

9 November 2020

To:  
ESF Review Team  
Asian Infrastructure Investment Bank  
Email: [esfreview@aiib.org](mailto:esfreview@aiib.org)

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***Via Electronic Mail***

**Subject: Joint Submission on Recommended Revisions and Additions to the Revised Environmental and Social Framework Draft of the Asian Infrastructure and Investment Bank (AIIB)**

Dear AIIB ESF Review Team,

We the undersigned welcome this opportunity to comment on the Asian Infrastructure and Investment Bank's (AIIB) proposed revised Environmental and Social Framework (ESF). In this submission we encourage AIIB to amend the ESF to meaningfully address human rights and mitigate if not altogether eliminate risks and retaliation against affected communities and human rights defenders (HRDs).

Previously, we submitted specific policy recommendations for the bank to address the above mentioned issues, which drew on our report *Uncalculated Risks: Threats and Attacks Against Human Rights Defenders and the Role of Development Financiers*.<sup>1</sup> We note that those recommendations largely do not appear to have been followed. And so we will include our initial submission as an Annex to this submission and urge AIIB to reconsider adopting them either within the text of the current ESF or as a separate guidance note accompanying the new ESF that will be adopted by the Bank.

We welcome the inclusion of the issue of retaliation in the revised ESF draft, and in particular the acknowledgement of risks for accessing the Project Affected Peoples' Mechanism (PPM). But this still does not address the scope of the risks experienced by those who raise their concerns about development activities. The ESF and its accompanying policies around risks and reprisals need to be made stronger especially since we see increasing cases of development activities feeding into conflict and leading to violent attacks on environmental and human rights defenders.

It is critical that AIIB give an unequivocal commitment that human rights related risks and impacts must be identified and addressed from the onset by ensuring that affected communities are provided space and given the freedom to choose what kind of development best fits them.

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<sup>1</sup> <https://rightsindevelopment.org/uncalculatedrisks/>

## Recommended Amendments to the Draft Environmental and Social Framework

### I. Human rights as an overarching framework for the ESF

AIIB should include a commitment to respect human rights within the text of the proposed revised ESF. There is a need for AIIB to respect human rights and operationalize the international obligations of its member states to protect human rights. The ESF should also be aligned with international human rights standards and norms.

AIIB should also adopt a zero tolerance policy for threats and retaliation against affected communities/persons/human rights defenders.

Include a new paragraph in the ESF that will show the Bank's commitment to fulfill human rights using the proposed text below:

**AIIB will respect human rights throughout its operations and take all necessary measures to ensure that the activities it finances or otherwise supports do not directly or indirectly cause or contribute to human rights violations**

**AIIB will not tolerate threatening acts or retaliatory actions of its clients, sub-clients and government implementing agencies against anyone, especially affected communities, in all its projects.**

### II. Specific Amendments/Additions to the ESF provisions

There is a need to ensure that human rights risks and impacts are accounted for in the definition of social risks and impacts in the text of the revised ESF

#### 1) Amend Section B, Objective of the Environmental and Social Framework, to include:

1.7.11. Support Clients, through Bank financing of Projects, to implement their obligations under national environmental and social legislation (including under international agreements adopted by the Member) governing these Projects, including their commitments relating to **human rights and** climate change.

#### 2) Amend Section B, Objective of the Environmental and Social Framework, to include (bold, underlined and italicized texts):

1.7.5. Provide a mechanism for addressing environmental and social risks and impacts, **and any other human rights related risks and impacts,** in Project identification, preparation and implementation.

1.7.6. Enable Clients (defined below in Section II, Definitions, of the ESP) to identify and manage environmental and social risks and impacts, **and any other human rights related**

risks and impacts, of Projects, with project-affected communities, including those of climate change.

3) Amend Section B to include a new provision.

1.7.13. - The Bank should establish an institutional reprisal response protocol committing the institution to act promptly and effectively to mitigate harm, prevent future attacks, and to ensure remedy for affected communities and persons.

4) Amend Section 2.2 Integration of Environmental and Social Sustainability, add “human rights-based, self-determined, and community-led development” as a principle subscribed to by the Bank in identifying, preparing, and implementing projects.

**2.2. Integration of Environmental and Social Sustainability.** The Bank supports sustainable infrastructure and other productive sectors to promote economic growth and improve the lives of people in Asia. Consistent with the Sustainable Development Goals (SDGs), the Bank recognizes the need to address the three dimensions of sustainable development – economic, social and environmental – in a balanced and integrated manner. In addressing the development challenges of Asia, the Bank subscribes to the principles of sustainable, community-led, self-determined, and human rights-based development in the identification, preparation and implementation of Projects, as described below in the ESP.

5) Amend Section 2.3 Social Development and Inclusion, to include international human rights standards; delete “encourage” and replace with “ensure respect, protection and fulfillment of these rights;” delete “for them”

**2.3 Social Development and Inclusion.** The Bank believes that social development and inclusion are critical for sound development. For the Bank, inclusion means empowering people to participate in and benefit (individually and collectively) from the development process in a manner consistent with local conditions and international human rights standards ~~local conditions~~. Inclusion encompasses policies to promote equity of opportunity and non-discrimination, by improving the access of poor, disadvantaged, Indigenous Peoples, women, and disabled people to education, health, social protection, housing, environmental quality, infrastructure, affordable energy, water and sanitation, employment, financial services and productive assets. It also embraces action to remove barriers against vulnerable groups,<sup>1</sup> who are often excluded from the development process, so that their voices can be heard. In this regard, the Bank seeks, through the Projects it finances, to be supportive of these human rights and works to encourage ensure respect, protection, and fulfillment of these rights ~~for them~~, all in a manner consistent with international human rights standards and its Articles of Agreement.

6) Amend Section 2.4, 2.5 and 2.6, add “ self-determined, community-led development and human rights” as a principle subscribed to by the Bank in identifying, preparing and implementing projects. Please see italicized and bold text as proposed additions.

**2.4 Role in Decision-making.** For the principles of environmental and social sustainability, *self-determined, community-led development and human rights* to be effectively integrated into policies, strategies and Projects, the Bank believes that these principles should become part of routine *fair, transparent* decision-making processes and that environmental and social risks and *human rights* impacts should receive full consideration in the identification, preparation, implementation and evaluation of all Projects.

**2.5. Leading Role of the Client.** The Bank’s Clients, whether public or private, are responsible for successful preparation and implementation of their Projects, including management of the environmental and social risks and impacts and *potential human rights risks and impacts* of these activities. The Bank aims to work in a cooperative manner – by providing expert advice and oversight from its staff, supplemented by specialized consultants – to support its Clients in integrating consideration of environmental and social risks and impacts into their Projects *and in carrying out contextual human rights risks assessments*. The Bank recognizes that not all of its Clients have the same capacity to implement the requirements of the ESP. In such cases it seeks to assist its Clients to identify and fill gaps in their capacity to implement their Projects in accordance with the ESP. *The Bank will be mainly responsible for closely monitoring its clients’ compