[56]

Land rights activists claim that Dinant began using fraud, corruption and violence in the mid-1990s to gain control of local farmers' land.[57] Farmers organized protests, roadblocks, and occupations of contested land. Dinant allegedly responded with violence, intimidation, and extra-judicial killings.[58] The company denies these allegations.[59]

The IFC and other development banks have provided millions of dollars in loans to Dinant, both directly and indirectly. In May 2008, the IFC provided a loan to Banco Ficohsa, the largest bank in Honduras whose third largest client was Dinant.[60] In December 2008, the IFC approved a US$30 million loan to Dinant, although at the time there were widespread public allegations regarding Dinant's use of coercion and violence against farmers and local indigenous people.[61] IFC asserts that at the time Dinant's legal title was clear, with no evidence of land claims, and they believed the risks to be limited and manageable.[62] That same year, Dinant secured US$20 million from the German DEG bank, and US$23.5 million from the Inter-American Development Bank in both direct investment and syndicated financing.[63]

Before the IFC disbursed its loan to Dinant, political unrest in Honduras triggered a military coup on June 28, 2009. The new government began to commit atrocities against political dissidents and land rights activists in the Bajo Aguán Valley.[64]

While the IDB and DEG both cancelled their loans to Dinant, citing human rights concerns and land disputes, the IFC moved ahead with disbursements.[65] In November 2009, the IFC disbursed US$15 million of its US$30 million loan to Dinant.[66] That same month, land conflicts escalated.[67] A lawsuit filed against IFC alleges that after the IFC disbursement, Dinant enlarged its security forces and supplied them with military-grade weapons.[68]

On November 15, 2010, a group of farmers set out to cultivate a disputed plot of land near Dinant's El Tumbador plantation. According to multiple witnesses, Dinant security guards and the Honduran military opened fire on the farmers, using military-grade assault weapons and then pursuing them for hours.[69] Five farmers were killed.[70] The company claims it acted in self-defense, although an autopsy revealed that two of the victims were shot from behind.[71]

Funeral of campesino killed August 14th, 2011 on the Paso Aguan Plantation.



Manu Brabo



Proliferation of palm plantations has ignited land conflict in the Bajo Aguán.

The IFC wrote to and met with the company and asked for restraint in dealings with local farmers.[72] The head of the IFC also wrote to and met with the President of Honduras to encourage a negotiated solution to the land disputes in Bajo Aguán.[73] IFC staff held multiple meetings with Dinant around security and conducted a monitoring visit in March 2011.[74]

Violence continued.[75] Human rights organizations monitoring the situation reported that there were at least 102 killings of people affiliated with the Aguán peasant movement between January 2010 and May 2013, including specific allegations that linked 40 of these killings to Dinant.[76] Dinant, in turn, alleged that farmers were responsible for the deaths of at least nine security guards during this period.[77]

The IFC continued to provide financing. In May 2011, the IFC approved US$70 million in investments for Banco Ficohsa, which included a ten percent equity stake in the bank.[78] Between November 2011 and March 2014, Ficohsa approved approximately US$40 million in loans to Dinant.[79]

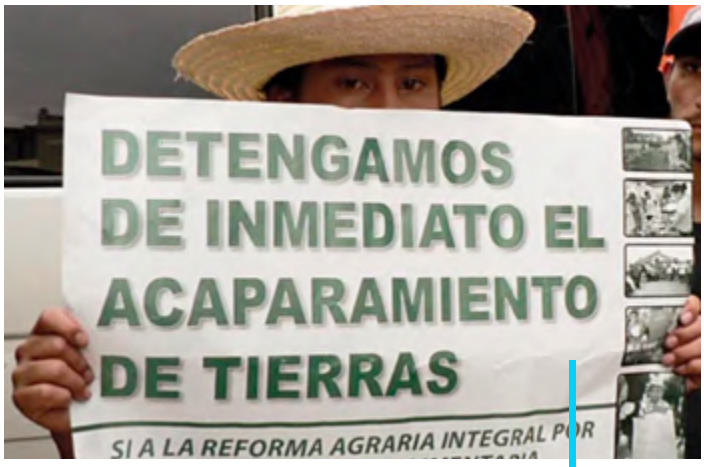
In April 2012 and August 2013, the IFC's Compliance Advisor Ombudsman (CAO) opened two separate investigations into the Dinant case, one focused on both the IFC's direct investments and one focused on indirect financing through Banco Ficohsa.[80] The IFC visited Dinant operations several times during the investigations, working with a security consultant to train Dinant staff and contractors.[81] In November, the IFC provided guarantees for at least US$5.3 million in Ficohsa loans earmarked for Dinant.[82]

In January 2014, the CAO published a scathing report on the IFC's Dinant investment, concluding that IFC had violated its own policies, underestimated the risks of investing in Dinant, and failed to adequately supervise the project when acts of violence occurred.[83] Rather than withdraw from the investment, the IFC developed an action plan and "chose to remain engaged and work with Dinant" to improve its performance.[84] NGOs and the affected communities criticized the IFC's response.[85]

In April 2014, under pressure from civil society and its own board, the IFC developed an "Enhanced Action Plan" that included commitments to investigate allegations and improve Dinant's environmental and social performance.[86] Two months later, IFC purchased another US$5.5 million in equity in Ficohsa.[87]

In July 2014, two campesino movements filed complaints with the CAO, as the communities felt that the IFC was taking too long to react.[88] The CAO decided to consider the issues raised by those complaints as part of its ongoing monitoring of its 2014 compliance audit.

That same month, the IFC hired a conflict resolution NGO to help identify a path forward.[89] The NGO commenced an extensive two-year dialogue process.



Salva la Selva

Protest against land grabbing in Bajo Aguán.

There are differing views on the outcomes of this process. The IFC states that its unprecedented engagement with stakeholders secured benefits for campesinos and yielded progress on a number of social and environmental issues; communities and civil society groups decry the lack of accountability for past atrocities.[90] IFC cites Dinant's adherence to the Voluntary Principles on Security and Human Rights, implementation of a grievance mechanism program, and disarming of security guards.[91] Human rights researchers and communities dispute the efficacy of those efforts and point to continued close collaboration between Dinant and armed government forces, as well as violence and intimidation by Dinant guards.[92]

Efforts to implement the "Roadmap" process initiated by the conflict resolution NGO eventually stalled, and CAO's monitoring of its Dinant investigation found that the IFC had not followed through on several commitments from its Enhanced Action Plan.[93] Dinant renegotiated its debt with various lenders and paid off its IFC loan in April 2017, removing itself from IFC oversight.[94] IFC remained invested in Dinant through Ficohsa until spring of 2018.[95]

The IFC states that, in response to its experience with Dinant, it has strengthened its operational practices, exercising more scrutiny over financial intermediary investments, and developing security guidelines for companies.[96] While advocates welcomed the new security guidance, they point to remaining gaps in public disclosure and due diligence around financial intermediaries.[97]

Allegations continued to emerge of violence and impunity on Dinant's plantations.[98] In October 2017, a group of farmers sued the IFC in U.S. court for complicity in human rights violations.[99]



Criminalization, threats and attacks against members of indigenous peoples movements

Mareña Renovables/ Eólica del Sur

Mexico

Wind

IDB / IDB Invest, EKF, BANOBRAS, NAFINSA

The Mareña Renovables project, which began in 2003 under Spanish company Preneal, was to be the biggest wind farm in Latin America, consisting of 132 turbines, in addition to substations, docking stations, and associated roads and transmission lines.[100] The turbines would be located on two narrow strips of land -- San Dionisio del Mar and Santa Maria del Mar -- in the Isthmus of Tehuantepec, Oaxaca, Mexico, home of the indigenous Ikojt and Binnizá people.

The area has long been marked with intense territorial, ethnic and political conflict, which has been exacerbated by expansive wind energy development in recent years.[101] Indigenous communities reported that as Preneal moved to acquire land, instead of undertaking a participatory process of free, prior and informed consultation as required under Mexican law, it withheld information and divided the communities, negotiating leases with individual land owners, without the requisite community approval required by law, or without full disclosure of the lease terms.[102]



Wind farms development has spiked across the region.

El Alebrije

In 2011, Mareña was acquired as a public private partnership by the Macquaire Mexican Infrastructure Fund (MMIF), Macquarie Asset Finance Limited and Coca-Cola bottler, Fomento Económico Mexicano (FEMSA) with funds from Mexico's National Infrastructure Fund (FONADIN), a trust of Mexico's National Bank of Public Works and Services (BANOBRAS). As the project advanced, communities struggled to gain access to information about the project and feared that it would damage the fragile local environment and disrupt the fishing economy.[103] Communities clamored for more accessible and affordable electricity, but the power generated from the wind turbines was destined for use by FEMSA and Heineken Mexico. While one community supported the project, seven others opposed it.[104] Under the umbrella of the Assembly of Indigenous Peoples of the Isthmus of Tehuantepec in Defense of Land and Territory (APIITDTT), the communities organized street protests and legal challenges.[105]

In April 2011, indigenous communities organized a protest outside the Federal Electricity Commission (CFE) in Juchitán opposing high electricity tariffs, the granting of licenses and construction of wind farms on indigenous lands, and the detention of an indigenous leader. Following the protest, at the CFE's request, the state launched a formal complaint and arrest warrant against Bettina Cruz, a leader with APIITDTT, for suspected "opposition to the execution of a public work" and "crimes against the national consumption and wealth." Police also charged her with wrongfully detaining CFE office personnel.[106] Bettina, however, was never at the protest.

In November, the Inter-American Development Bank (IDB) approved $72 million in financing for Mareña.[107] IDB had flagged the project as "high risk," noting that the project could both be impacted by, as well as exacerbate, existing conflict.[108] The project's environmental and social management plan noted

San Dionisio del Mar marches against Mareña Renovables.



APIITDTT

risks associated with the use of private security forces to manage conflict or vandalism at the site. It suggested mitigating these risks through increased communications, monitoring, and staff capacity, and by having the borrower accede to good industry practices.[109] Project documents claimed that the consultation of indigenous peoples and land acquisition processes complied with Mexican laws and the Bank's principles, and that there was "no opposition to the project from indigenous peoples."[110] At the same time, documents noted that the consultations suffered from "a lack of a systematic process to register issues, concerns, and feedback of affected people".[111]

As community opposition to Mareña and other wind farms in the area grew and intertwined with political divisions, so, say residents and reporters, did the surveillance, repression, threats, beatings, detentions and criminalization.[112] Community members reported agressions from supporters of the project, local authorities and party leaders, company employees, hitmen, police forces, investors, and representatives of the company union.[113]

In January 2012, the members of the community of San Dionisio learned that the Mayor had given unilateral authorization for the wind farm's construction.[114] They occupied the municipal palace, deposing the Mayor.[115] Reports that previous government officials accepted bribes from Mareña's proponents ignited tensions.[116]

In February 2012, Bettina was arrested while leaving a meeting with the CFE, based on the outstanding warrant.[117] She was released on bail but would not be acquitted for another two years. At the same time, Mareña Renovables received a new influx of funds as Mitsubishi and Dutch pension fund PGGM joined the project, with Danish Export Credit Agency (EKF) providing the credit guarantee.[118] In March and April, IDB made its first two disbursement to Mareña.[119]

On May 14, the Governor of Oaxaca reportedly threatened community leaders who had raised concerns with the project, saying, "blood could flow if you don't stop being so obstinate". According to community members, the governor suggested that community members could be assassinated, referencing killings of anti-mine activists in a nearby community.[120] On May 15, IDB made its third loan disbursement.[121]

In September, APIITDTT and other civil society groups petitioned for an injunction to stop the project. Shortly thereafter, Bettina and her husband reportedly received a series of death threats and had to flee from their home in Juchitán for nine months with their daughters.[122]

In October of that year, community representatives communicated their concerns to IDB.[123] The following month, the community of Álvaro Obregón found their fishing access blocked by the company. Clashes ensued between the community, the company and security forces.[124] The community set up roadblocks on their land to prevent the passage of workers and machinery, and several more communities and civil society groups joined in the struggle.[125]

In November 2012 community members delivered a document to IDB's Mexico City office, signed by 2000 community members, rejecting the project.[126] They reported that IDB representatives ignored their concerns and requests for information.[127]

On December 6th, a district court ordered the temporary suspension of the project.[128] The same month, 232 indigenous members of seven communities filed a complaint with the IDB's independent accountability mechanism, the Independent Consultation and Investigation Mechanism (MICI), highlighting "*[t]he Project's increasing pressure on the communities, ignorance of community decision-making..., and constant intimidation and unceasing persecution of leaders who question the Project...*"[129] According to the complaint, more than 40 indigenous people who spoke out were subjected to criminal proceedings[130]; others had their basic services like electricity and health care cut off; others were subjected to physical attacks; and there were reports of known hit men looking for prominent community leaders.[131]

IDB states that project staff worked to resolve tensions - to mediate between those opposed and in support of the project and to ensure that the voices of the community were heard - but that the level of conflict was too great.[132]

Eventually in February of 2013, the project sponsor reportedly decided to stop construction and began a debt restructuring process with IDB and other creditors.[133] Though IDB did not disburse the final payments to Mareña, communities were not informed of the status of the project nor IDB's involvement. Tensions continued. In March, four community members in San Mateo del Mar were allegedly detained by police, beaten and threatened with hanging for their opposition to the project.[134]

In May 2013, the project was relocated to the area of Juchitán de Zaragoza and El Espinal, 50km away from San Dionisio, under a new name - Eólica del Sur.[135] Soon after, the project was accredited under the United Nations Clean Development Mechanism.[136]

In November 2014, under pressure from the international community and citing requirements under recently enacted energy legislation, the Mexican government decided to initiate a free, prior and informed consultation process for Eólica del Sur.[137]

The process, however, was deeply flawed.[138] Human rights experts questioned the characterization of the consultation as a "prior" consultation, given that the project permits were granted before the consultation process was finalized.[139] Consultation proceedings quickly became tense. A human rights observation mission documented at least 32 security incidents, including threatening phone calls and harassment of members of the Popular Assembly of the Juchiteca People (APPJ) and APIITDTT by government and company representatives.[140] Participants reported not feeling safe to speak after being characterized as "anti-development."[141] APPJ and APIITDTT eventually withdrew from the consultation. In fact, it is reported that only 0.5% of the population was present for the final vote.[142] In July 2015, the Government declared the process a model consultation and show of support for the project.[143]

Over a thousand Juchitecos, together with civil society groups and indigenous peoples organizations, petitioned to stop construction, and on December 11, a District Court granted an injunction.[144]

In January 2016, IDB transferred the Mareña restructuring to IDB-Invest, the Bank's new private sector arm. In September 2016, the MICI released its investigation report, finding that the IDB failed to comply with requirements to ensure good faith consultation with indigenous peoples.[145] The report also found that the *"Bank failed to identify in a timely fashion the conflictivity of the area and the impact it could have..."* noting significant limitations in analysis of social impacts and lack of mitigation plans. MICI found that the IDB lacked adequate guidance for situations of social conflict, stating that "*[r]emaining on the sidelines as an observer of violent events is not the best alternative, and inaction could even exacerbate the social conflict.*"[146]

The IDB Board of Directors agreed with the findings, and as a result, the Bank developed new guidance on consultations and social assessment.[147] Unfortunately this provided little benefit to the communities impacted by the Mareña conflict and those who would be impacted by Eólica del Sur.

"We don't want wind projects in the Barra de Santa Teresa - Get out Marena Renovables."



APIITDTT

Throughout 2016 and 2017, legal battles over Eólica del Sur continued with injunctions and suspensions being granted and overturned.[148] In April 2017, Alberto Toledo Villalobos, one of the coordinators of APIITDTT and a leader in the fight over electricity tariffs, was beaten to death.[149]

In May 2017 the restructuring from Mareña to Eólica del Sur was complete, with IDB, MMIF and PGGM transferring their rights and obligations to Eólica's new equity holders -- BalamCK16, Fonadin and Mitsubishi -- with financing from EKF, Banobras, and Mexico's main development bank, Nacional Financiera.[150] BalamCK16 had been established as a parallel fund to Balam Fund,

which was set up in 2013 by IDB, the Development Bank of Latin America (CAF) and the Japanese Bank for International Cooperation (JBIC).[151] While these banks are not financing Eólica del Sur, they arguably have influence with BalamCK16 and could have voiced concerns with the project.[152]

Meanwhile, throughout 2017 the harassment and attacks against Bettina and the others who had filed for injunctions increased.[153] "*Every time we present a legal action at the national or international level, our lives and that of our communities are put in danger*," explains Bettina. "*Each time we advance, the risk increases*."[154]

In January 2018, the Inter-American Commission on Human Rights ordered Mexico to ensure protection for Bettina and her family.[155] That same month, the Supreme Court agreed to hear three petitions for injunction from indigenous communities.[156]

Meanwhile, in spring of 2018, Eólica del Sur restarted construction. The division and conflict that flared up around Mareña and Eólica del Sur continues to take a violent toll. On March 29, 2018, just prior to scheduled elections, five community members of San Dionisio del Mar were shot during a religious celebration.[157] Civil



APIITDTT

Indigenous women protest outside the Supreme Court October 2018.

society groups believe the attack and the mounting electoral tension can be traced back to the social conflict over Mareña.[158] On July 24, 2018, Rolando Crispín López, an active member of the resistance against the Mareña and Eólica del Sur projects, was shot and killed by an assailant in an unmarked car.[159] In November, the Supreme Court denied the injunctions against Eólica del Sur and upheld the consultation as legitimate.[160]

Santa Rita Hydroelectric Project

Guatemala

Hydro

IFC, FMO, DEG, SIFEM, AECID

Fueling conflict in indigenous communities

For months, members of several Maya Q'eqchi' communities of the Río Dolores region in the central highlands of Guatemala, had erected a roadblock in Monte Olivo to prevent the construction of the proposed Santa Rita hydroelectric dam. They were protesting the lack of adequate consultation and transparency with affected communities who feared that if built, the dam would have a devastating impact on the Icbolay River and their drinking supply.[161] On August 14, 2014, over 600 members of the national police force descended on the community roadblock, using tear gas to disperse the crowd, and arresting five.[162][163] The following day, the police continued to the community of Nueve de Febrero, where families were occupying a piece of land owned by a family who had sold property to the Santa Rita dam developer.[164] Upon arrival, police burned several homes to the ground.[165]

The Santa Rita Hydroelectric project is a proposed 23 MW dam and transmission line situated in Cobán, Alta Verapaz. The project was initiated in 2008 and is managed by the Guatemalan company Hidroeléctrica Santa Rita S.A. (HSR). Proponents argue that the dam will increase employment and bring much needed infrastructure and social investment.[166] The electricity from the dam, however, would be fed into the national energy grid, rather than supplying local consumers.[167]

In 2009, HSR hired a national NGO to conduct negotiations and implement social programs in the area,[168] which community members allege were conditioned on acceptance of the hydroelectric dam.[169] The NGO was able to secure agreement from select leaders, however, without the approval of community assemblies and other important decision-making bodies of the Q'eqchi' peoples.[170] Communities report that this resulted in a breakdown in community cohesion and an increase in conflict.[171] Between 2010 and 2012, at least 20 communities organized their own consultations and communicated to the municipal government their rejection of the project.[172]

In February 2012, police issued arrest warrants for five community leaders after HSR issued formal complaints against them for encouraging a public occupation of project lands.[173]

In March 2012, communities organized a 130-mile march from Cobán to Guatemala City to bring attention to the issue.[174] While community members were on the march, a military detachment arrived in Monte Olivo, allegedly fed and resourced through HSR during its two-week deployment, before the community petitioned for its departure.[175]

2012 protest, "Indigenous Peoples have a right to say no to hydroelectric projects on their lands".



Consejo de Pueblos de Tezulutlán

Despite this open conflict, in late 2012, the project received an influx of international financing. Dutch development bank (FMO) acquired nearly 50 percent equity in HSR, joined by Guatemalan investors and the Latin Renewables Infrastructure Fund ("LRIF") - a $100 million private equity fund managed by Real Infrastructure Capital Partners LLC (REAL).[176] Investors in LRIF include the International Finance Corporation (IFC), the Development Bank of Germany (DEG), the Swiss Investment Fund (SIFEM), the Spanish Agency for International Cooperation (AECID), as well as FMO.[177] According to project documents, while IFC acknowledged Santa Rita's potential negative impacts on local communities and REAL's lack of experience in managing social and environmental risks, IFC claimed it would mitigate those risks through direct engagement and oversight.[178] IFC accepted LRIF's determination that the Free, Prior, and Informed Consent (FPIC) of Indigenous Peoples was not required because the project would not have significant adverse impacts.[179] An independent consultant hired by LRIF and FMO, however, found significant gaps in LRIF's environmental and social impact assessments, including potential impacts on biodiversity, drinking water, livelihoods, and cultural heritage.[180] Investors argue that project promoters spent years consulting with communities and that 14 of 18 communities supported the project.[181]

In July 2013, construction began at the dam site. Almost immediately, machinery was burned and community members in Monte Olivo erected a roadblock, effectively suspending construction activities.[182]

As reported by the media, in August 2013, two children from Monte Olivo were allegedly shot and killed by a former HSR worker, and the suspected perpetrator was allegedly lynched by members of the local community.[183] While the shooting death of the two children was broadly seen as accidental, it greatly exacerbated tensions between project opponents and proponents.[184]

On November 8, 2013, community members allege that the son of the landowner who sold property to HSR shot and injured five people in Nueve de Febrero, leaving Carlos Isaías Guitz Pop confined to a wheelchair. He later died from complications related to his injuries.[185]

In January 2014, despite ongoing violence in the project area, IFC's Asset Management Company (AMC) made an additional US$20 million equity investment in LRIF.[186] In March 2014, LRIF reported to IFC that opposition to the project was down partly due to "the issuance of many arrest warrants at the urging of HSR against individuals involved in damaging project equipment."[187]



Rax Kok, Prensa Comunitaria

Police occupation of Monte Olivo August 2014.

Conflict between the landowner and Nueve de Febrero increased in 2014, and according to media reports, on April 7th the landowner and his bodyguard opened fire on a community ceremony, injuring several and killing one.[188]

In June 2014, despite a petition to the Executive Board of the UNFCCC Clean Development Mechanism (CDM) citing the human rights violations associated with the dam, the project was approved for funding under the CDM.[189]

In October 2014, two local organizations filed a complaint with the IFC's Compliance Advisor Ombudsman (CAO) on behalf of affected communities in the Río Dolores region. The complaint details human rights violations, violence, and the criminalization of community leaders.[190]

In September 2017, FMO sold its equity in HSR citing the project's uncertain future.[191]

The CAO's Compliance Report eventually found the IFC to be out of compliance in several areas.[192] It found a lack of analysis of contextual or third-party risks[193] and a failure to give due consideration to prior protests against the project, or to engage sufficiently with LRIF to manage these risks.[194] The report also raised questions about the effectiveness of IFC's oversight, including reliance on client disclosures instead of third-party monitoring.[195]

IFC Management refuted the majority of CAO's findings[196] but disclosed in October 2017 that it had withdrawn its support for the Santa Rita Project.[197] IFC, like FMO, remains a significant investor in LRIF.[198] Both have argued that major environmental and social risks never materialized because construction was halted shortly after it began.[199]

Impacted communities, however, continue to petition the Ministry of Energy and Mines for a full cancellation of the contract with HSR and compensation for damages, alleging significant social harm.

Rio Salá Hydroelectric Project

Guatemala

Hydro

FMO, IFC, IDB Invest, Finnfund, CABEI, CMIC

Criminalization of indigenous communities

Fausto Sánchez Roblero is a Maya Mam community leader and catechist in the municipality of San Pablo, in the northwestern department of San Marcos, Guatemala. Since 2008, Fausto has vocally opposed a hydroelectric dam slated for his community. He and many others in the surrounding indigenous communities fear that the dam will negatively impact their lives and livelihoods.[200] On November 10, 2014, Fausto was arrested on charges of kidnapping, illegal detention, and illicit association, in part at the urging of the Guatemalan hydroelectric company behind the proposed dam.[201] He would spend more than two years in detention before charges would be dropped for lack of merit.[202]

Río Salá is a proposed 15 MW hydroelectric project along the Salá River under the operation of Hidro Salá S.A., part of the FABRIGAS group.[203] Hidro Salá says that the hydroelectric dam will bring development, education, cleaner water, and employment to the region.[204] But community authorities from the local indigenous Maya Mam population requested the project not be approved, alleging that prior consultation was negligible and fearing risks of negative impacts on food security in the communities due to a possible reduction in river flow.[205]

The surrounding communities have faced multiple agressions since Hidro Salá came to the area, including intimidation, criminalization, surveillance by the police and private security, defamation, and smear campaigns in the media.[206] Hidro Salá has used the press to depict community leaders as anti-development terrorists, members of organized crime, and political opportunists creating opposition to the dam to advance their own ambitions.[207]

Despite local opposition, the government approved the dam's environmental impact assessment in October 2009, denied a June 2010 community request for municipality-wide consultation, and in February 2011 issued Hidro Salá S.A. a 50-year operating contract.[208] In November the municipality of San Pablo approved the dam's construction license.[209]

On June 11, 2012, impacted communities gathered in the town square to request that Hidro Salá withdraw from the area. The mayor issued a decree requiring Hidro Salá to withdraw its machinery within 24 hours.[210] Hidro Salá immediately filed a court injunction against the decision, which San Marcos courts upheld.[211]

Protest in San Marcos, "There is no peace without justice, Fausto is innocent."



Norma Sancir, Prensa Comunitaria

Despite the record of public opposition to Hidro Salá, in November 2012, a consortium of development financiers purchased a 51% controlling interest in Generadores Electricos S.A. (Genhidro), another FABRIGAS company, and Hidro Salá's majority shareholder and administrator, through a mezzanine fund called CAMIF I.[212] CAMIF I, the first "Central American Mezzanine Infrastructure Fund" raised



Prensa Comunitaria

Press conference against criminalization of indigenous authorities in San Marcos.

US$150-million in financing, largely from the Inter-American Investment Corporation (IIC) (now IDB Invest), the International Finance Corporation (IFC), the Central American Bank for Economic Integration (CABEI), the Dutch Development Bank (FMO), the Finnish Fund for Industrial Cooperation Ltd (Finnfund) and the Mexican Fondo de Fondos (CMIC).[213]

Little news emerged from Genhidro for over a year, but on July 8, 2014, two civil engineers working for Hidro Salá were stopped by a large group of community members.[214] The engineers, under duress, signed an agreement that they would not carry out further activities for the dam and were released several hours later.[215]

On November 10, 2014, police arrested Fausto Sánchez Roblero, ancestral authority Lorenzo Ramírez Rodríguez, and Plutarco Irineo Clemente Pérez and charged them with kidnapping in relation to the July encounter. Working with the Unit for Organized Crime in the Public Prosecutor's Office of San Marcos, Hidro Salá joined as a co-plaintiff against the community leaders.[216] The Mayan Peoples Council (CPO) and other indigenous organizations denounced the arrests as a strategy of criminalization seen in other parts of Guatemala, where judicial harassment is used to deter and prevent communities from organizing in opposition to development projects.[217]

A month later, six other community members were arrested, charged with trying to free Fausto Sánchez from pre-trial detention. The defendants denied involvement but said they were pressured to sign affidavits of their guilt as a means to reduce their sentences. All were convicted and sentenced to between two and four years in prison.[218] Even after their release, several have reported experiencing health complications and feel they are under constant surveillance.[219]

On January 21, 2015, Hidro Salá attempted to bring in additional machinery to the area, accompanied by approximately 200 police officers. The next day, hundreds of people wearing ski masks and bearing AK-47s burned the machinery.[220] In a subsequent press conference, Hidro Salá's Community Relations Manager accused community members of collaborating with organized crime to attack the company.[221] Others have speculated that the police were behind the attack.[222] It remains unclear who was responsible.

According to CAMIF I's fund manager, Latin American Partners (LAP), following CAMIF's environmental and social review process, Genhidro opted not to pursue the Hidro Salá project, and in March of 2016 sold its holding in the company to FABRIGAS, Genhidro and Hidro Salá's mutual parent company.[223] This shift of ownership rearranged the corporate structure but did not defund Hidro Salá. Genhidro and Hidro Salá remained intertwined, sharing promotional materials on the proposed dam, as well as the same office in Guatemala City.[224]


Fausto Sánchez

CMIGuatemala

On August 6, 2016, Maya Mam ancestral authorities from San Marcos held a press conference to denounce human rights violations committed by the company and to demand the release of imprisoned community members.[225] Leaving the press conference, ancestral authority Óscar Sánchez was arrested on charges of illegally detaining and assaulting a well-known supporter of the dam.[226] Óscar spent two and a half months in pre-trial detention and was ultimately sentenced to two years in prison, although the prosecution's lead witnesses reportedly provided contradictory testimony.[227]

On December 10, 2016, Duarle Licardie, the secretary for the Maya Mam Council, was arrested in Mexico on charges related to the 2014 detention of Hidro Salá's civil engineers. The courts dismissed the case for lack of merit.[228]

Since 2017, communities opposing the project have faced continued smear campaigns, and spurious criminal charges, preventing those individuals from engaging in normal activities of daily life, for fear of arrest.[229] The relationship between FABRIGAS and its subsidiaries remains opaque; while HidroSalá and Genhidro continue to share office space with FABRIGAS, Genhidro no longer has a public staff list, contact page or online presence. The development banks invested in CAMIF I state that they no longer have a connection to Hidro Salá, because as LAP attests "Genhidro is no longer involved in any way in the Hidro Salá project."[230] However, in a request for comment sent to GenHidro, Hidro Salá's management replied using GenHidro's email account. They denied any wrongdoing and rejected community claims that project opponents have been criminalized, stating that the company and its workers have been victims of violence by a small group of "terrorists" supported by the political agendas of outsider organizations. In their communication they accuse several well-known national indigenous organizations of being linked to organized crime and drug trafficking.[231]

On December 5, 2018, the Guatemalan Supreme Court, in response to a petition from the Maya Mam council of San Pablo, granted a provisional injunction against the installation of Hidro Salá, provisionally suspending five ministerial licensing agreements for violating the rights of indigenous communities.[232]

Killing of Tomás García, Berta Cáceres, and attacks on COPINH and the community of Rio Blanco

Agua Zarca Dam

Honduras

Hydro

Finnfund, FMO, CABEI

On March 2, 2016, two armed men kicked in the backdoor to the home of indigenous leader Berta Isabel Cáceres Flores in the town of La Esperanza, Honduras. The assailants shot Cáceres and Mexican environmental activist Gustavo Castro Soto, leaving Cáceres dead.

Cáceres was the leader of the Lenca indigenous organization COPINH (Consejo Cívico de Organizaciones Populares e Indígenas de Honduras), which since 2010 had been fighting to stop the construction of the Agua Zarca Dam, a small scale hydroelectric dam located on the Gualcarque River in the northwest of Honduras.[233] The Lenca communities, organized and represented by COPINH, resisted the project for the impact it would have on this culturally important river and their lives, and because of the lack of adequate consultation required by law.[234]

Since 2010, COPINH has been supporting communities fighting against the construction of the dam, raising concerns with government officials, filing legal complaints, mobilizing protests, blockading project sites, and sending letters to the project's financiers calling their attention to escalating violence and human rights abuses. Researchers have chronicled years of violence against COPINH and local community protesters, carried out by authorities, state security forces, paramilitary groups, and from employees and supporters of Desarrollos Energeticos S.A. de (DESA), the dam developer, including surveillance, death threats, physical attacks, defamation campaigns, warrantless raids and confiscation of property, arbitrary arrests, forced evictions, sexual harassment, and judicial harassment.[235]

An international, independent expert panel commissioned to investigate Cáceres' murder concluded that DESA appeared to have utilized its finances to foment violence around the project area and to systematically attack members of COPINH, including Berta Cáceres.[236] The panel's report draws from financial documents and phone records to conclude that DESA, which had received a US$24 million credit line from the Central American Bank for Economic Integration



"Don't finance Agua Zarca, FMO out of Agua Zarca."

COPINH


Berta Cáceres

Goldman Environmental Prize

(CABEI), contracted government security forces to secure its construction sites and used project funds to hire public relations experts, lawyers, private security personnel, informants, and contract killers to neutralize those who opposed the project.[237] The Agua Zarca Project and DESA reject these allegations and maintain that Agua Zarca is unrelated to any act of violence and that the project has always complied with Honduran law.[238]

On July 15, 2013, soldiers positioned inside the company's logistics headquarters opened fire against peaceful community protesters, killing indigenous leader Tomás García, seriously wounding his 17-year-old son Allan, and injuring others.[239] Citing unpredictable conflicts between DESA and local communities, Chinese construction company Sinohydro terminated its contract with DESA weeks later.[240]

In October of that year, COPINH filed a complaint with the International Finance Corporation's Compliance Advisor Ombudsman regarding IFC's financial intermediary investment in the Central American Mezzanine Infrastructure Fund (CAMIF) which was at that time considering investing in Agua Zarca.[241] CAMIF later decided not to invest in the project.

Yet in February 2014, Dutch development bank FMO and Finnish bank FinnFund granted DESA US$15 million in financing for the Agua Zarca project.[242] Since the 2013 murder of Tomás García, both FMO and FinnFund had received numerous communications from COPINH and international NGOs citing the lack of consultation and free, prior and informed consent, warning of the increasing violence and serious threats to the life and integrity of Cáceres and other community members, and demanding the banks not finance the project.[243] Correspondence from FMO shows that it refused to consider these risks and allegations seriously, and that it believed that FPIC had been obtained and that other risks were sufficiently manageable.[244]

Cáceres' death in March 2016 captured global attention. The international community rallied behind COPINH's calls for the financiers to cancel their investments and permanently withdraw from the project.[245]

While FMO and FinnFund called on the Honduran government to put an end to the violence and to investigate Cáceres' murder, they did not suspend their financing until around two weeks later, when, on March 15, 2016, Nelson García, another COPINH leader, was shot and killed.[246] FMO and FinnFund also announced the suspension of their other activities in Honduras.[247]

Even then, FMO did not seem to challenge the project or its developers. "As far as Agua Zarca knows, lenders see the project as a responsible initiative that respects life and the rule of law…," reported DESA.[248]

After DESA's manager for social and environmental affairs was arrested for Cáceres' murder, FMO and FinnFund announced on May 9, 2016, their intent to seek "a responsible exit" from the project and commissioned an investigation to explore how.[249] The investigation report concluded that FMO should have



COPINH

3rd Anniversary of Berta Cáceres' killing.

secured the consent of indigenous communities, and "conducted follow up" after the killing of Tomás García, however, it delegitimized the concerns and work of COPINH, casting the organization's opposition campaign as the source of the risk of future violence if the project were to continue.[250]

On July 6, 2017, FMO and FinnFund announced their exit from Agua Zarca, noting "no proven connection has been established between DESA and allegations regarding any illegality" and thanking DESA for its "willingness to put the project on hold."[251] COPINH criticized the banks' failure to acknowledge the role of DESA, the government, or their own financing in contributing to the human rights violations and violence.[252]

It remains unclear whether CABEI ever officially withdrew from the project, though they reported in June 2017 the cessation of loan payments.[253] The bank has been largely unresponsive to multiple communications from COPINH and other civil society groups.[254]

Following its exit from the project, FMO adopted a position statement that the institution does "not tolerate any activity by our clients that amount to the oppression of, violence towards, or any other violation of the human rights of those who voice their opinion in relation to FMO activities and the activities of our clients."[255] The bank also announced plans to develop more robust systems for verifying FPIC, and assessing human rights risks and threats to environmental and land defenders.[256]

COPINH argues that the exit of FMO and FinnFund not only was a callously late response to the deaths and human rights violations, but also was done whilst maintaining vocal support for DESA and sidelining the FPIC rights of the Lenca communities, leaving them in greater risk.[257]

The 2017 expert investigation found "willful negligence" by CABEI, FMO and FinnFund, citing their "prior knowledge of the strategies undertaken by DESA" and their failure to implement effective measures to guarantee respect for human rights or protection for Cáceres.[258] In July 2018, COPINH and Cáceres' family filed suit against FMO in Dutch courts alleging negligence and indirect responsibility for Cáceres' killing.[259] FMO maintains that it acted in good faith.[260]

In November 2018, a Honduran court convicted seven men, including a DESA manager and a former DESA security chief, of murdering Cáceres. The court found that the killing was carried out by a gang of hitmen on the orders of DESA executives frustrated at costly delays caused by the protests against the dam.[261] Roberto David Castillo, a former intelligence officer and DESA's executive president at the time of the killing, is accused of orchestrating the murder and as of early 2019 is still awaiting trial.[262] Castillo and DESA have denied any wrongdoing.

Human rights groups and the families of the victims welcomed the conviction, but criticized the Honduran government for excluding key witnesses and evidence and failing to bring to justice the masterminds behind the killing and the larger campaign of intimidation.[263]

As of early 2019, several Honduran officials are under investigation for violating free, prior, informed consultation requirements during Agua Zarca's licensing.[264] Agua Zarca's investors have yet to acknowledge their responsibility; the suit against FMO remains pending in Dutch courts. Social movements continue to demand justice and accountability and the protection of human rights defenders still at risk.[265]



Aggression against Máxima Acuña-Atalaya de Chaupe and violent repression of protests

Minera Yanacocha

Peru

Gold mine

IFC

Máxima Acuña-Atalaya de Chaupe and her family are indigenous subsistence farmers who live in the highlands of Cajamarca, Peru. For years, they have suffered harassment and surveillance. Minera Yanacocha, a company controlled by the U.S.-based Newmont Mining Corporation, operates large-scale mining projects across the region. Newmont had plans to expand its gold mining operations in Cajamarca and acquired most of the land that it needed for the project, except for the Chaupes' farm.

A land dispute between the company and the family, which began in 2011, has escalated over the years. According to Máxima, Newmont agents have repeatedly used extrajudicial measures in an attempt to forcefully evict the family. In August 2011, for example, Máxima reported that company agents—accompanied by local police—destroyed the family's home, set fire to their huts, destroyed their crops, and physically assaulted her and her family.[266] Both the Chaupes and Newmont have brought the dispute to courts in Peru and the United States. Newmont did not respond to a request for comment.

Máxima on her land.



Goldman Prize

From the start, the World Bank's International Finance Corporation (IFC) has been an active partner in Newmont's mining operations in Peru.[267] From 1993 to 1999, the IFC provided a series of loans to help build, and later expand, the Yanacocha gold mine.[268] The IFC also bought a 5% equity stake in Minera Yanacocha, which it maintained for over 20 years.[269]

Well before the Chaupe conflict started, relations between the company and the local communities grew tense. Local residents began to protest the Yanacocha mine for its perceived effect on local water sources including concerns that discharge from the mine was polluting drinking water. In 2000, a tanker truck from the mine spilled 330 pounds of mercury, poisoning around 1,000 people in the watershed.[270]

Throughout the 2000s, protests shut down Yanacocha's mining operations for days or weeks at a time.[271] On multiple occasions, security forces acting on behalf of the company responded with violence. In 2006, two people—a farmer and an environmental activist who had both expressed opposition to Minera Yanacocha—were killed under suspicious circumstances.[272]

In July 2011, Newmont's board approved funding for the US$4.8 billion expansion of the Conga mine in Cajamarca, on the lands near the Chaupes' home.[273] Máxima alleges that the company's harassment of her family began around this time.

In November 2011, an estimated 10,000 people flooded the streets of Cajamarca to protest the Conga project, which many believed would have devastating impacts on local water supplies.[274] The protesters blocked roads and shut down the airport, while military forces converged on the area. At least one peaceful protester was shot and left paralyzed.[275] The President of Peru declared a months-long state of emergency and on August 2012, the government suspended the Conga expansion.[276]



EarthRights International

Maxima Acuña-Atalaya de Chaupe

In July 2012, a large protest took place in the city of Celendín against mining activities in Cajamarca. Police and military forces fired on the protesters during violent confrontations. Four civilians were killed, and 16 were wounded by gunfire. An investigation by Human Rights Watch concluded that the security forces were not facing an imminent threat when the fatal shots were fired.[277]

Since 2001, Minera Yanacocha workers and community members in the region have filed eleven separate complaints to the IFC's Compliance Advisor Ombudsman (CAO) related to impacts on worker health and safety, land rights and water quality.[278] The CAO has played an active role in efforts to resolve company-community tensions, including setting up a stakeholder dialogue between the company and communities.[279] Three of the complaints remain open and are pending appraisal or investigation.[280]

Even though Newmont suspended the project, the company's land dispute with the Chaupes has continued. Both parties claim to have rights to the land. The Chaupes allege that security forces have continued to harass and attack them during this time, keeping them under constant surveillance, while destroying property, killing livestock, digging up crops, and stopping family members at checkpoints.[281] Newmont argues that it is engaging in lawful "defense of possession" against squatters, which it cannot cease without losing its claim to the land. In 2016, Maxima was awarded the Goldman Environmental Prize in recognition of her resistance to the Conga project.

In September 2016, a third party fact-finding mission commissioned by Newmont found that the information needed to resolve the land rights question between the Chaupes and the company was "contradictory and incomplete." It also concluded that "the human rights of the Chaupes have been at risk when they are on [the disputed land]," and that Newmont had not conducted appropriate human rights due diligence on the situation.[282]

In October 2015, Elmer Campos, who was left paralyzed after being shot by police during the protests against the Conga expansion, joined Maxima to address members of the World Bank's Board of Directors.

"*They keep shooting us, leaving dead, leaving orphans, spilling so much blood*," said Elmer. "*They keep fooling our country saying there is economic progress, while Cajamarca is one of the poorest departments. We want the project declared inviable.*"[283]

In response, a World Bank Director argued that to stay away from socially conflictive environments would be the "easy" approach and that instead, "the issue is the Bank's commitment to improve things and to face conflicts and violence responsibly and find solutions."[284] At the time that IFC purchased part ownership in the company in 1993, the IFC's Environmental and Social Performance Standards were not applied to Yanacocha or any other equity agreements.[285] At the same time, local activists find no evidence that IFC utilized its shareholding to influence Yanacocha's behavior or made any public pronouncements in support of the rights of local communities.[286]

In December 2017, the IFC sold its stake in the Yanacocha mining project, citing the benefits of its 24-year investment for Peru and local communities.[287]

Today, the Conga expansion project remains suspended. The land dispute between Newmont and the Chaupes continues.[288]



Use of emergency decrees and militarization to silence indigenous communities

Las Bambas Copper Mine

Peru

Copper mine

IFC

On September 28, 2015, indigenous communities gathered at the gates of MMG Limited's Las Bambas copper mine in the Andean region of Peru. Communities from the provinces of Grau and Cotabambas, which border the mine, had called for construction on the mine to be suspended until meaningful consultation could take place with local communities regarding major changes to the mine's infrastructure.[289] When a small group of people, unknown to protest organizers, attempted to push through the gates of Las Bambas, police fired tear gas and live ammunition on the crowd.[290] In the ensuing clash, three indigenous men were killed and at least 15 other community members injured. Eight police officers were also left with injuries.[291]

Widespread discord over the Las Bambas mine began after the mine's first owner, Xstrata, merged with Glencore in 2013.

As construction advanced, Glencore looked to sell its stake in the project and proposed significant design changes to increase the project's appeal.[292] In the initial design, mineral concentrate would be transported 200 kilometers from the mine via a slurry pipeline to be processed in a neighboring province.[293] The new design, however, allowed for a molybdenum processing plant to be built on-site at Las Bambas, with the copper then transported via truck and eventually train, to a port for export.[294]

For the Quechua indigenous population of Cotabambas, the change raised serious concerns. The new molybdenum processing plant would be sited in the virgin territory of Cotabambas. The local road passing by Las Bambas mine passes through 18 communities and would see a major increase in heavy truck traffic, with approximately 370 trucks daily bringing dust, noise, increased emissions, and possible adverse effects



Protest over Las Bambas Mine.

Mining Conflict Observatory



Funeral for Quintino Cereceda Huisa, shot during a protest against the mine, October 2016.

CooperAcci ón

on communities' health, their livestock, their crops and water sources.[295] Communities feared that the addition of a processing plant in Las Bambas would also have a dramatic effect on the water supply.[296]

On July 31, 2014, the China-based MMG Limited (MMG) purchased the Las Bambas project from Glencore-Xstrata for $7 billion USD.[297] The purchase was financed through a combination of debt and equity provided by China Development Bank, Industrial and Commercial Bank of China (ICBC), Bank of China (BOC), and Export Import Bank of China (EXIM).[298]

According to MMG, local communities have greatly benefited from the presence of the mine, which has brought increased employment and business development to the impoverished area, as well as major improvements to infrastructure.[299] MMG cites investments of over $160 million USD to develop roads, electricity, hospitals, and other social projects.[300] While communities are by and large in favor of the mine project, they allege that the benefits have been distributed unfairly and have been inadequate to mitigate the harms. They also express serious concern at the lack of community input into significant changes made to operations at Las Bambas.

Including the major changes in operations, the project underwent five revisions to its environmental impact assessment between 2012 and 2015, and the stated impact area of the project was reduced.[301] Three significant revisions were passed under a rapid 15-day approval procedure with no community oversight or input.[302] Under Peruvian law, indigenous communities must be consulted prior to construction on development projects that would affect their lands.[303] Communities across Peru, however, continue to push for this requirement to include major changes to project operations.[304]

On February 6, 2015, as construction wrapped up on the mine, local temporary workers initiated a 72-hour strike in Challhuahuacho to protest layoffs.[305] Local tension was high over alleged failures by MMG to comply with previously-made agreements for social development.[306] During the strike, community members temporarily detained a group of subcontractors. Eventually a dialogue process was established, bringing together the central government, local organizations, and the district mayor.[307] The dialogue process focused more on development projects in Challhuahuacho, however, and many communities in the area felt that it was not representative and did not address community needs or fears regarding environmental impacts.[308]

On September 24, 2015, 1,500 police and 150 members of the military descended on the communities surrounding Las Bambas mine in advance of a province-wide general strike planned for the following day.[309] Prior to the strike, MMG reportedly signed an agreement with the police to provide security to the project, and a police base was set up within the mine's property.[310]

Following the shooting at the mine protest, according to protest organizers, police immediately detained at least 17 people inside the mine for more than 24 hours, where they were allegedly beaten and deprived of food.[311] Two protesters were arrested and would spend eight months in pre-trial detention before being released on bail.[312] The government declared a 30-day state of emergency in the region, suspending the rights to freedom of movement and association, and allowing police to freely enter homes in the area without a warrant.[313]

In November 2015, the national government approved additional military intervention in the provinces of Grau and Cotambas.[314] A second dialogue process between representatives from the local government, MMG, and communities was initiated in December 2015, with community demands focusing on issues of the environment, human rights, sustainable development, and corporate social responsibility.[315] The company

reportedly began to negotiate bilaterally with select communities, ignoring the official dialogue process.[316]

In June 2016, several NGOs sent a letter to MMG's CEO in Australia detailing the social and environmental conflicts around the Las Bambas mine.[317] Among other requests, the letter asked MMG to employ local staff in the dialogue tables who will more proactively listen to community concerns, engage a third party to emit a technical opinion on the changes to the project and the environmental impact assessment, pave the highway, and provide humanitarian support for the families of those killed and wounded protesting the mine.[318]

In his July response, as Las Bambas began commercial production, CEO Andrew Michelmore praised the mine's successes in the area, including a reduction in poverty, and argued that the modifications made to the operations were done in full compliance with all legal and regulatory frameworks. He emphasized the importance of the established dialogue and development tables and stated that if company employees, police, or protesters engage in illegal acts, they should be prosecuted by the appropriate authorities.[319]

One of the key issues discussed at the dialogue tables was payment for the use of the community road that passes through Las Bambas, which was seeing a major increase in truck traffic. In October 2016, however, communities learned that, with the support of MMG, the government had changed the designation of the road from community property to public property, negating the communities' claim to compensation. That same month, MMG was in the process of asphalting part of the road when four communities erected a roadblock. Police arrived on October 14, allegedly on orders of the company to clear the roadblock, and shot and killed one man.[320] According to MMG, several police were also injured when community members at the roadblock threw rocks.[321]

Between 2016 and 2017, local NGO CooperAcción met five times with the company in an attempt to raise community concerns about environmental and social impacts.[322]

Despite significant police repression and several deaths related to the mine, it is unclear if Chinese banks supporting MMG were aware of or included this information in their respective due diligence and monitoring processes. Under China's Green Credit Guidelines, all Chinese banks which issue loans are required to follow international social and environmental standards when financing overseas operations.[323] However, impacted communities continue to argue that the Las Bambas project has failed to meet international standards around meaningful consultation, public participation and benefit sharing, and use of security forces.[324]

In October 2017, a delegation from the region traveled to Lima to ask for the 2016 dialogue process to be reinstated, but their petition was ignored.[325] On January 11, 2018, another state of emergency was declared for the region and another delegation from Challhuahuacho traveled to Lima to again request that the 2016 dialogue process be restored. Community members called for the changes to the environmental impact assessment to be rejected and the state of emergency lifted.[326]

Since initial protests began, communities have been clear that they are not against mining operations, but are exerting their rights to see adequate economic and social benefits. They continue to insist in meaningful dialogue, while the government responds by continuing to enact states of emergency, including in April and August of 2018.[327] At the time of publication, two community members continue to face charges from the September 28, 2015 protests and are awaiting trial. An additional 30 community members involved in the protest are waiting to see if accusations against them will be elevated to formal criminal charges.

A community roadblock.



CooperAcción



Belo Monte Dam

Brazil

Hydro

BNDES

Intimidation and corruption to silence indigenous communities, environmental activists and government regulators

In June 2012, members of the Movimento Xingu Vivo Para Sempre gathered in Altamira in the Brazilian Amazon for a week long protest for indigenous rights and environmental justice, and against the Belo Monte dam -- a massive dam project on the Xingu River. On June 12, Belo Monte's owner, Norte Energia, filed a judicial restraining order against the Movement and its coordinator Antonia Melo and other leaders, threatening them with a fine of US$ 24,000 per day.[328] Shortly thereafter, Brazilian authorities issued a spurious arrest warrant against Antonia and ten other Movement leaders, citing property damage at the office of the dam construction company, Consórcio Construtor Belo Monte (CCBM).[329] The fine was never levied and the arrest warrant was never executed, but both still served to send a strong message to those who might try to oppose the dam.[330]

Conflicts between dam developers and local indigenous peoples began in the late 80s with Belo Monte's predecessor, the Kararaó dam.[331] As indigenous leaders and advocates spoke out against the dam's anticipated impacts on their environment and on their livelihoods, so began the attempts to silence them. In 1988 the World Bank, which had been considering investing in dams in the Amazon, withdrew its interest after meeting with Kayapó indigenous leaders in Washington.[332] A spokesman explained, "[w]e cannot lend money to the Brazil power sector and close our eyes to the guidelines for the environment and the Amerindians."[333] Shortly thereafter, the Brazilian authorities brought charges for sedition against the American ethnobiologist who facilitated the Kayapó leaders' visit to Washington.[334]

Around 2002, the Kararaó project eventually re-emerged as Belo Monte, this time redesigned by Electronorte, a branch of the parastatal electric company Electrobras, together with Brazil's largest construction companies.[335] In 2005, the government of Lula da Silva secured fast-tracked approval of the dam in a three-day Senate consideration that bypassed hearings with local indigenous communities, in violation of constitutional requirements.[336] The following year, Brazil's federal public prosecutor for the region filed a lawsuit against Eletronorte and the national environmental agency, alleging violation of the right to prior consultation of indigenous peoples.[337]

In 2008, indigenous and traditional riverine communities, together with environmental and social justice activists, founded the Movimento Xingu Vivo Para Sempre to fight the dam.[338] The protests, lawsuits and petitions launched by the Movement and others gained national attention and brought Brazilian President Lula da Silva to the dialogue table by July 2009. The President promised that "Belo Monte will not be shoved down anyone's throat."[339]



International Rivers

Indigenous peoples protest the Belo Monte Dam.



Protesters spell out "Stop Belo Monte."

Atossa Soltani - Amazon Watch

Yet in February 2010, the government issued the preliminary environmental license for the dam with 40 preconditions.[340] Electrobras soon established a public-private consortium, Norte Energia, to manage and operate the dam, contracting CCBM to handle construction.[341]

In December 2010, the World Bank disbursed the final tranche of an unprecedented US$1.3 billion programmatic loan to the Brazilian government.[342] While the stated objective of the loan was to strengthen environmental management, including the development of social and environmental standards at BNDES, an investigation revealed that the funds were instead channelled to BNDES' investment coffers.[343] The investigation found "little discernible improvement" in BNDES' environmental management system, and anticipated standards for the hydro sector were never developed.[344] A week following the disbursement, BNDES announced it would be financing Belo Monte, though the project had not yet been granted an installation license as required by law.[345]

Norte Energia was granted concession to more than 3,500 hectares of public land, home to over 20,000 people who had lived on and utilized the land for decades.[346] Some received meager compensation, but many were not recognized as legitimate landholders.[347] Tens of thousands were eventually resettled in the municipality of Altamira, forced to abandon their rural way of life and thrown into a mix of crime, poverty and violence as the city strained against the influx of not only the displaced persons, but nearly 30,000 construction workers as well as migrants who came seeking work, but remained unemployed.[348] Altamira quickly became the country's most violent city, troubled with drug trafficking and organized crime.[349] Civil society groups and Brazilian public servants continued to protest and petition the government to stop Belo Monte, pointing to grave social and environmental risks and glaring legal irregularities with the project.[350]

In June 2011, Belo Monte's final installation license was approved with 32 preconditions and only after the previous environmental licensing director resigned in protest.[351] Public Prosecutor Felicio Pontes characterized the license as "*totally illegal*," and protests broke out in Brasilia.[352] Human rights organizations reported acts of intimidation by Norte Energia against Pontes for his criticism of the project.[353] At the same time, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures and requested the



Ruy Sposati

Shock troops policing a peaceful protest in Alta Mira.

suspension of the project until requirements for consultations with indigenous peoples could be met.[354]

Despite the investigations, irregularities, and widespread opposition, in June 2011, BNDES formally approved its first bridge loan to Norte Energia for approximately US$292 million.[355] BNDES states that it took social and environmental considerations, including the licensing process, into account at every step of financing, and relied on the analysis and decisions of relevant national agencies.[356] As construction ramped up, hundreds of indigenous protesters occupied the dam site, and civil society groups around the country, joined by prominent Brazilian artists, again called on BNDES to heed the dam's likely devastating impacts on the environment and on indigenous and local populations.[357]

In 2012, the harassment, threats, surveillance and attacks against indigenous leaders and other activists intensified. On February 7, BNDES approved a second bridge loan for more than US$1 billion for the dam.[358] Advocates have criticized BNDES' lack of basic transparency or robust social and environmental standards, and the absence of an effective independent accountability mechanism.[359] In November, BNDES approved US$11 billion for Belo Monte's construction, the largest loan in the bank's history, bringing its stake in the project to the maximum limit of 80 percent.[360] In December, advocates sent a letter criticizing BNDES' failure to comply with national law regarding risk assessment and monitoring, and urged the bank not to disburse the funds, citing devastating impacts, including the criminalization of human rights defenders.[361] BNDES did not respond to the letter.[362]

In 2012 the Federal Regional Tribunal ordered the consultation of indigenous communities, but the order was suspended utilizing a legal instrument which allows preliminary judicial decisions to be unilaterally and arbitrarily reversed based on justifications of imminent "grave damage" to the national interest and the economy.[363] These *security suspensions*, which were created during the country's dictatorship, have been utilized at least six times in the case of Belo Monte.[364] As one civil society group concluded: "*Through the Security Suspension, ignoring illegalities has become a situation of 'institutional normality'. With the approval of the judiciary, the backers of megaprojects will only have to comply with the established rules where convenient*."[365]

As persons displaced by the dam came together to defend their rights, Norte Energia is reported to have engaged in espionage and judicial harassment.[366] In one incident in 2013, a resident of Altamira described being contracted by CCBM to infiltrate Xingu Vivo and Belo Monte workers to pass on information about movement and labor leaders to Norte Energia, and eventually to the Brazilian Intelligence Agency.[367] The Movement of those Affected by Dams (MAB), has had to defend against judicial restraining orders against ten of its members, similar to those levied against Antonia and Movimiento Xingu Vivo in 2012. Under these *interdito proibitorios*, if the subject of the order enters a territory controlled by a company or engages in any sort of protest on the premises, they can be subjected to a substantial fine and possibly arrest.[368] As MAB explains, the *interditos* are used by Belo Monte and other dam owners to "*prevent the exercise of the right of free association and expression, as well as with the intention of prosecuting human rights defenders*".[369] In March 2013, Norte Energia obtained a legal order that would automatically fine Xingu Vivo and MAB approximately US$25,000 per day if any occupations of the

Belo Monte Dam construction 2013.



Marcelo Salazar (ISA)

construction site were to occur.[370] In May, approximately 200 people from seven indigenous tribes occupied one of Belo Monte's construction sites, demanding prior consultation and the suspension of dam-related policing operations.[371]

Throughout Belo Monte's history, the military police, including the Federal Police and the National Security Force, have been utilized as *de facto* private security for Norte Energia.[372] In January, 2014 Norte Energia provided more than US$40 million to the Military Police with jurisdiction in the area of Belo Monte and Altamira to purchase equipment.[373] Altamira residents and civil society groups have reported that national and municipal forces can be seen wearing Norte Energia's logo and utilizing company vehicles and that they employ harassment and excessive use of force against communities and activists protesting the dam.[374]

In 2015, developers carried out another set of evictions with the demolition of Antonia Melo's and her neighbors' homes. The Public Prosecutor's Office in Altamira brought forward a case against the government and Norte Energia for "*ethnocide*", citing "*the destruction of the social organization, customs, languages and traditions*" of the indigenous groups affected by Belo Monte.[375] In November, Belo Monte's operation license was approved.[376]

In early May, 2016 president Dilma Rousseff presided over Belo Monte's inauguration, touting its ability to produce "*clean, renewable and sustainable energy to ensure the economic and social development of the country*".[377] Shortly thereafter, investigative journalists and regulators revealed that the most expensive construction project in the country's history -- at least US$15 billion -- was at the heart of a web of corruption and money laundering involving companies and politicians across the Amazon.[378] According to executive confessions, Belo Monte construction companies allegedly colluded to inflate their bids for Belo Monte and paid more than US$56 million in campaign contributions to Brazil's two main political parties to secure the contracts.[379] Federal Prosecutor Felicio Pontes highlighted the culpability of BNDES, whose financing of millions of dollars in exclusive contracts was allegedly used to bribe public officials while at the same time causing grave social and environmental harms.[380] "*The bank has rules that regulate the loans it makes, but they were not followed or audited, only the money was delivered,*" stated Pontes.[381]



Brent Millikan

Antonia Melo protesting.

With the breaking of the scandal, it was clear to activists and regulators why their complaints had been ignored. Over Belo Monte's lifespan, the Brazilian Public Prosecutor's office has filed 21 legal actions questioning anomalies in the dam's licensing, the lack of prior consultation, and other irregularities.[382] For this effort, public prosecutors and regulators have experienced increasing pressure, threats and intimidation. In October of 2016, the killing of Luiz Alberto Araújo, Secretary of the Environment for Altamira signalled a new level of risk for environmental defenders in the Amazon.[383]

Despite the abuses, irregularities, and corruption, in February 2017 BNDES approved a US$811 million loan to Belo Monte Energy Transmitter, controlled by the Chinese State Grid group in partnership with Eletrobras, for an expansive transmission network to distribute energy from the dam.[384] Today, Belo Monte's main construction is completed and turbines are being activated. Approximately 40,000 people have been displaced.[385] Environmental defenders and human rights advocates continue to challenge the devastation of ecosystems, livelihoods, and democratic institutions left in the dam's wake, and they continue to be attacked for their brave efforts.[386]



Jirau Dam

Brazil

Hydro

BNDES

Killing of Nilce de Souza Magalhães and threats to activists

In July 2016, the body of Nilce de Souza Magalhães washed up on the banks of the Madeira River in Porto Velho, Brazil, tied to a rock.[387] A local fisherwoman, de Souza had criticized the Jirau dam project, which had depleted fish stocks in the river since its construction, affecting the livelihoods of thousands like her who lived along the river. De Souza had gone missing six months earlier. She was last seen speaking out on behalf of uprooted fishing communities at a national hearing in the capital, Brasília.[388]

The Jirau hydroelectric dam, operated by consortium Energia Sustentável do Brasil (ESBR), received a US$3 billion investment loan from Brazil's National Development Bank (BNDES) in 2009, alongside funding from several international and Brazilian commercial banks.[389] According to BNDES, the project was to bring affordable electricity and positive social impacts for regional development.[390] In 2012, BNDES approved another US$1.14 billion loan to ESBR for the dam project.[391]

Starting in 2014, after seeing fish stocks diminish, de Souza became a leading activist with the Movement of People Affected by Dams (MAB), advocating for the rights of all communities affected by the Jirau dam. As often happens, dam developers had only considered impacts on the communities that would be physically displaced, ignoring the significant economic and cultural impacts on communities like de Souza's, living further downstream. Many of the communities in the area opposed the dam not just for its direct impacts, but for the cumulative impacts it would have together with three other dams in the area, including the BNDES-financed Santo Antonio dam located just over 100 km from Jirau.

The impact assessment for the Jirau project was narrowly scoped, excluding both the social impacts to local fishing communities and the cumulative impacts of numerous dams on a single river system.[392] As early as 2006, environmental scientists expressed concern that impact assessments had ignored the effect of climate change on river flows and underestimated flood risks.[393] Their admonitions took on new weight in 2014 when widespread flooding left part of the city of Porto Velho submerged under eighteen meters of water. Tens of thousands of people were left homeless, and many lost their livelihoods.[394] The government came short of shutting down the Jirau and San Antonio hydroelectric plants, but it ordered ESBR to pay for housing for displaced families and to redo impact assessments to account for climate change and cumulative risks.[395]



Joka Madruga

Nilce de Souza Magalhães

On November 28, 2015, frustrated with ESBR's failure to compensate flood victims and rebuild communities, MAB members blocked the main access road to the dam in protest.[396] Shortly thereafter, de Souza brought the complaints against ESBR to the federal government. It was in January 2016, as de Souza was awaiting a follow-up visit by the government to confirm receipt of the complaints, that she disappeared.[397]

Despite these events, the Jirau dam continued to receive international investment. In August 2016, the project was approved to receive financing under the



Jirau Dam.

United Nations' Clean Development Mechanism, an international emissions-trading scheme.[398]

In March of 2017, authorities sentenced Edione Pessoa da Silva to 15 years in prison for de Souza's murder – shifting the spotlight onto a personal conflict.[399] MAB representatives, however, insist that de Souza was targeted because of her activism.[400] Other community members and MAB activists who opposed the dam have also received death threats, including Lurdilane Gomes da Silva and Iza Cristina Bello, who worked with de Souza.[401] De Souza's daughter and others who organized the community to resist and to fight for justice for de Souza's murder have also been targeted.[402] MAB members have criticized the failure of the government to ensure their protection.[403]

Brazil consistently ranks as one of the deadliest countries for land and environmental defenders.[404] Threats to defenders center around those challenging the advance of agribusiness, mining, infrastructure and energy investments which are often imposed on indigenous, traditional and local communities without their consent or consultation.[405] Often, these defenders do not have access to institutional mechanisms to ensure that their concerns can be heard. Public hearings occur too late in decision-making processes, or involve too few community members, compromising the ability to effectively incorporate the view of affected communities into project design and implementation. At Jirau, no effective operations-level grievance mechanism is available -- a common problem throughout Brazil. Access to justice is hampered by corruption as well as logistical, financial, and normative barriers.

The situation is becoming more pressing as the government considers a range of laws and constitutional amendments which would eliminate environmental regulations that allow local communities and civil society to access information and participate in decision-making processes around development.[406] These include measures to gut licensing requirements for infrastructure projects, open indigenous lands to mining, and dramatically speed up environmental certifying processes, even allowing "self-licensing" for many development projects.[407]

Today the communities impacted by the Jirau dam are still fighting for compensation for their lost livelihoods and to rebuild their lives after the 2014 flood.[408] In January of 2018, ESBR decided to raise the level of water in the dam, increasing the risk of another disaster.[409]



Attacks, criminalization and killings of grassroots activists

Hidroituango Hydroelectric Project

Colombia

Hydro

IDB/IDB Invest,BNDES, KfW Ipex,ICBC

On May 8, 2018, Luis Alberto Torres Montoya, a father of three, was shot and killed by several unknown attackers while panning for gold in the Cauca river canyon region of Colombia.[410] Torres was a member of the Movimiento Ríos Vivos Antioquia (MRVA), a network of Colombian environmental, campesino, and community groups which came together to oppose the Ituango Hydroelectric Project.[411] The week before, attackers shot and killed another MRVA member, Hugo Albeiro George, along with his young nephew, hours before he was to attend a protest against the dam.[412]

Hidroituango, as the project is commonly known, is owned by the local Government of Antioquia, Empresas Públicas de Medellín (EPM), and minority private shareholders. The project was initiated in 2009 to be the nation's largest hydroelectric dam.[413] Public opposition to Hidroituango grew as communities began to learn of the project's likely impacts. Communities were concerned that the dam's 49 mile-long reservoir would flood an area of 11,120 acres — negatively impacting the livelihoods of many of the 180,000 people who live in the municipalities along the river and who depend on it for farming, artisanal mining and fishing.[414]

In 2008, community members formed an association, later known as Movimiento Ríos Vivos Antioquia, to mobilize against the evictions and the dam and to demand respect for their rights. Distrust of the project stems from the region's history of intense violence during Colombia's internal armed conflict.[415] The 12 municipalities directly affected by the project experienced 62 documented massacres, hundreds of forced disappearances, and over 14,000 forced displacements.[416] Still today, the Colombian Ombudsman's office characterizes the dam area as having high rates of violence, forced displacement and complex interplay between the FARC, the government, and other armed actors.[417]

One critical concern was that the dam would submerge the unmarked graves of hundreds of victims of the war, obstructing family members' ability to locate and pursue justice for their loved ones.[418] Communities demanded the identification of all the bodies in mass graves, organizing peaceful protests, public debates, legal actions, and international advocacy.[419] As they spoke out, threats, harassment, and violent attacks intensified.[420]

Dam construction began in 2009, and community members estimate that 700 families have been affected by 11 different evictions to date.[421] Many of these families had previously been displaced by the armed conflict.[422]



Movimientos Ríos Vivos Antioquia

Forced displacement of families in 2015.



Activists bury themselves in sand in protest against the flooding of human remains.

Movimientos Ríos Vivos Antioquia

In 2012, evictee Piedad Mazo, an opponent of the dam, was threatened, while her son, also an opponent, was killed.[423] Despite the significant public opposition and the history of conflict in the area, in October of 2012, the Inter-American Development Bank (IDB) approved a US$2 million technical cooperation package to help structure the technical, financial and environmental aspects of the dam project.[424]

In 2013, 400 people displaced by Hidroituango sought refuge in the local university for eight months demanding protection for their lives and respect for their homes and livelihoods.[425] That year, evictee and MRVA member Nelson Giraldo Posada was found shot dead on the banks of the Cauca River.[426] Robinson Mazo, another MRVA member was also killed.[427] As the project advanced and violence increased, communities appealed to the Inter-American Commission on Human Rights and the Colombian Congress.[428] Both the Colombian Ombudsman's Office and UN experts have documented the fact that members of MRVA are not freely able to express their opinion and have been victims of stigmatization and repeated threats.[429] In September of 2013, the National Unit of Protection was ordered to establish security measures to protect Isabel Zuleta, an MRVA leader, and other members.[430] In 2014, a risk report by the Ombudsman highlighted that defenders speaking out about Hidroituango were subjected to repeated illegal detention as a form of intimidation and threat.[431] Yet investment continued.

In April of 2016, the Brazilian national development bank (BNDES) lent EPM US$111.4 million for the importation of equipment for Hidroituango.[432] In August of the same year, Export Development Canada provided approximately US$135 million in financing for the dam.[433]

In July 2016, activists sent a request for information to the IDB's private sector arm, the Inter-American Investment Corporation (IIC), but did not receive a response.[434] Four months later, MRVA and other local organizations wrote to IIC, summarizing the project's negative environmental, social and human rights impacts, including the threats and attacks.[435] They did not receive a response. Later that month, the IDB Group approved $400 million in financing, plus a $700 million syndicated loan, including $50 million from the China Co-Financing Fund for Latin America and the Caribbean (CHC).[436] While the IIC's project review clearly indicated a risk of mass displacement, it failed to analyze the human rights risks related to ongoing conflict in the project area and the well documented risk of reprisals against local activists and community members.[437] IDB Invest states that it recognized the "complexity of the project as well as the possibility that some groups opposed to the construction of this type of project in general would emerge," and that for this reason undertook especially rigorous due diligence.[438]

For years, concerned citizens supporting MRVA challenged the legality of Hidroituango's permits and environmental license through litigation. Some of these cases are still pending. On September 19, 2017, MRVA organized a performance protest on a bridge over the Cauca river, known as the place where armed groups dispose of their victims' bodies.[439] Two hundred supporters watched as 30 protesters buried their bodies in sand to call attention to the flooding of mass graves.[440]

In early 2018, IIC, by then called IDB Invest, announced consolidation of a US$1 billion loan package for Hidroituango, which, in addition to the investments by IDB Group, included a $650 million B loan from commercial banks and institutional investors, including the Canadian pension fund CDPQ, the Industrial and Commercial Bank of China (ICBC), and Germany's KfW IPEX.[441] In mid April, 2018, IDB president Luis Moreno visited the Hidroituango project site, lauding its progress and contribution to development.[442] "...[W]e managed to bring a group of partners who had never invested in



Colombia Reports

Puerto Valdivia residents evacuated due to dam failure 2018.

Colombia and who did not know where Medellin was," said Moreno. "Now they are pleased to be part of this project."[443]

In April and May, landslides due to rain, coupled with severe structural failures at the dam site, led to a blockage of one of the dam's deviation tunnels, which together with the collapse of a second tunnel, resulted in extremely high water levels in the reservoir and a forced deviation of the Cauca River; this triggered a flood that knocked out bridges and destroyed dozens of homes, affecting thousands of people.[444]

The government eventually ordered the evacuation of five affected towns, leaving 8,000 to 12,000 people in makeshift shelters.[445] Technical experts hired by the Ministry of Environment have found that the dam is not structurally sound and presents an ongoing risk, creating long-term insecurity for downstream residents.[446]

Since 2012, through the power struggles surrounding the Peace Accords and subsequent to their signing, violence has escalated in Ituango and other conflict zones of Colombia.[447] At the same time, activists have noted a correlation between key moments of activity in the dam project and attacks against activists.[448] As the flood crisis reached a head, so did attacks, including the killing of Alberto Torres and Hugo Albeiro George in May 2018. In all, two MRVA leaders, and six relatives of leaders, were killed in the Ituango region during 2018.[449]

Between 2013-2018 MRVA documented a total of 151 threats and attacks.[450] This includes 63 threats, two attacks with explosives, two cases of torture, 26 cases of trumped-up criminal charges filed against activists, two episodes of mass detentions during protests against the project, as well as cases of harassment, public defamation, discrimination and surveillance.[451]

On the first of June 2018, Colombia's national environmental authority ordered the suspension of all non-essential operations at Hidroituango until completion of a range of studies to assess the structural soundness of the dam, essentially suspending its environmental license.[452] On the 5th of June, communities affected by Hidroituango led by MRVA, with the support of the Center for International Environmental Law (CIEL), the Interamerican Association for Environmental Defense (AIDA) and International Accountability Project (IAP) filed a complaint with the IDB's independent accountability mechanism, the Independent Consultation and Investigation Mechanism (MICI).[453] Five days later, MRVA denounced the "situation of imminent risk to life and physical integrity" of two of its members, one of whom was forced to relocate with his family due to threats.[454]

In an August 2018 statement in response to the complaint, IDB Invest reiterated its commitment to human rights and characterized the killings as part of a general and indiscriminate escalation of violence in the region, maintaining that the project is in full compliance with IDB's social and environmental standards.[455] KfW has similarly attested that the project is in compliance with the International Finance Corporation's Performance Standards on which KfW's Sustainability Guidelines rely.[456]

That same month, the Comptroller's Office of Colombia released a scathing 442-page compliance audit on Hidroituango finding numerous irregularities in the environmental license and resettlement approach. The Comptroller found the dam lacked an adequate rain emergency plan, the necessary mechanisms to oversee and manage technical operations, and a system to guarantee accurate identification of affected persons and monitoring of compensation and resettlement.[457]

In December, MRVA declared 2018 the worst year in terms of attacks against affected communities and opponents of the project, citing 108 different cases, ranging from discrimination to killings.[458] Announcing a lawsuit against the Government of Antioquia for "harassment, stigmatization and discrimination," MRVA argued that stigmatization and inaction by public officials "encourages and condones the attacks by legal and illegal actors in the territory."[459]

On February 5th, 2019, Hidroituango's final gate was closed, reducing the flow of the Cauca river to less than one-fifth its normal average, devastating fish populations and the communities that depend on the river for their subsistence.[460] The same week, the Government of Antioquia reportedly banned protests in the towns downstream from the dam.[461]

Intimidation and judicial harassment of workers and local community

Alexandria Portland Cement Company (Titan)

Egypt

Cement

IFC

Residents living near the Alexandria Portland Cement Plant had long complained about the factory, and how it blocked access to the sea and undermined the natural beauty of the culturally significant landscape. In 2002 when the plant's new owner, Blue Circle Industries, decided to establish a new production line less than ten meters away from residents' homes without acquiring a new license, opposition grew.[462] Neighbors noted a significant increase in fumes and dust, local children were becoming ill with respiratory diseases, and families were struggling to keep up with medical bills.[463][464]



Protest against the cement company

The new management also laid off many of the plant's permanent workers, replacing or re-hiring them as sub-contractors with less pay and benefits.[465] Residents and workers organized protests outside the factory gates, but were unsuccessful at getting management to address their concerns. After residents held their first press conference in the street, state security forces summoned several of the leaders and warned them against future public displays or agitation.[466]

In 2004, local residents formed the Coordination Committee for the Defense of the People of Wadi Al-Qamar (CCDPWG) to present their demands to company management and government authorities.[467]

Throughout the years, CCDPWG monitored and documented the environmental and health impacts of the plant and was successful in utilizing social media and communications to shed light on the suffering of Wadi Al-Qamar residents.[468] In 2007, a committee formed by the Egyptian Parliament to investigate the case concluded that emissions were causing "severe harm to the residents as well as nearby companies, their products, and their industrial equipment" and warned of a "severe danger to citizens' health."[469] The report recommended moving the plant further away from residential areas, but this recommendation was not implemented.[470]

After a series of acquisitions and mergers, Alexandria Development Limited (ADL), a subsidiary of Titan Group, acquired the plant in 2008, yet the situation for residents did not improve.[471] In 2010 several residents filed a lawsuit challenging the plant's license. The State Commissioner concluded that the "company is operating under a license that is legally invalid and should be canceled." The court, however, delayed its verdict, residents allege at the company's request.[472]

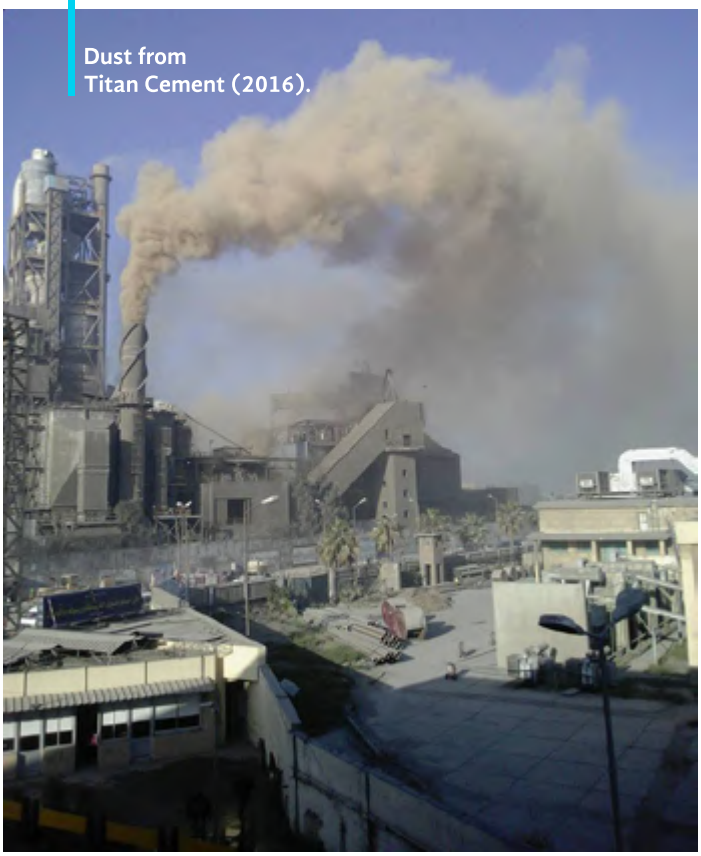
In November 2010, the International Finance Corporation (IFC) of the World Bank Group overlooked this extended history of complaints and irregularities and invested 80 million Euros to acquire a 15.2 percent stake in ADL. IFC's objective was to "support the company's expansion plans and the development of housing and infrastructure projects in Egypt", "improve environmental standards," and "secure current employment at APCC [Alexandrian Portland Cement Company] and generate new local employment opportunities."[473]

On the night of December 30, 2012, around 500 residents were protesting in front of the main locked gate of the plant when a fire started inside the plant's offices. Police intervened and forcefully disrupted the demonstrations and arrested a number of residents. The company accused 26 community leaders and

activists of sabotage. The protesters alleged that the fire was set by hired provocateurs who were seen to exit the building at the time of the fire.[474] The next morning the largest national state owned newspaper reported on the incident with a headline proclaiming that residents of Wadi Al-Qamar set fire to the company's buildings.[475] The accused leaders and activists were later released for lack of evidence.[476]

In the early morning of February 17, 2013, around 425 of the plant's sub-contracted workers were in the midst of a three-day sit-in to demand equal terms of employment with other directly contracted workers when the Egyptian Central Security Forces converged to disband the strike.[477] Police released dogs on the workers, forcing some to jump from the factory windows to escape. Around 150 workers were severely injured that day.[478] The authorities reportedly arrested 87 workers, later releasing 69 after family members blocked the roads to the plant in protest.[479] Eighteen workers were detained for 52 days before being released on bail. They were accused of forcibly entering the company's premises and holding employees hostage.[480] During these incidents, IFC did not speak out as a Titan shareholder regarding the mistreatment of workers or local residents. Replying to a letter from the Egyptian Initiative for Personal Rights (EIPR), IFC insisted that "Titan is in compliance with Egyptian laws regarding its operation licenses. The company is also in full compliance with Egyptian labor laws and regulations."[481]

In mid-2014, the Egyptian government gave permission to the cement industry, including Titan, to generate power on-site, using imported coal, triggering pollution concerns among workers and communities.[482] In April 2015, after making no headway through administrative and legal channels, CCDPWG and the workers filed a complaint with the Compliance Advisor Ombudsman (CAO) of the IFC.[483] ADL management rejected a CAO facilitated dispute resolution process, thereby moving the case toward a compliance investigation assessment.[484] In September of that year, however, the police report filed against the residents over the December 2012 fire, was reopened. Residents speculate that the company used its influence to



Dust from Titan Cement (2016).

reopen the case at this specific time in an effort to intimidate them.[485] At the same time, the case filed against the striking workers was also active in the court system, and as a result, many of the complainants were concerned that they could face retaliation for cooperating with the CAO. Creative approaches had to be employed to facilitate the CAO's engagement with complainants and eventual site visit, and in July 2016, the CAO approved the case to proceed to a compliance investigation.[486]

In 2016, both residents and workers were acquitted of all charges. In June, the accused workers were exonerated for their sit-in activities, and in December, the Alexandria criminal court found no evidence that residents accused of arson were actually inside the factory buildings when the fire started.[487] The CAO investigation is ongoing as pollution complaints persist and workers have still not been reinstated in their jobs.[488]

Ahli United Bank

Egypt

Financial services

IFC

Retaliatory freezing of human rights lawyer's assets

On November 11, 2016, Azza Soliman, a prominent Egyptian human rights lawyer and head of Lawyers for Justice and Peace, attempted to cash a check at Ahli United Bank (AUB), only to discover that both her personal and business accounts had been frozen.[489]

A few months earlier, Azza was accused of illegally receiving foreign funding for her activism.[490] The charge, and the resultant freezing of assets, has become a prevalent strategy of the Egyptian government to deter human rights advocacy and restrict the activities of civil society organizations.[491] Azza's case is part of Case No. 173, also known as "the foreign funding case," which has been open since 2011 against several human rights defenders and organizations who face asset freezes, travel bans and other restrictions.[492] When Azza attempted to travel later that month, airport personnel informed her that she could not, due to the pending case.

Azza is a vocal advocate for women's rights.



Rene Clement

Under the Egyptian constitution, assets can only be frozen after a court order and after the defendant has been informed of the charges and has had an opportunity to respond.[493] Because Azza's accounts with other commercial banks in Egypt, including a state-owned bank, were still active, she assumed that perhaps a court order was issued without her knowledge and had not yet reached the other banks.[494]

However, a few days later, Azza learned that the court date to consider the charges against her and whether to freeze her assets was not scheduled until December 14.[495] On December 4th, Azza filed a police report accusing AUB of violating Egyptian law by freezing her assets without a court order.[496] In response, AUB management submitted to the police a letter dated November 20, 2016, from the investigating judge asking AUB to freeze Azza's accounts.[497] Azza challenged the legality of the letter and of AUB's actions, arguing that, absent a court order, the Bank acted arbitrarily in "*cooperation with security and judicial authorities against its clients' interests, and that it is complicit in facilitating unconstitutional and unlawful action.*"[498]

On December 7, Azza was arrested at her home and taken to the office of the investigative judge who had written the letter to AUB, and later released on bail after hours of interrogation.[499] Since she was the only one among several accused activists to be detained for interrogation, Azza believes that this was retaliation for challenging the judge's letter to AUB.[500]

On her court date, December 14, the North Cairo Primary Court issued a verdict to freeze Azza's personal and business assets.[501] As per Egyptian law, the other commercial banks where Azza had accounts then gave Azza one month's notice before the freeze would take effect.[502]

The International Finance Corporation -- the private sector arm of the World Bank Group -- first invested in AUB in 2006 with a US$200 million loan.[503] IFC later


Azza Soliman

Center for Egyptian Women's Legal Assistance

purchased a US$35 million equity share in AUB's Oman branch, and another US$40 million in its Egypt branch.[504] In April 2011, the IFC invested another US$125 million in equity and US$165 million in subordinating debt in AUB "as it expands operations in Egypt, Iraq and other countries [in the region]."[505] In December 2014, IFC converted US$100 million of the subordinated debt to equity to bring its total ownership to 5.16 percent.[506]

The events in Egypt between 2011 and 2014, before the IFC decided to increase its equity in AUB, should have raised a red flag. Crackdowns on activists and civil society organizations had been on the rise, characterized by coercive measures against activists.[507] Six months before the IFC converted its debt to equity in AUB, the Egyptian agency which regulates NGOs had announced new policies to seize assets of activists, in a move understood to be part of a series of efforts to criminalize activists, even as it ran afoul of Egyptian law.[508] This repressive practice was also playing out in other authoritarian countries, including several cases in Azerbaijan.[509]

AUB characterized Azza's allegation that it colluded with security agencies in violation of national laws as a "*totally false allegation with no evidence*" adding that "*the allegation mentioned from Mrs. Azza above may constitutes [sic] a crime*" and "*we hope no further allegations from her in the future.*"[510]

The IFC has repeatedly insisted that the assets were frozen in accordance with a judicial order and that "IFC is not in a position to compel the bank to contravene local law and court orders."[511] However, IFC remained silent regarding the fact that the freeze took place more than three weeks before the requisite court order.[512]

In July 2017, Azza submitted a complaint to the Compliance Advisor Ombudsman (CAO) of the IFC, claiming AUB had colluded with the Egyptian regime and violated the Egyptian constitution and national laws.[513] The CAO found the complaint ineligible, stating that "*the decision to suspend access to an individual's bank account in the circumstances described is not considered to be a social impact of the IFC investment.*"[514]

Today Azza, like many other Egyptian human rights activists, is barred from leaving the country, and her accounts are still frozen. The foreign funding case remains open, while the list of accused activists continues to grow.

IPP4 Al-Manakher Power Plant

Jordan

Power plant

EBRD, OPIC

Intimidation of East Aman Society for Environmental Protection

On September 8, 2015, Mr. Farhan Al-Daboubi, the chairman of the Jordanian advocacy group, the East Amman Society for Environmental Protection (EASEP), received a call from an officer at the local police station requesting that he come to the station. As he reports, at the meeting, the officer showed him a thick file which the officer claimed included a complaint lodged by the manager of the IPP4 power plant in East Amman, alleging that Mr. Al-Daboubi had harassed and threatened him.[515] The officer also claimed that the file contained a copy of a complaint that EASEP had recently filed with the Project Complaint Mechanism of the European Bank for Reconstruction and Development (EBRD-PCM) on behalf of 91 residents in East Amman, regarding the negative environmental and social impacts of the plant.[516] The officer reportedly threatened Mr. Al-Daboubi that he would be charged under the Jordanian Communications Law for communicating false information to obstruct an investment in the country.[517]

On November 24, 2015, Mr. Al-Daboubi was again asked to report to another police station. Upon doing so, he says he was taken to the office of the governor of Amman, where he was again detained and questioned about the complaint filed with the EBRD-PCM. Mr. Al-Daboubi was reportedly pressured to sign a pledge committing not to communicate with any international institutions regarding the power plant.[518] He reports being told that if he did not sign the pledge, he would have to pay US$70,000 in order to be released.[519] Following a protest by 200 local community members and leaders of Jordanian civil society, Farhan was released the following day.

The IPP4 is a 240 megawatt power plant operated by AES Levant Jordan. The plant, which was constructed in 2013, is located near the village of Al-Manakher in East Amman. AES Levant is owned jointly by the US-based AES Baltic Holdings B.V, and Japanese Mitsui & Company Ltd. The IPP4 plant was funded through



Community protest against IPP4.

EASEP



Al-Daboubi in front of IPP4.

EASEP

a US$100 million loan from the European Bank for Reconstruction and Development (EBRD) in 2012, and a US$270 million loan from the US Overseas Private Investment Corporation (OPIC) in 2013.[520]

Residents in the vicinity of IPP4 felt they were not adequately informed about the potential environmental impacts of the plant or the proposed mitigation measures, nor properly consulted.[521] They were especially worried about potential soil and water contamination, and the adverse effects plant emissions could have on their health.[522] Residents were also concerned that the plant would not create employment opportunities for the local population. EASEP, on behalf of its members, raised those concerns with EBRD, OPIC and various Jordanian government bodies including the Ministry of Environment. On August 3, 2015, EASEP filed a complaint with the EBRD-PCM.[523]

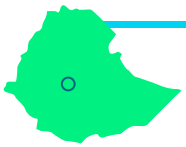
While the complaint process was proceeding, OPIC and EBRD conducted monitoring visits and met with Mr. Al-Daboubi.[524]

In November, as the PCM was assessing the eligibility of EASEP's complaint, Al-Daboubi informed them that he was subject to the threat of arrest because of his complaint to the PCM. PCM reports that this information was shared with EBRD officials. Later that month, when Al-Daboubi was in fact detained by Jordanian authorities, PCM reports that they alerted EBRD senior management, including the head of the EBRD Resident Office in Amman.[525]

EBRD states that "even though we were not aware of the motivations for his arrest and detention, and whether they were connected to the IPP4 or any other EBRD project, we initiated regular contact with the Client and the Jordanian authorities regarding this situation, and we made it clear that we strongly supported Mr. Al-Daboubi's right to freely express his views in relation to IPP4."[526]

After his release in November 2015, Mr. Al-Daboubi reports that he continued to experience harassment by AES Levant and local government officials. EBRD states that they were not aware of their client's role in any intimidation of Mr. Al-Daboubi and AES Levant denies the allegation.

In December 2016, the PCM released its investigation report, which concluded that the IPP4 project was in compliance with EBRD policies.[527] Today, EASEP continues to advocate for the rights of residents around the plant who are struggling with environmental contamination from various sources. Al-Daboubi notes that since his detention this work has become even more difficult as the organization has lost members who feared that they would lose their jobs or expose themselves to danger if they continued to cooperate with EASEP.[528]



Promoting Basic Services Program

Ethiopia

Budgetary support

WB

The arrest of Pastor Omot Agwa

On March 15, 2015 Pastor Omot Agwa of the evangelical Mekane Yesus church in Ethiopia was arrested together with seven colleagues while en route to attend a workshop on land and food security. Omot and his colleagues were taken to the notorious Maekelawi police station, where torture is routine.[529]

After nearly six months in police custody, on September 7, Omot and two colleagues were finally charged under a counterterrorism law which has repeatedly been used to prosecute journalists, bloggers, opposition politicians, and peaceful protesters.[530] The state charged him with being the leader of an outlawed liberation movement and referred to the workshop he planned to attend as a "*terrorist group meeting*."[531] Penalties under the law carry a prison sentence of 20 years to life.

Advocates contend that Pastor Omot's arrest was likely connected to his work helping the Anuak indigenous people. Omot had been an interpreter for the World Bank's Inspection Panel during a 2014 complaint made by the Anuak, alleging that World Bank loans were funding forced evictions across their native Gambella region.

Between early 2011 and late 2012, the World Bank approved funding for *two phases of a sector-wide project* with the Ethiopian government, called Promoting Basic Services Program (PBS), totaling US $1.02 billion.[532] The program was implemented nationwide through block grants to different districts to decentralize service delivery. The program was implemented concurrently with the Ethiopian government's "Commune Development Program" in Gambella and four other lowland regions, which sought to cluster dispersed populations "into commune centers to enable more efficient provision of basic services," through a process known as "villagization."[533]

In 2012, representatives of the Anuak submitted a complaint to the Inspection Panel alleging that the Bank's investment in the PBS program was directly and substantially contributing to the serious human rights abuses that were part and parcel of the villagization process.[534] The program forcibly evicted indigenous and other marginalized peoples from their traditional lands and relocated them to new villages under the argument that this would ensure more efficient provision of services - the same services funded by the World Bank's PBS program.[535]

In February 2014, the Inspection Panel visited Ethiopia to investigate the case and hired Pastor Omot as an interpreter to facilitate meetings with the Anuak community.

The investigation concluded that the World Bank had violated some of its own policies in Ethiopia, including failing to apply the Bank's Indigenous Peoples Policy.[536]



Pastor Omot Agwa

Dead Donkeys Fear No Hyenas - WG Film



Joe Athialy

Ethiopian diaspora protests outside World Bank.

In December 2014, the Panel submitted its report to the World Bank Board for discussion, and the report was leaked to the media.[537] The leaked version of the report, while appropriately not disclosing Pastor Omot's identity, did include his photo with other community members.[538] In February 2015, the World Bank Board considered the Panel's report. Soon after, as reported to Human Rights Watch, various individuals told Omot that a well-known security official was looking for him.[539] Omot told a colleague "*I feel like [I am] living in a fire. I am being burnt alive. But what can I do? I do not fear. I will do what I [am] supposed to do.*"[540] A few days after Omot's detention, police officers seized his computers, cameras, and other materials, raising concern about the safety of all the community members who met with the Inspection Panel.[541]

Within days of Omot's arrest, Human Rights Watch and other organizations alerted World Bank Group president, Jim Yong Kim, and the European Union, United States, and Swiss missions in Addis Ababa. Several groups wrote formally to the World Bank president and board of executive directors a week later, urging the Bank to delay board consideration of any new projects in the country until Omot was released and safely out of the country, and all others associated with the Inspection Panel investigation were confirmed safe.[542] Yet on March 31, the World Bank board approved a new US $350 million agriculture project with the government of Ethiopia.[543] On September 15, the World Bank approved another $600 million services project replacing one of the subprograms of the PBS program.[544]

In a May 2015 meeting with nongovernmental organizations in Washington, DC, World Bank staff reported that the government had informed them that Omot's arrest was in accordance with Ethiopian law and unrelated to the Bank's accountability process.[545] According to a senior World Bank official, the Bank's country director asked government officials, both in the Finance Ministry and in the Prime Minister's office, about the interpreter's arrest soon after he was detained.[546]

The Chair of the Inspection Panel emphasized the Panel's concern privately and asked senior Bank staff for their assistance to inquire with the government about the arrest of Omot and to press the government to ensure his well-being and prompt release.[547] On September 25, 2015, the Panel published a statement calling "on the Government of Ethiopia to ensure that Pastor Omot's rights to due process and other protections under the rule of law are respected." [548]

On 17 January 2017, after 21 months in prison, Pastor Omot was released on bail.[549] On April 3, 2018, he was finally acquitted.[550] During the three years between Omot's arrest and his aquittal, there is no evidence that the World Bank ever spoke out publicly in his defense. In that time, the World Bank approved 30 projects with the Ethiopian government, totaling more than US $6 billion.[551]



Mombasa-Mariakani Road Project

Kenya

Road

AfDB, EIB, KFW, EU-AITF

Intimidation of community complainants

On April 5, 2017, three members of the Jomvu community, a settlement on the outskirts of Mombasa, Kenya, were summoned to appear before the Deputy County Commissioner (DCC).[552] The community members had previously filed complaints with the Complaints Mechanism of the European Investment Bank (EIB-CM), one of the investors in the Mombasa-Mariakani Road Project, over the inadequate compensation they received for property lost in a May 2015 forced eviction to make way for the road expansion.[553] The DCC was serving both as a government functionary and as the chairman of the grievance redress mechanism committee for the project. The community members testified that when they arrived at his office, the commissioner told them that he had learned of their complaints and that if they ever again communicated with the project lenders he would denounce them as liars and might leave them out of any future compensation.[554]

The evictions in question were carried out as part of preparations for the rehabilitation and expansion of 41.7 km of highway between Mombasa and Mariakani in Eastern Kenya. Around midnight on May 17, 2015, sleeping Jomvu residents awoke to the sound of a bulldozer. Under the watch of police forces, 30 houses were demolished in four hours, leaving more than 100 inhabitants homeless. The Kenyan National Highways Authority (KeNHA) had sent 30-day eviction notices to the residents of Jomvu without consulting them about the eviction process, or their resettlement or compensation.[555] The project, worth approximately US$344 million, is currently funded by the European Investment Bank (EIB), the African Development Bank (AfDB), the European Union through its Euro-Africa Infrastructure Trust Fund (EU-AITF), and the German Development Bank (KFW).[556]

After Amnesty International brought the evictions to the attention of KeNHA and the lenders , KeNHA admitted wrongdoing and promised full redress to all those affected.[557] The lenders supported KeNHA in the elaboration and implementation of a Corrective Action Plan (CAP), as well as in the development of an updated Resettlement Action Plan which adheres to their policies and standards. However, many of the evicted residents felt that the compensation they received under the CAP did not reflect the fair market value of their losses, and was inadequate to restore their livelihoods.[558] Various complaints were filed with the EIB-CM and the local grievance mechanism, requesting fair compensation.[559]

One of the key aspects of the EIB-CM and other independent accountability mechanisms is that, as opposed to project level grievance mechanisms operated by companies or governments implementing development projects, they are, in theory, independent. Furthermore, under the EIB-CM's procedures, complaints were to be dealt with confidentially.[560] In this instance, however, the identity of the first three project complainants to use the EIB-CM was revealed by EIB staff to KeNHA. Soon after, the three complainants were summoned to the Deputy County Commissioner's Office (DCCO).



Tomas Obongo in his workshop destroyed in 2015.

Krzysztof Miękus



Koneja Aziza Juma from Jomvu Narcol hoping to be properly compensated.

Krzysztof-Miękus

The NGO CEE Bankwatch Network, which works closely with the affected community, informed EIB, AfDB, and KFW about this incident.[561] In May 2017, EIB responded to Bankwatch expressing regret that during exchanges with the project promoter correspondence to the EIB-CM *"was inadvertently disclosed to KeNHA by the EIB, without the knowledge of the EIB-Complaints Mechanism or prior notification to the project affected persons concerned."*[562] The EIB indicated that it formally informed the project promoter and Kenyan authorities that the referenced information is *"strictly confidential and should not be used in any way that might be prejudicial to the complainants"* and *"made clear to KeNHA that complainants to the EIB-CM must not be subject to any form of retaliation or intimidation as a consequence of their exercising of their legitimate right to complain"*, and that the same applies to *"any other interested parties exercising their legitimate right to complain or express their concerns about the project."*[563]

Advocates additionally met with AfDB several times in 2017 and 2018, seeking for AfDB to address the intimidation of project affected communities, but did not find them responsive.[564]

The EIB-CM initiated a mediation process between the complainants and KeNHA in February 2018, which will establish a process to review the more than 200 complaints that have been filed.[565] While the person carrying out that function has changed, the DCCO continues to serve as the head of the project-level grievance redress committee.[566] Meanwhile, the threats against the local communities continue. In June of 2018, a community leader who has been supporting other displaced residents in their claims was subjected to harassment and received a death threat warning him to desist.[567] According to testimony, he believes the source of the threat to be connected to the project.[568] In a September 2018 response to a letter of concern from advocates, EIB, also on behalf of KfW, stated that they have reached out to a defender protection organization and will initiate a "full risk assessment" of the project.[569]

Part of the Mombasa-Mariakani existing road in Jomvu Varcol.



Krzysztof-Miękus



The killing of Robert Kirotich, shooting of Elias Kimaiyo, and violent evictions of the Sengwer of Embobut

Natural Resource Management Program and Water Tower Protection and Climate Change Programme

Kenya

Forest

WB, EDF

On April 2, 2017, Elias Kimaiyo was taking photographs of Kenya Forest Service (KFS) guards, documenting their activities as they burned the homes of his neighbors, indigenous Sengwer people in the Embobut Forest of Western Kenya. KFS guards spotted Kimaiyo and started chasing him and shooting. As he tried to run away through the steep Cherangany Hills, he fell and broke his kneecap. Catching up with him, one of the guards hit him with the butt of a rifle, breaking his right arm. When community members heard Elias calling out in agony they raised the alarm, shouting. The KFS guards ran away, taking Elias' cameras and evidence.

The Kenya Forest Service and its parent Ministry of Environment and Natural Resources embrace an explicit strategy of forced eviction of forest communities, under the pretext of protecting the forest from deforestation.[570] The Sengwer, however, are committed to conserving their lands and natural resources, and their rights to their forest homes are protected by law.[571] High profile investigations of KFS, on the other hand, have revealed that the agency has been profiting off of illegal logging, resulting in investigations and firings of several senior officials, including the agency's director.[572]

The KFS guards who shot at Elias were implementing a project called the Water Tower Protection and Climate Change Programme (WaTER), financed by the European Union's European Development Fund (EDF) since 2016.[573] The WaTER project aims to help eradicate poverty through improved ecosystem management in two of Kenya's five main "water towers," the forested mountainous regions from which Kenya's water flows down to the rest of the country. The project goal is laudable, but implementation required proper protections to avoid fueling human rights abuses, as the experience of previous development finance projects made clear.

Between 2007 and 2013, after receiving US$57 million from the World Bank to carry out a Natural Resources Management Project, KFS guards engaged in a series of attacks on the Sengwer, arresting community members, burning their homes and destroying their property.[574] An investigation by the World Bank's independent accountability mechanism, the Inspection Panel, found that the Bank should have anticipated the risk of violent evictions given that eviction "was a main task of this Department of the KFS before, during, and after the conclusion of the [project]".[575]



Sengwer homes torched by KFS in January 2014.

FPP/SIPP



Sengwer families fleeing Embobut Forest to escape the threat of eviction.

FPP/SIPP



FPP/SIPP

Armed KFS and police support entering Embobut Forest January 2014.

World Bank president Jim Yong Kim acknowledged the Bank's responsibility and met with Kenyan President Kenyatta in late 2014, as he had promised in his response to the Inspection Panel's report.[576] In March 2015, the Bank, together with the Ministry of Environment, Water and Natural Resources, hosted a colloquium to bring forest communities and KFS together to try to find a solution, yet little progress was achieved.[577] The EU was well aware of this history when it approved funding for WaTER.[578]

In late 2017, the violence by KFS escalated. On Christmas day, over 100 guards converged on the forest. On December 29th, they began burning homes, destroying families food stores and personal property, and stealing their livestock. KFS guards shot at community members, targeting elders and leaders who had spoken out. UN experts and Human rights groups around the world joined the Sengwer in condemning the attacks and called for the immediate suspension of EU funding.[579] The EU Ambassador to Kenya later reported that he told KFS that "*the use of force by Kenya Forest Service guards in the Embobut Forest or elsewhere against innocent locals would lead the EU to suspend its financial support...*"[580]

The evictions continued. On January 9th, 2018, Paul Kitum Elias (aka Kiptuga), chairman of the Sengwer council at Embobut was preparing to attend a meeting with Kenyan and EU officials to discuss the crisis, when a KFS official called him on his cell phone to ascertain whether he was at his home. A few hours later, ten KFS guards arrived. As Kiptuga ran, the guards began shooting, reportedly shouting "*Kill him, kill him, kill him!*"[581]

Then on January 16, 2018 while a group of Sengwer community members were tending their cattle, guards sprayed them with bullets. Robert Kirotich, 41-year old father of seven was killed, and David Kiptilkesi was shot through the knee. Another Sengwer man was injured.[582] On 17th January 2018, EU officials finally announced the suspension of funding to the WaTER project.[583]



Elias Kimaiyo

David Kiptilkesi was shot in the knee by KFS guards January 2018.

"*This is the beginning of a first step in our land rights struggles," Elias reflected. "If they had listened to us (and we have been crying for a long time), then this would not have happened, and the funds could have been used in a constructive way to help conservation and not used in a violent way for human rights violations. It seems to have taken Robert Kirotich being sacrificed for these people to listen.*"



Lonmin Company

South Africa

Platinum mine

IFC

Massacre of workers at the Marikana Mine

On August 10, 2012, thousands of miners went on strike at the Marikana platinum mine, just north of Johannesburg, South Africa. The workers were demanding fair wages and better working and living conditions. The strike was a wildcat strike, organized without the backing of the main union, the National Union of Mineworkers (NUM), which many workers believed was in league with the mine owner, British-based Lonmin Company.

Marching workers demanded an audience with Lonmin management, but Lonmin refused to negotiate outside of official bargaining structures.[584] The next day, as both Lonmin and NUM demanded workers return to work, tensions rose and strikers carrying traditional spears and sticks began intimidating workers to join the strike. Lonmin security guards fired several rounds of rubber bullets at strikers.[585] Deadly violence erupted from all sides lasting five harrowing days in which ten people were killed, including two policemen and two security guards.[586] During that time, Lonmin could have closed the mine or agreed to negotiate to defuse tensions, but it refused.[587] On August 16th, the South African police, determined to end the strike, employed a militaryesque operation involving ground forces, water cannons, helicopters, stun grenades, and snipers.[588] Police opened fire on the striking miners, shooting 112, and killing 34.[589] What quickly became known as the Marikana Massacre was the bloodiest use of force by the South African government since apartheid's Sharpeville Massacre in 1960.[590]

During the fateful events of August 2012, IFC held US$50 million of equity shares in Lonmin's platinum mines in Marikana.[591] The initial investment, made in 2007, was the institution's largest to date in Sub-Saharan Africa and a showcase for community development.[592] Fifteen million dollars was earmarked for "*the development of a comprehensive, large scale community and local economic development program.*"[593] IFC provided three years of advisory services to boost Lonmin's capacity in four key areas, including stakeholder dialogue and planning and implementation of community development projects.[594] The package also included a US$100 million credit line, which Lonmin's CEO reportedly stated would be used in part for migrant worker housing.[595] Under South African law, Lonmin was required to implement a comprehensive social and labor development plan, and workers from around the country migrated to Marikana with the hope of well paid jobs and a better future for their families.

Marikana mine workers striking.



Thapelo-Morebudi

South African police and the bodies of striking mineworkers shot dead August 16, 2012.



aidc.org.za



London Mining Network

Women of Marikana protest outside Lonmin meeting.



Ashraf Hendricks

Mineworker families live in informal settlements around the mine.

However, the reality for the approximately 350,000 people living in and around Lonmin's operations was far different.[596] The work at the mine was extremely dangerous, yet workers were not paid enough to meet their basic needs. Labor unrest and intimidation was well known.[597] Families lived in one-room shacks, with no roads, no electricity, and no running water or basic sanitation.[598] Lonmin leadership conceded that conditions were "truly appalling."[599] While Lonmin had committed to building 5,500 houses for migrant workers, at the time of the strike only three "show" houses had been built.[600]

In a statement following the massacre, IFC said "*the issues are serious and IFC encourages all parties to resolve the dispute through constructive dialogue and negotiation.*"[601] The statement, however, made no reference to IFC's environmental and social standards or its supervision of Lonmin's compliance.

On August 21, 2012, the IFC's independent accountability mechanism, the Compliance Advisor Ombudsman (CAO), initiated an appraisal of IFC's investment in Lonmin to examine IFC's role in relation to the conflict.[602] The CAO found that while the project was determined to be high risk, IFC did not contractually require Lonmin to comply with its Performance Standards, significantly limiting IFC's ability to monitor Lonmin's environmental and social performance. CAO also found that IFC's supervision "did not engage in any detail with publicly reported worker security and industrial relations issues," including a strike in May 2011 and the subsequent dismissal of 9,000 employees.[603] The appraisal also raised questions regarding the verification of broad community support for the project. The CAO closed the case, however, without an actual investigation, citing the absence of a complaint directly from Lonmin workers.[604]

On September 20, 2012, after six weeks of mediated negotiations between Lonmin and the workers, the company agreed to raise wages. The living conditions for workers and surrounding communities, however, remain dire to this day.[605]

In December, IFC invested US$5 million in additional Lonmin shares to strengthen the company's deteriorating financial situation even as the violence and Lonmin's role, was still under investigation by a commission of inquiry.[606] An IFC spokesman reportedly stated that IFC had "addressed issues" with Lonmin and "supported its funding requirements to maintain operations in the wake of tragic events in 2012," and that it encouraged Lonmin and other parties to cooperate with the investigation.[607]

In the wake of the massacre, a group of women in Marikana -- including the wives and daughters of killed or injured miners -- formed an organization called 'Sikhala Sonke'.[608] They fought to get their voices heard at the commission of inquiry, and in 2014, submitted evidence of the dire living conditions for the women of Marikana.[609]

In 2015, after years of trying to secure improvements through protests and marches, Sikhala Sonke submitted a complaint to the CAO. The complaint focuses on the failure of IFC to ensure Lonmin's compliance with social and labor commitments mandated by South African law, ongoing environmental and health impacts of the mine, as well as the failure of IFC to ensure broad community support for the project.[610]

In early 2018, the CAO's Compliance Appraisal found that the IFC did not consider Lonmin's housing and other social and labor commitments mandated by South African law as compliance requirements and did not include them in its social and environmental action plan.[611]

As the CAO noted, this lack of supervision of Lonmin's social commitments is of particular concern given that the Marikana Commission of Inquiry found that Lonmin's failure to comply with its housing obligations "created an environment which was conducive to the creation of tension, labour unrest, disunity among its employees."[612]

While the IFC sold its stake in Lonmin in early 2016, the CAO compliance investigation is ongoing, as is the struggle for justice for the people of Marikana.[613]

Judicial harassment and physical attacks against Tep Vanny and Boeung Kak Lake community

Cambodia Land Management and Administration Project

Cambodia

Land administration

WB

The Boeung Kak Lake community in Phnom Penh, Cambodia, has been fighting for justice since a 2007 luxury development project led to the eviction of approximately 20,000 residents -- considered one of the largest evictions in Cambodia, second only to the Khmer Rouge's forced relocations in 1975. For their activism, community members have been subjected to beatings, surveillance, harassment, and threats, as well as arbitrary arrests, criminal prosecution and imprisonment.[614]

Tep Vanny, a leader in the Boeung Kak Lake community struggle, spent two years in Cambodian prison for spurious charges arising from her participation in protests against the evictions and the detention of fellow Boeung Kak Lake activists.[615]

In 2002, the World Bank approved US$23.4 million in financing for the Cambodian Land Management and Administration Project, designed to formalize the country's land registration system.[616] The Bank, however, failed to ensure compliance with the project's requirements as well as the World Bank's safeguard policies. Communities were not adequately consulted, and the project failed to account for individuals who held their land through the traditional land tenure system. As a result, thousands of families in Boeung Kak Lake were excluded from the titling process and left vulnerable to eviction.[617]

In 2007 the city of Phnom Penh signed a lease agreement with Shukaku Inc. for the development of Boeung Kak Lake, not only thereby illegally stripping the community of their land rights but also leasing out public property, in violation of Cambodia's Land Law. In August 2008, Shukaku began filling in Boeung Kak Lake, flooding surrounding areas. Thousands of families were forced from their homes, coerced into accepting a fraction of the compensation they were due.[618]

After failed attempts to seek remedy through Cambodia's courts, in September 2009, community members filed a complaint with the World Bank Inspection Panel. The complaint described the forced evictions, including intimidation of residents and the violation of the Bank's safeguard policies.[619] The Panel found that non-compliance with World Bank safeguard policies contributed to the harm suffered by Boeung Kak Lake residents.[620] The report also flagged the issue of threats and harassment and revealed that while World Bank project documents and reports had detailed the country's serious problem with forced evictions, the project design failed to acknowledge this "reputational risk."[621]

In August 2011, after the Cambodian government had shown no willingness to resolve the conflict, the Bank announced a freeze on new lending until a satisfactory resolution was reached.[622] A few days later, the Cambodian government announced in-situ resettlement and titling for the nearly 700 families who remained on their land. Yet the decree failed to address the approximately 3,500 families who had already been displaced without adequate compensation.[623]



Demolition of Boeung Kak Lake community.



Jessica Evans / Human Rights Watch

Members of the Boeung Kak community protest peacefully in Phnom Penh, May 2013.

While the Bank took a strong and public stance on evictions and resettlement issues, it has remained silent on the well-publicized and growing repression against Boeung Kak Lake residents. During a peaceful protest of around 80 community members on May 22, 2012, police and district guards violently dispersed the gathering, arresting Tep Vanny and 12 other women, eventually sentencing them to two and a half years in prison.[624]

On September 4, 2012, Yorm Bopha, a Boeung Kak Lake representative who had been at the forefront of the campaign for the women's release, was arrested on spurious charges, while two of her brothers were charged in absentia. While serving a three-year sentence, Bopha reported that no one from the World Bank had visited her or, to her knowledge, inquired about her detention.[625]

As members of the Boeung Kak Lake community staged protests calling for Bopha's release, they met repression, including brutal beatings by police and para-police. In one incident para-police reportedly attacked attendees of a candle-lit vigil with sticks, batons and cattle prods, injuring 11 people.[626] In a November 10, 2014 protest by community members whose homes had been flooded, seven women were arrested and sentenced to a year in prison. Four more community members were arrested the next day at a protest outside the courthouse, and later sentenced to a year in prison.[627]

Despite the continued repression and unresolved land claims, in May 2016 the Bank announced its reinstatement of lending to Cambodia, citing progress by the government.[628] Reportedly, "extensive" stakeholder consultations just prior to the reinstatement did not include the residents of Boeung Kak Lake.[629]

On August 23, 2018, Tep Vanny was released with a pardon by the king. However, a few days later, a municipal court sentenced her and five fellow community members to suspended six-month sentences on the charge of making death threats related to a community dispute; this is despite the fact that the original complainant had withdrawn their complaint. Tep Vanny and fellow community leaders continue to be surveilled and harassed. Advocates are calling for the convictions to be quashed and harassment of land activists to be immediately stopped.[630]



Amnesty International

Tep Vanny at Boeung Kak Lake.



Coal projects

Bataan, Phillippines

Coal

IFC

Killing of Gloria Capitan

On July 1, 2016, Gloria Capitan was sitting in her family's karaoke bar when two unidentified men approached. One of them shot her three times as her grandson looked on.[631] Capitan was a 57 year-old mother of five and grandmother of eighteen. She was a community activist who had spoken out and led her own community against a slew of dirty coal projects in Bataan province after joining a local anti-coal campaign in 2015. Over the years, she had seen her grandchildren fall ill with respiratory problems and skin allergies, a result of the intense air pollution from an open coal storage facility in her home village of Lucanin.[632]

"*I will only stop if my eyes are closed!*" she explained. "*This is not for my sake, but for my grandchildren. My heart breaks whenever I see them get sick!*"[633]

In the months preceding the attack, Capitan experienced intimidation and threats, as well as bribery attempts by various parties.[634] According to her son Mar, in April 2016, a man showed up at the family's home and offered Capitan $300 for medical treatment for her ailing husband, on the condition that she stop her anti-coal organizing.[635] He then delivered the following threat: "*I care about all of you. I'd hate to see any of you buried under a mound of earth.*"[636] Soon after, Capitan was killed.

Communities in Bataan have long complained of health risks as a direct result of the intense air pollution caused by ash from two coal power plants and two open coal storage facilities. They have recorded an increase in cancers, respiratory problems and skin allergies.[637]

In January 2015, with the help of the local organization, Coal-Free Bataan Movement (CFBM), Capitan submitted a petition to the local Department of Environment and Natural Resources against the open coal storage facility operating in Lucanin, citing an increase in local health complaints since the facility's opening.[638] While much of Capitan's activism targeted the Lucanin storage facility near her home, eventually, she became active with CFBM, organizing campaigns, and initiating public actions calling for the permanent closure of coal projects across the province.[639] Two of the coal projects Capitan actively campaigned against – the expansion of the GN Power Mariveles Power Plant and the development of the Limay Power Station – received financing from the International Finance Corporation (IFC) through its financial intermediary clients Rizal Commercial Banking Corporation and BDO Unibank.[640] The IFC, through its financial intermediary clients, is also indirectly financing San Miguel Power, an owner of both the Limay and Mariveles Power Stations in Bataan.



The Coal-Free Bataan Movement

Gloria Capitan was killed after receiving threats for her campaign against coal pollution.



Inclusive Development International

Activists demand justice for the killing of Gloria Capitan.

The anti-coal movement is strong in the Philippines, despite the risks for activists.



Philippine Movement for Climate Justice

An investigation by Inclusive Development International found that the IFC provided $563 million to Rizal and BDO Unibank, which went on to become major financiers of the coal boom in the Philippines.[641]

The banks, on the boards of which IFC held seats, participated in approximately $13.4 billion of project finance, corporate loans and bond underwriting for the Philippines coal sector since 2013, the same year the World Bank announced its ban on coal financing.[642]

On October 11, 2017, the Philippine Movement for Climate Justice (PMCJ) filed a complaint with the Compliance Advisor Ombudsman (CAO) of the IFC on behalf of several communities in Bataan province and elsewhere, living in the proximity of the coal projects financed by Rizal.[643] The complainants are seeking redress for harms caused by the existing coal projects; as well as to stop projects in development which are inconsistent with IFC standards.[644] The complaint also raised concerns about potential reprials. CAO found the complaint eligible and is currently assessing it while working with complainants to address security concerns.[645]

As for the killing of Gloria Capitan, it remains unclear who ordered the attack and who was behind the anonymous threat. What is clear is that she was killed because she chose to speak out.[646]

East-West Corridor Highway Project

Myanmar

Road

ADB

Intimidation of Karen farmers in a conflict zone

In November 2017, Saw Hla Ngwe and his neighbors were driving up a mountain road outside the community of Lun Nya in Karen State, Myanmar, to inspect a limestone quarry when armed guards began firing at them.[647] Ethnic Karen farmers and residents concerned about the quarry's impacts on local water resources had begun to monitor the Lun Nya quarry in October, after excavation ramped up. A colonel in Myanmar's Border Guard Force (BGF) owned the license to mine the pit and had farmed out operations to China Roads and Bridge Corporation (CRBC), the contractor to the Asian Development Bank (ADB)-financed East-West Corridor highway project.[648] ADB did not approve Lun Nya as a limestone source, although the Lun Nya environmental review documents from 2015 named Lun Nya as the planned quarry for the project.[649]

In September 2012, just nine months after a fragile ceasefire halted 62 years of fighting between the Karen peoples and the Myanmar government, ADB began reconnaissance visits to finance a highway through the heart of Karen lands.[650] The 67-km road upgrade aimed to facilitate the movement of people and goods within the state, country and region, as it connected Myanmar with Thailand and the rest of Southeast Asia. By November 2015, ADB had approved a US$100 million loan for the project alongside a US$20 million loan from the ASEAN Infrastructure Fund.[651]

Violence has plagued the East-West Corridor highway since well before ADB became involved. Four months before ADB signed its loan agreement, fighting broke out between Karen soldiers and government troops on a separate section of the highway.[652] One thousand people from four villages were displaced by fighting between BGF and splinter Karen groups, their homes looted in their absence.[653]

ADB initially labeled the project "complex" and noted a possibility that it could create "internal social conflicts."[654] The Bank planned to address these issues through a parallel, small-scale Technical Assistance (TA) project that would develop a comprehensive



Myanmar East-West Corridor.

Karen Human Rights Group



Karen Human Rights Group

BGF filming villagers as they block road.

community engagement strategy. Consultants collaborated with ADB between 2012 and 2015 to identify approaches that would address the political and security nuances of the state.[655] In a 2015 report they carefully laid out the fears of local populations and the actions needed to allay those fears and ensure conflict-free project development. Strategies included: (1) engaging extensively and repeatedly with affected populations in local languages and safe settings, (2) carefully overseeing implementation by the Ministry of Construction (MoC), and (3) working with local groups, particularly the Karen Human Rights Group (a consortium of civil society groups) and religious leaders to share information and build trust.[656]

All told, ADB conducted over 70 consultations along the corridor between March 2014 and July 2018, 24 of them in public spaces. However, only four consultations were held between the TA planning consultations and the finalization of the highway route, leaving the impression that ADB was advancing without heeding its consultants' counsel.[657] In formal documents, TA community meetings have been, in some cases, used as a surrogate for engagement, rather than a roadmap. ADB documentation shows that TA community meetings, labeled in the Environmental Examination as preliminary consultations, were relabeled as resettlement consultations in the Resettlement Plan.[658] Consultation protocols were inconsistently applied, with several being brief (30 minutes), and at least one reportedly being accompanied by a police presence.[659] The Ministry of Construction and CRBC were not carefully monitored, as documented by ADB audits, and CRBC's hiring strategy and procurement approaches did not meet social and environmental standards.[660]

CRBC's activity ramped up at the quarry on Lun Nya mountain in mid 2017.[661] By October, village leaders committed to monitor the mining activity.[662] By November, activists aiming to inspect Lun Nya had been turned back by the guards' warning shots. Saw Hla Ngwe, who led the aborted monitoring mission, directly petitioned the government shortly thereafter.[663] Other villagers coordinated a blockade on the quarry access road in January 2018, and one dug a trench through the haul road to protect his fields from flooding.[664] The quarrying company and government complied with an ADB requirement to renew consultations with the community. However, the people of Lun Nya rejected Col. Chit Thu's offer to pay just under US$200,000 for the stone.[665] In response, he told villagers that, while he wished to address their suffering, "the government will continue to carry out its project."[666]

Then came the government crackdown. Saw Hla Ngwe was removed as village administrator in April 2018, reportedly for refusing to take legal action against the residents who damaged a road leading to the quarry. He was also charged with insubordination under the Village-Tract Administration Law.[667] In a May 12, 2018 meeting with the government, the chief minister for the Karen region told residents they had no right to protest a government-sponsored project, calling them "renegades."[668] In total, 11 farmers have been hit with lawsuits from the government, some carrying five-year prison sentences, for their efforts to safeguard the livelihoods and water resources of Lun Nya.[669]

Since being alerted to the problems with the Lun Nya quarry, ADB has taken several positive actions to address residents' concerns. ADB has informed its contractor that limestone from Lun Nya is not to be used for the project, and it has compelled the government to engage with Lun Nya residents.[670]

By September 2018, the project proponent had reportedly identified an alternative source of limestone.[671] Col. Chit Thu is reportedly overseeing this quarry, as he oversaw Lun Nya's. However, this deposit is located in Hpapun, the remote northern district of Karen state, which remains highly militarized and inaccessible to civil society groups.[672] No consultations have been publicly logged by ADB in this area. Activists think it unlikely that human rights defenders will be active in the conflict-affected zone, thus risks to rightsholders are more likely to go unreported.[673] With the Karen peace agreement fraying, there is cause for concern.

In late 2018 ADB advertised and filled a post for a Consultation and Participation Specialist.[674] It is hoped that this person will promptly visit the new limestone quarry and promote active engagement with residents.

Coercion of indigenous peoples in Sindhuli District, Nepal

Khimti-Dhalkebar Transmission Line

Nepal

Energy infrastructure

WB

On April 17, 2016, Shakti Sahanubhuti[675] and fellow community members in Sindhuli District, Nepal, held a peaceful protest against the planned construction of the 220kV Khimti-Dhalkebar Transmission Line (KDTL) through their lands. The Nepali police violently dispersed the protesters, dragging and beating them with bamboo sticks. Several community members, including elders and women, were injured.[676] Later that day, six community leaders, including Sahanubhuti, were arrested as they left a meeting with local authorities. While detained, they were threatened with criminal charges if they refused to sign a document pledging to not obstruct the project's construction.[677]

On July 2, 2016, Sahanubhuti was again arrested with other community members in a peaceful protest and detained overnight. Similar to the April 2016 incident, local authorities threatened community members with criminal charges and released them only after they signed agreements committing not to obstruct the project.[678]

The KDTL transmission line is part of the Nepal Power Development Project financed by the World Bank in 2003 for the amount of US$75 million.[679] After several delays, construction of the project began in 2008, and in 2009 communities along the project route began seeking information. The families in Sindhuli District, many of whom are indigenous peoples, Dalits, women and other marginalized groups – are concerned about the health, safety, and economic impacts the transmission line would bring.[680] Project implementers have failed to provide communities with necessary information on the project and carried out the environmental and social assessments without their participation, in contravention of Nepali law as well as international conventions on the rights of indigenous peoples.[681]

In 2010, several communities formed a "Struggle Committee" and have been protesting the project ever since, demanding that the transmission line be realigned along an alternative route.

On March 31, 2011, the police detained the founding member of the Committee for several hours for leading a protest. Ten days later, another protester was detained for two days. He reportedly sustained severe injuries while in custody.[682] In November 2012, the police attacked more protesters and severely injured ten women, including Sahanubhuti.[683]

In July 2013, 103 families in Sindhuli filed a complaint with the World Bank Inspection Panel demanding the right to access information on the project and to be properly consulted, and citing violent treatment at the hands of the police.[684]



Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

A villager wounded by police April 2016.



Accountability Counsel

Indigenous women protesting the transmission line.



ABCTV Live Nepal

Police use force against villagers, April 2016.

The Inspection Panel's investigation found several violations of Bank policies, including the requirement to ensure meaningful consultation with local communities.[685] The Panel also found that "misinformation by project implementers and poor planning had led to misunderstanding and violence on the ground." As for the violent incidents and acts of repression, Bank management "emphasize[d] that the Bank, within the boundaries of its mandate, is constrained as regards the actions that it can take on being alerted of human rights violations of the nature alleged by the Requesters."[686]

Bank management developed an Action Plan to address the issues identified in the Panel's Investigation Report, including measures to strengthen consultation with the communities.[687] However, before the communities were provided information about the project's impacts, construction was resumed in April 2016.

Although Bank management was informed of the incidents of April and July 2016, its first progress report on the Action Plan appeared to use the agreements villagers were coerced into signing while in detention as an indication of the communities' consent to the project.[688]

After much advocacy, including letters to the Bank's president, board, and management, as well as to the government of Nepal[689], the second report on the Action Plan issued in August 2017 conceded that "a local 'Struggle Committee', had informed the Bank that 'in its view' the community had not agreed with the continuation of construction."[690] Still, the Bank refused to acknowledge that the referenced community agreement was obtained through intimidation and coercion. It also failed to mention the repeated use of violence and intimidation by authorities in the project area.

Construction of the transmission line was completed in January 2017. The communities continue to fight for compensation and remedy for the harms they have suffered.[691]

In December 2018, two key community activists who had false criminal cases filed against them finally had their cases dismissed by a Nepali court after over two years of legal proceedings.[692]

Southern Gas Corridor

Azerbaijan

Oil and gas

EBRD, WB, EIB, ADB, AIIB

Jailing of Ilgar Mammadov, journalists and anti-corruption activists

Lawyer and activist Ilgar Mammadov has worked for years to expose corruption scandals involving the ruling Aliyev family of Azerbaijan, particularly the family's use of external funding for political oppression.[693] His efforts landed him in jail in 2013. Oppression of journalists and human rights activists like Mammadov is endemic in Azerbaijan. In 2016, dozens of human rights defenders were behind bars on trumped up or wholly fabricated charges (some Azerbaijani human rights groups put the number closer to 150).[694] But nothing has triggered a fiercer crackdown than the questioning of the government's oil and gas aspirations.



Ilgar Mammadov

Ilgar Mammadov

Before being imprisoned in February 2013, Mammadov was chairman of the political opposition group REAL (Republican Alternative) and a civil society member of the Extractives Industry Transparency Initiative (EITI).[695] As he reported just days after being arrested, one of the main reasons for his detention was his rejection of the government's proposed legislative amendments aimed at eliminating transparency of corporate ownership. Mammadov said the bill would create "a more clandestine environment for stealing the oil money."[696] Another was the fact that he was planning to run for president.

By opposing legislation that would embolden corrupt actors, and building a public presence to contest the presidency, Mammadov became a critical threat to Aliyev. Four years later in January 2017, still behind bars, Mammadov penned an "*Open Letter from an Inmate of the Southern Gas Corridor*"[697] stating that "*[i]nternational investment in fossil fuel extraction is making me and other Azerbaijani political prisoners hostages to the Aliyev regime.*" Mammadov does not oppose the pipeline project itself. What he has criticized is the ability of the government to use the importance of the project for Western governments and donors to successfully neutralize criticism of the country's crackdown on domestic opposition.

Between 2013 and 2014, the government of Azerbaijan began consolidating financial control of gas projects in the country. The ambitious series of projects and pipelines designed to deliver natural gas from the Caspian Sea to Europe, started with the Shah Deniz Gas field, funded with US$700 million in loans from the European Bank for Reconstruction and Development and US$250 million from the Asian Development Bank.[698] It eventually grew to include the Trans-Anatolian Natural Gas Pipeline (TANAP), and the Trans Adriatic Pipeline (TAP). The banks have publicly supported this infrastructure as components of "sustainable, inclusive and private sector-led growth," theorizing that democratic transition could be facilitated through stronger ties to Europe, which might weaken Azerbaijan's growing ties to Russia.[699] Each segment of what is known as the Southern Gas Corridor (SGC) pipeline is partially owned by the government of Azerbaijan, either directly or through the State Oil Company of the Azerbaijan Republic (SOCAR) or a subsidiary. For this reason, it is a lightning rod for anti-corruption and transparency advocates.

While the government of Azerbaijan began soliciting foreign finance for the SGC projects in 2012, the currency crisis of 2015 triggered a borrowing spree, which multilateral development banks were happy to support, seeing lending as a way to drive a wedge between Russia and Azerbaijan. In March of 2016, the European Investment Bank (EIB) approved a EUR932 million loan for the Turkey portion of TANAP.[700]



CEE Bankwatch

The route of the Southern Gas Cooridor.

Development financiers have placed a strong emphasis on the importance of transparency in the extractive industries as a requisite for development. The Asian Development Bank, the World Bank, the European Investment Bank, and the European Bank for Reconstruction and Development, have all endorsed the EITI and cited it as a critical factor in investment decisions in the extractive industries. In September 2016, Riccardo Puliti, director on energy and natural resources at the EBRD, expressed concern over the tenuous status of Azerbaijan in EITI. Puliti noted that "*if there is no progress [on Azerbaijan's transparency performance], it will be quite difficult to justify a large amount of finance [for the SGC].*"[701]

With the government's increasing attacks on civil society, Azerbaijan's membership in EITI came under further doubt, and in October 2016, EITI asked Azerbaijan to take corrective measures.[702] Civil society groups urged the banks to abstain from financing extractive industries projects in Azerbaijan until the EITI's recommendations regarding civil society engagement were implemented.[703] Instead, as the crackdowns intensified, so did foreign investment in the government's pipeline.

In December 2016 the World Bank approved a US$400 million loan to Turkey and a US$400 million loan to Azerbaijan for TANAP as well as a US$950 million credit guarantee.[704] That same month the Asian Infrastructure Investment Bank invested US$600 million in TANAP,[705] while the ADB approved a US$500 million investment in Shah Deniz alongside a US$500 million sovereign loan directly to the government.[706]

Three months later, in March 2017, EITI suspended Azerbaijan, and Azerbaijan announced its withdrawal from the initiative the following day.[707] Civil society groups again urged EBRD to honor its mandate enshrined in Article 1 of its founding agreement to fund only those countries committed to the principles of multi-party democracy and pluralism, and to ensure progress on the EITI conditions and release of Mammadov before granting any additional funding. In response, EBRD stated that it remained committed to its Article 1 mandate, "as part of which we closely follow the situation with regards to human rights and developments in the operational environment for civil society."[708]

On June 19, 2017, the EBRD approved an additional US$100 million loan for Shah Deniz, followed by a US$500 million loan for SGC.[709] The following July, the World Bank's guarantee agency, MIGA, guaranteed an additional US$1.1 billion syndicated loan to SGC, held by seven private banks.[710] A few days after the fifth anniversary of Ilgar Mammadov's detention, and despite further objections raised by civil society, on February 6, 2018, the European Investment Bank (EIB) approved a US$1.5 billion loan for the TAP.[711] In July the EBRD approved a US$583 million loan for TAP.[712]

Mammadov was finally released from detention in August 2018. He remains on probation for the remaining two years of his wrongfully-issued sentences, so he is not free to travel, speak out, or engage in political activism.[713]



Harassment and intimidation of Svetlana Anosova, village of Berezovka, Crude Accountability staff

LUKoil Overseas Karachaganak

Kazakhstan

Oil and gas

IFC

In July 2003, Svetlana Anosova, a music teacher at the local school in the village of Berezovka in northwestern Kazakhstan, returned from a trip to Washington D.C.. She had traveled the more than 5,500 miles to meet with representatives from the World Bank as well as the international consortium Karachaganak Petroleum Operating BV (KPO), to tell them that the oil and gas condensate field they supported on the edge of her village was making people sick. It was then that Anosova began facing threats and pressure from local authorities and police.[714] For the next several years, she was under almost constant surveillance, was questioned several times by the representatives of the National Security Committee of Kazakhstan and told to stop communicating with the World Bank about the plight of Berezovka.[715]

Residents of Berezovka had been complaining of air and water pollution as well as negative health impacts since the 1990s, because the government never established an adequate Sanitary Protection Zone (SPZ) between the oil and gas operations and the village. In 2000, when the field underwent redevelopment by KPO, the impacts intensified. Villagers began to experience cardiovascular problems, chronic illnesses, memory loss, skin ailments, and vision loss.[716] Svetlana formed a local organization, Zhasyl Dala, to fight for the rights of the villagers. "*Our organization, which included mostly women, was extremely inconvenient for both the authorities and KPO,*" said Anosova. "*We raised questions they did not want to discuss - emissions from the field and an increase in health related incidents in the village.*"

In May 2002, the World Bank's International Finance Corporation (IFC) facilitated a US$150 million loan package to the Russian company, LUKoil, to increase crude oil and condensate production in the Karachaganak Oil and Gas Condensate Field, with the aim of spurring economic development and job creation.[717]

In 2004, while conducting a human rights seminar with the residents of Berezovka, staff of the NGO Crude Accountability, and the community organization Berezovka Initiative Group, were frequently detained and harassed by the local authorities and police. When women from the village tried to participate in a study at a medical clinic in Askai, they were physically and verbally threatened by police who tried to take them to police headquarters for questioning.[718]

On September 1, 2004, Svetlana and other Berezovka residents, with support from Crude Accountability, filed the first of three official complaints to the IFC's independent accountability mechanism, the Compliance Advisor Ombudsman (CAO), citing the negative impacts on the health and well-being of the residents and calling for resettlement of the village.[719] Two



Svetlana Anosova

Crude Accountability



Crude Accountability

More than 25 children sickened by mass discharge from Karachaganak Field.



Crude Accountability

Children suffered seizures and other effects from hydrogen sulfide discharge.

additional complaints raising similar claims followed on April 1, 2007 and May 1, 2008, filed by the NGOs Green Salvation and Crude Accountability and the community organization, Berezovka Initiative Group.[720]

The CAO's compliance report from the first claim found that IFC had violated its own policies, which resulted in the company being forced to monitor and report on its emissions.[721] Despite this, the illegality of the SPZ and lack of resettlement were left unaddressed.[722] The final complaint closed in April 2009 after LUKoil paid off its loan from IFC ahead of schedule. Following this, CAO and IFC ended their involvement.[723]

Beginning in 2004, civil society groups repeatedly alerted the CAO and IFC about harassment and threats to Svetlana and other villagers.[724] In 2007 Crude Accountability approached the World Bank Office of Institutional Integrity with news that the KPO subcontractor in charge of laying pipe at Karachaganak had been found guilty of bribery by the US Securities Exchange Commission.[725] Despite this information, the World Bank refused to sanction the company.

Repeated efforts for resettlement proved fruitless and the harassment, surveillance, and intimidation continued. In 2008, Svetlana was prohibited from teaching her students in the local school. Starting in 2013, Svetlana, the community organizations and NGOs supporting the villagers, and the parents who were pressing for resettlement and compensation, became the targets of a public smear campaign. Anonymous, accusatory videos were published on YouTube and false rumors circulated in the village accusing the advocates of seeking remedy merely to serve their self-interest.[726]

On November 28, 2014, more than 25 children and adults in the village fell severely ill with symptoms of cramps, dizziness, headaches, and nausea, and several fainted, from a mass discharge of hydrogen sulfide from the Karachaganak Field.[727] The following year, authorities and the KPO finally agreed to start the process of relocation of residents to two locations approximately 25km away.[728] Despite the relocation, KPO and government officials continue to dispute the poisoning and refuse to provide necessary healthcare and assistance to the injured children.

During the relocation process harassment continued. Advocacy groups posit that corrupt local authorities who had received large sums of money for the relocation used intimidation in order to discourage inquiry into how the funds were actually being spent. In 2016, an anonymous video "Mask of Democracy of Berezovka" was published online.[729] The video accuses Svetlana of working for secret organizations, spreading misinformation and receiving huge sums of money in return. It characterizes Crude Accountability staff members as CIA agents and "organizers of chaos and unrest."

Today, several children of Berezovka continue to suffer from lasting health problems, including seizures, and community members continue to fight for compensation for the harms they have endured.[730] The harassment of advocates continues. Kate Watters, director of Crude Accountability, notes, "*On our last visit to Berezovka, in May 2016, the local migration police tried to detain us illegally. Surveillance, checking of documents, and repeated questioning have become almost an everyday occurrence during our visits to Berezovka.*"



MHP Poultry Facilities

Ukraine

Agriculture

EBRD, IFC, EIB

Assaults against community activists

On October 13, 2015, Petro Ivanov[731] an investigative journalist and activist in Ladyzhyn city in Ukraine's Vinnytsya region received an anonymous call from someone claiming they had information to share on local election fraud. When Ivanov went to meet the caller at the designated meeting spot, two men in their mid-twenties approached him and, without saying a word, punched him with brass knuckles.[732]

On November 25, 2015, Danylo Halych[733], a local farmer and Chetvertynivka village leader was in his vehicle at the Ladyzhyn city market, when two men knocked on the window and told him he had a flat tire. When he got out of the car to check the tire, the men attacked him, again with brass knuckles, breaking the bones in his face.[734]

A month later, on December 21, 2015, Vasyl Tkachenko, the head of the Yasnozirya village council in the región of Cherkasy was attacked by two unknown assailants inside the local administration building. He suffered brain trauma and severe damage to his face, and was hospitalized for nearly a month.[735] Investigations identified two boxers as the attackers.[736]

The only known and clear common thread among these attacks is that each of the victims were prominent leaders in movements critical of the Ukrainian agribusiness company Myronivsky Hliboproduct PJSC, commonly known as MHP.

MHP is a long-term client of the European Bank for Reconstruction and Development (EBRD), the World Bank Group's International Finance Corporation (IFC), and the European Investment Bank (EIB). Between 2010 and 2017, the EBRD approved a series of loans investing a total of US$280.75 million in the company.[737] The IFC has invested a total of US$321.25 million in MHP between 2003 and 2014, and in 2014 EIB invested approximately US$116 million.[738]

In 2015 MHP was expanding its industrial poultry business in four regions in Ukraine: Dnipropetrovsk, Vinnytsya, Cherkasy and Kyiv.[739] Communities in those regions were concerned about the impacts of MHP poultry rearing zones and supportive infrastructure on the local environment, public health and water resources. Members of the communities, particularly in Vinnytsya and Cherkasy, felt the company was pressuring local residents, especially the elderly, to lease their lands to MHP.[740] Communities could not get access to information, and MHP inadequately addressed their concerns.[741]

Cherkasy

In April 2015, in Moshny village, Cherkasy region, residents at a public hearing voted against the construction of the poultry farm. Ignoring the decision, MHP went ahead with preparatory works for construction and was met with strong opposition from villagers.[742] When community members began organizing against the operations, the smear campaigns began. Kateryna Onopriienko, a district council member in Cherkasy region, and a community leader, was the subject of a number of leaflets distributed widely in the district attacking her character.[743]

"Chyhyryn area is a green pearl, don't let chicken magnates in."



CEE Bank Watch



MHP poultry complexes.

CEE Bankwatch

Activism against MHP's expansion ramped up in other regions over the summer, and that December 2015 Vasyl Tkachenko, the head of the Yasnozirya village council in Cherkasy region was brutally attacked after vocally opposing the MHP expansion[744]. On June 23, 2016, Nina Martynovska, a deputy of the Ratseve village council, was attacked, suffered a concussion and was hospitalized for her injuries[745]. The victim was well known for her opposition to MHP's expansion. The attacker was found guilty, and court rulings confirmed that the incident was related to the conflict over the poultry operations.[746] Despite appeals from civil society groups, neither EBRD nor IFC publicly condemned the attacks nor reached out to the victims.

Vinnytsya

EBRD played a somewhat more proactive role in Vinnytsya region, though to limited effect. In the summer of 2015, at a public meeting in Chetvertynivka village, residents voted against the construction of the new MHP poultry operation. When MHP attempted to build, locals responded with a road blockade.[747] Protesters faced violent backlash. In autumn 2016 an activist from Vinnytsya had drugs planted in his luggage and was then questioned by police who had received anonymous tips.[748] Petro Ivanov, a local journalist, and Danylo Halych, the community leader and a participant in the blockade, were attacked. Eventually Chetvertynivka received a Memorandum of Understanding from the company committing not to pursue construction without community approval.[749]

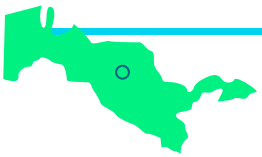
After the attacks on Petro Ivanov and Danylo Halych, and upon receiving a number of complaints from Ukrainian civil society groups, the EBRD launched an in-country monitoring mission in Vinnytsya region in November 2015.[750] Although the report did not address the allegations of attacks and intimidation of activists, the EBRD and MHP agreed to an updated Environmental and Social Action plan that addressed the communities' concerns and provided them with more relevant information. On November 11, 2017, Chetvertynivka voted to approve the construction of an MHP operation.[751]

In March 2017, nearly 1500 residents of Tulchyn Rayon signed an open letter to Ukrainian President Petro Poroshenko, raising environmental concerns and expressing their disagreement with MHP's expansion and the provision of construction permits. In response, the local government filed a libel lawsuit against the lead authors as well as the online outlet that published the letter.[752] Neither IFC nor EBRD made public statements condemning the repression of free speech in Vinnytsya regions.

Thus, despite some success in Chetvertynivka, other villages cite little actual change in the company's engagement. The EBRD states that it discussed the allegations of intimidation extensively with EBRD's teams and with top management at MHP, that the company investigated the alleged incidents and "categorically denied involvement", and that an assessment by EBRD's Chief Compliance Officer supports that assertion.[753] EBRD adds that despite this finding, "we stressed the utmost importance for the Company to address the allegations in an open and transparent manner and clearly stated the rights of communities and activists to voice concerns without fear of intimidation or retaliation."[754] IFC reports that it looked into the reported incidents, meeting with a local NGO and soliciting information from MHP, and "was satisfied based on those responses that the company was not involved in the incidents and had no obvious motive to engage in such behavior." IFC also cites MHP's "positive record of public engagement," including the hiring of stakeholder engagement consultants and development of an engagement protocol, as well as the fact that the company is not the subject of legal actions related to the incidents.[755]

While there have been no additional physical attacks, the smear campaigns against activists continue.[756]

In June 2018, representatives of three communities of Vinnytsya region filed complaints with the IFC's Compliance Advisor Ombudsman and the EBRD's Project Complaint Mechanism.[757] The complaints raise concerns that current and planned poultry facilities threaten air, water and soil quality, as well as residents' livelihoods and homes, and that the absence of consultation violates IFC and EBRD standards. The individual complainants requested confidentiality out of fear of retaliation should their identities be disclosed.



Detention and abuse of Elena Urlaeva and other independent labor monitors

The cotton sector

Uzbekistan

Textile/Agriculture

IFC, ADB, WB, EBRD

Elena Urlaeva, the head of the Human Rights Alliance of Uzbekistan, has spent nearly two decades monitoring and documenting human rights abuses in Uzbekistan, and for the last ten years she has reported extensively on issues of forced and child labor in the cotton industry. At age 62, she has been arrested, beaten, strip searched, interrogated for hours at a time, subjected to psychiatric detention and treatment against her will, had her documentation destroyed, and been threatened so many times that she stopped counting.[758]

The evidence gathered over the years by Urlaeva and her colleagues revealed a widespread and systematic state policy of forcing students, teachers, medical workers, other government employees, private-sector employees, and sometimes children, to harvest cotton, as well as to plant and tend the fields in the spring. The system is enforced with government threats to fire people, stop welfare payments to individuals, and to suspend or expel students if they refuse to work in the cotton fields.[759]



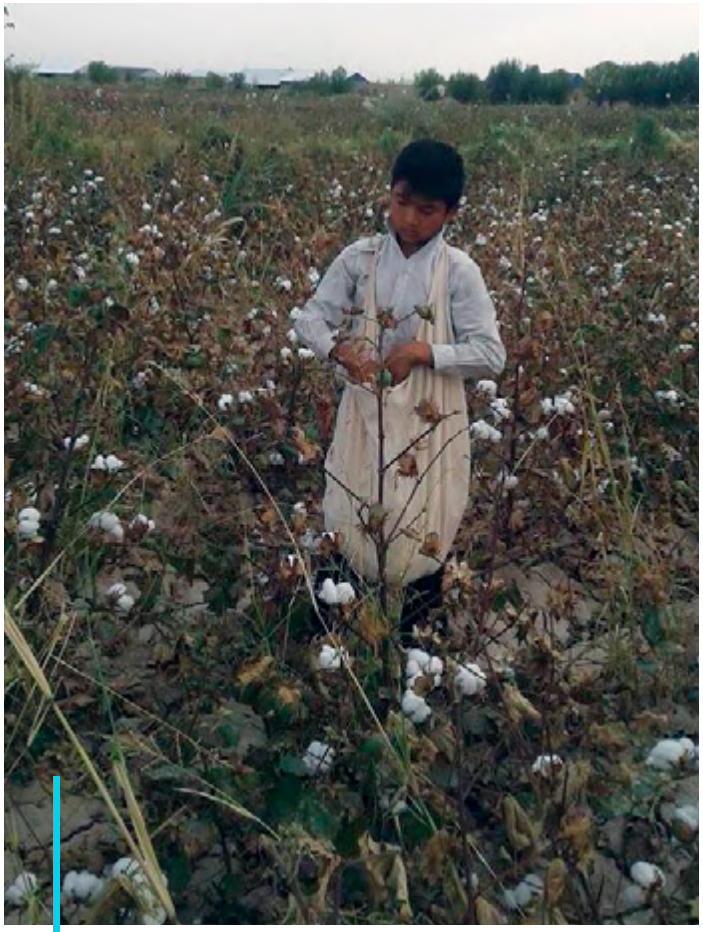
Timur Karpov

Elena Urlaeva was detained at a psychiatric hospital from March 1 to March 23, 2017 for her human rights work.

In September 2013, victims of forced labor filed a complaint with the Inspection Panel, the World Bank's independent accountability mechanism, alleging that one of the Bank's agriculture investments was contributing to child and forced labor.[760] In response, the Bank committed to several measures, including establishing third party monitoring of labor practices in its project areas.[761]

Instead of a third party, however, the World Bank contracted the International Labour Organization (ILO) to conduct the labor monitoring. Because the ILO is a tripartite agency made up of governments, employer organizations, and worker representatives, and in Uzbekistan neither the labor union federation nor the employers' organization is independent from the government, the monitoring was in actuality not independent from the government.[762] The official reports from the monitoring program show a very different reality from the one that Urlaeva and her colleagues have risked their lives to document and report.[763]

The scale of forced labor in Uzbekistan and its systemic entrenchment in the cotton industry raise concerns regarding all international financial institutions' investments benefitting Uzbekistan's cotton sector. One such example is the Amu Bukhara Irrigation System Rehabilitation Project (ABIS) in which the Asian Development Bank (ADB) is investing US$220 million.[764] Given that Bukhara is a lead cotton producing region in the country, the coordinator of the Cotton Campaign, a multistakeholder coalition, as well as Human Rights Watch, expressed concern about the project in a letter to ADB's President on September 3, 2013, three weeks before the project was approved.[765] The letter referenced the Uzbek authorities' retaliation against human rights defenders, including the case of Uktam Pardaev, a rights activist known for reporting on forced labor, who was beaten and held on spurious charges. On January 27, 2014, the Cotton Campaign sent another letter to ADB's President urging him to halt the project until human rights



Uzbek German Forum

A child working in the cotton harvest.

concerns were addressed, and referencing the continued reprisals against labor monitors.[766] To date, the ADB has not taken any public steps to address or even acknowledge the human rights concerns raised by civil society.

In 2015, harassment against Urlaeva and other independent labor monitors in the cotton fields reached unprecedented levels. Dmitry Tikhonov, a journalist and human rights defender, was arrested, beaten, interrogated, and had his home office destroyed by arson, leading him to eventually flee the country.[767]

Uktam Pardaev was imprisoned for two months then released on a suspended sentence, under the condition that he would no longer report on human rights concerns.[768] Police told Pardaev he was subject to travel restrictions and a curfew, neither of which was included in his original sentence.[769] Malohat Eshonkulova, a journalist and activist, was detained with Urlaeva in 2016 due to their monitoring work in Bukhara region, where the ADB project was being implemented. Both Eshonkulova and Urlaeva were beaten and subjected to interrogation and humiliating strip and body cavity searches.[770] In 2017 Uzbek police raided Eshonkulova's home and confiscated several of her belongings in a nearly eleven-hour search for her computer and cell phone.[771] "*Our government very clearly does not want any information about forced labor to reach the international community*," Urlaeva says.[772]

World Bank staff have indicated that they have shared concerns about reprisals against civil society with the Uzbek government.[773] At times, though, Bank staff declined to raise such concerns.[774] As government reprisals continued, the Bank did not escalate its response, and it refused to publicly condemn reprisals or sanction the government.

The Cotton Campaign, Human Rights Watch, and the International Labor Rights Forum again contacted the ADB on July 21, 2016, specifically regarding the repeated attacks on human rights defenders across the country. ADB has never responded.[775]

Another example of DFIs' investments in this sector is the $40 million loan that the International Finance Corporation (IFC) approved in December 2015 to Indorama Kokand Textile, a leading cotton yarn producer in Uzbekistan, to expand its textile plant, which uses solely Uzbek cotton.[776]

On June 30, 2016 Pardaev, Tikhonov, and Urlaeva, together with a forced labor victim who requested confidentiality, filed a complaint with the IFC's independent accountability mechanism, the Compliance Advisor Ombudsman (CAO).[777] The complaint entered dispute resolution in March 2018.[778]

At the September 2017 UN General Assembly, Uzbek President Shavkat Mirziyoyev publicly acknowledged forced labor for the first time on an international stage.[779] World Bank President Jim Kim raised concerns about forced labor with Mirziyoyev in a meeting the next day.[780] However, the World Bank's press statement after the meeting makes no mention of attacks on human rights defenders who report on forced and child labor. On September 21, Uzbek Prime Minister Abdulla Aripov took the unprecedented step of recalling university students and some medical and education workers from the fields.[781] Despite these developments, the Uzbek-German Forum for Human Rights (UGF) found evidence of forced adult labor throughout Uzbekistan's cotton sector in 2017, including



Uzbek German Forum

Elena Urlaeva with a child in the cotton fields.

in the three districts where the World Bank's South Karakalpakstan Water Resources Management Improvement Project is being implemented and for which the Bank had approved a US$260.79 million loan in June 2014.[782] Later in the harvest, many recalled workers were sent back, while others were forced to pay for replacement workers.[783]

Other development banks are still considering investing in projects that benefit the Uzbek cotton industry. In October 2017 the European Investment Bank (EIB) signed a legal framework with Uzbekistan to begin operations there.[784] In November 2017 the European Bank for Reconstruction and Development (EBRD) opened an office in Uzbekistan for the first time since 2010 and is actively seeking to increase its investments, describing this as "*a new stage of engagement with Uzbekistan.*"[785] That same month, the EBRD approved a US$20 million loan to Hamkorbank, one of the companies involved in the CAO complaint with the IFC.[786]

Annex 1: Reprisal Prevention and Response Process

ALL PROJECTS

PRE-APPROVAL REPRISAL RISK SCREENING

Place: human rights context, conflict, rule of law, land tenure, threats against defenders

Project: adverse impacts and distribution of impacts

Process: engagement, participation and degree of trust throughout exploration, assessment, design processes

Players: will, capacity, human rights record, level of corruption of clients, gov't, security, cartels, suppliers

Population: presence and vulnerability of defenders or other marginalized or at-risk groups

REPRISAL RISK CLASSIFICATION

Ask:

> *What is the* **level of reprisal risk, and can it be mitigated** *to avoid rights abuses and reprisals?*

> *Can the project reasonably ensure that* **affected communities are able to safely and effectively raise their concerns,** *oppose projects, and participate in development decisions and activities?*

> **Will we have sufficient leverage** *to prevent and address any human rights abuses that may occur?*

YES

NO >

LOW TO MODERATE REPRISAL RISK

STANDARD HUMAN RIGHTS DUE DILIGENCE & REPRISAL-SENSITIVE STAKEHOLDER ENGAGEMENT

> **Identify and show mitigation of defender-related risks** in stakeholder engagement plans and other project management plans

> Require and verify **free, prior informed consent or broad community support**

> **Incorporate loan requirements** to avoid human rights abuses, ensure enabling environment for defenders, prevent and address reprisals, and remedy harm, tying these requirements to disbursement

> **Ensure an enabling environment for public participation,** and reaffirm the important role and rights of defenders

STANDARD REPRISAL MONITORING

> **Active disclosure to the public and to affected communities** of the existence of bank financing, PLGM, IAM, whistleblower mechanism, and reprisal monitoring system

> Project team maintains **direct communication and feedback loop with affected communities**

> **Client, bank staff, PLGM, IAM, whistleblower mechanisms to report** any reprisals risks to reprisals unit

> Operate a well-publicized and linguistically accessible **reprisal hotline and online portal for rapid response**

SUBSTANTIAL REPRISAL RISK

HEIGHTENED HUMAN RIGHTS DUE DILIGENCE & REPRISAL-SENSITIVE STAKEHOLDER ENGAGEMENT

Same as above plus...

> Require additional **human rights impact, conflict, and/or reprisal assessment**

> Engage additional relevant **human rights expertise**

> Conduct **capacity-building for client and community**

> Develop a participatory **reprisal prevention and response plan** including the stakeholders at risk, the sources and nature of potential threats, reprisal mitigation and response measures

> Play a **direct role in stakeholder engagement** and oversee necessary measures to ensure safe participation

> **Incorporate additional leverage moments** within plans and contracts

> Include provisions for remedy, such as a remedy fund

HEIGHTENED REPRISAL MONITORING

Same as above plus...

> **Active solicitation by reprisals mechanism of information** from community, civil society groups, human rights experts and institutions

> Reprisals unit **review of periodic risk analysis** with project team

> Oversee an on-the-ground **participatory monitoring mechanism**

UNACCEPTABLE REPRISAL RISK

PROJECT APPROVAL WITHHELD OR PROJECT REDESIGNED

Reports of threats or attacks, or allegations that a client is not adequately managing human rights defender related risks

REPRISAL RESPONSE

> **Trigger reprisal response protocol** and **alert Reprisals Unit**

> **Work with defenders and security experts to assess the situation**, including source and severity of threat

> **With defenders, develop specific plan of action**

> **Engage relevant clients, authorities, and third parties and utilize all available leverage**, including suspension of funding, **to minimize threat or harm and prevent recurrence**

> **Investigate allegations/incident**, responsibility of actors, and call for thorough investigations

> **Apply sanctions, including divestment**, either where effective for mitigation, after failed attempts at mitigation, where mitigation is not feasible, or due to the severity of the threat or impact

> **Employ accountability** measures with clients, staff and other relevant parties

> Use leverage and resources to **ensure remedy**

> **Maintain active engagement and consultation with defenders throughout** and monitor situation until threat is mitigated and remedy delivered

> **Track and publicly report** outcomes, while ensuring learning across the institution and with peer DFIs

Annex 2: Policy Recommendations

>ASSESS AND AVOID ADVERSE IMPACTS

1.Avoid activities likely to produce significant human rights impacts or exacerbate risks for defenders by requiring assessment of the full range of human rights and reprisal-related impacts, including differentiated impacts on defenders and other marginalized or vulnerable groups, and by making human rights impact a determinant factor in investment decisions.

2. Screen all projects for human rights and defender risks prior to approval, analyzing contextual and project-related risks as well as the enabling environment for public participation and human rights, the engagement process, risks related to the client, government or third parties, and the vulnerability of affected communities and defenders.

3. Review all current investments in sectors and countries with significant defender risks, ensuring that project-specific risks are identified and mitigated.

4. Condition project approval on the ability to reasonably avoid adverse human rights impacts, to ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate in development decisions and activities, and to be able to adequately address any human rights abuses that may occur.

5. Where reprisal risk screening identifies significant risk, employ heightened due diligence, an elevated level of reprisal-sensitive stakeholder engagement, a reprisal prevention and response plan, and engagement of a reprisal monitoring system.

6. Utilize and increase available leverage to prevent harm, including by incorporating within contracts with government and corporate clients, requirements to avoid human rights abuses, to employ robust due diligence to prevent abuses, to investigate and remedy reprisals, and to ensure consistency with UN Guiding Principles on Business and Human Rights and UN Voluntary Principles on Security and Human Rights, tying these requirements to disbursement and building in additional moments of traction.

7. Adopt and widely communicate a no-tolerance policy prohibiting threats or attacks against defenders, complainants, and those who express their opinion on the project, client or government, and outlining measures for the assessment, prevention, mitigation and remedy of any reprisals.

8. Develop necessary institutional expertise and capacity on human rights and defenders and provide capacity building and technical assistance to clients on reprisal risk assessment, prevention, and response, including through partnering with national and international civil society organizations and human rights institutions.

>REQUIRE REPRISAL-SENSITIVE ENGAGEMENT WITH COMMUNITIES AND DEFENDERS

9. Assess the enabling environment for public participation at the country and project level and do not proceed with investments where the project cannot reasonably ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate meaningfully in development decisions and activities.

10. Use contractual provisions and other necessary leverage with clients, authorities, and relevant parties to ensure an enabling environment for participation and human rights defense.

11. Where there is significant human rights or reprisal risk or inadequate implementer capacity, DFIs should play an active role in stakeholder mapping, consultation, and ongoing engagement and monitoring, including by maintaining a direct communication and feedback channel with the affected communities.

12. Seek out dissenting voices and ensure that stakeholder mapping exercises explicitly identify defenders or those at risk of reprisal.

13. Ensure adequate conditions for participation of women, indigenous, and other defenders and at-risk groups free from intimidation or coercion as a prerequisite for investment, allowing defenders and marginalized groups to establish the appropriate mode of engagement for their safe and effective participation.

14. Ensure and verify that affected communities have access to information in a language and format that is understandable to them, and in a timeframe that allows them to meaningfully engage and shape decision-making.

15. Require and independently verify that projects have secured and maintain the free, prior and informed consent of indigenous peoples and good faith broad community support of other communities.

16. In communications with staff, project partners, authorities, and the public, make clear that those who raise concerns about a project have a right to be heard, avoid stigmatization or negative labels such as "project opponents," and take every opportunity to reaffirm the important role that defenders play in sustainable, inclusive development.

17. Make protection of defenders and meaningful participation a core component of dialogue with states and engagement with businesses, and proactively and publicly denounce any labeling of critical voices as "anti-development."

18. Provide strong oversight and specific guidance and capacity building for both clients and staff regarding how to conduct and verify reprisal-sensitive stakeholder engagement, especially in restricted contexts.

19. Address power imbalances and support affected communities' capacity to meaningfully engage in development processes and defend their rights.

>ENSURE EFFECTIVE MONITORING OF REPRISAL RISK AND GRIEVANCE REDRESS

20. Strengthen transparency for all projects and sub-projects, including those made through funds and financial intermediaries, and ensure disclosure of the existence of bank financing and the availability of independent accountability mechanisms, grievance mechanisms and reprisal monitoring and response systems.

21. Require project teams to maintain a direct line of communication with affected communities, and especially human rights defenders, and actively work with clients to address any concerns that arise.

22. Name a point person at the vice presidency level to be responsible for reprisals and other threats and attacks on defenders and establish a protocol to ensure that reports of human rights risks or incidents, including those relating to defenders, are elevated to the highest levels and acted upon in a timely and effective manner.

23. Establish a reprisals hotline accessible to all affected communities and stakeholders, and for projects with significant reprisal risk, establish an on the ground reprisal monitoring mechanism which solicits and collects information from affected communities including through participatory and third-party monitoring.

24. Ensure that affected communities and workers are aware of and have access to an effective project level grievance mechanism, ideally a community-driven mechanism, and an independent accountability mechanism, without fear.

25. Require independent accountability mechanisms and project level grievance mechanisms to adopt and implement policies and internal protocols and capacities for assessing, preventing, mitigating, reporting, and responding to reprisals.

26. Ensure that within all grievance and accountability activities power imbalances are addressed, including by facilitating the accompaniment of communities and defenders by multilateral and human rights organisms.

27. Establish sanctions for any grievance mechanism involvement in reprisals or significant mismanagement of reprisal risk.

>RESPOND EFFECTIVELY TO THREATS AND ATTACKS

28. Establish an institutional reprisal response protocol committing the institution to act promptly and effectively to mitigate harm, prevent future attacks, and to ensure remedy.

29. Assess each threat or attack and establish a specific response plan together with the communities and defenders at risk.

30. Investigate each instance and call for prompt and impartial investigations by relevant authorities or human rights bodies.

31. Utilize all available leverage to safeguard defenders and their right to remain in their territories and communities and continue their defense efforts, and to help ensure remedy, including but not limited to, public statements in support of the defenders' rights, diplomacy with relevant governments, embassies and private actors, suspension of financing, convening of mediations, observation of trials, and provision of security resources.

32. Utilize divestment or disengagement where effective for mitigation, or where continued engagement poses a risk of exacerbating adverse impacts, where attempts at mitigation fail, where mitigation is not feasible, or due to the severity of the threat or impact.

33. Expand public sanctions lists to include clients and implementing agencies that have engaged in or have been repeatedly associated with human rights abuses.

34. Utilize proactive strategies to ensure remedy, including through use of a remedy or reserve fund, and ensure that redress is proportional to the harm suffered, restoring victims to their pre-violation condition.

35. Track, report, and ensure institutional learning and accountability.

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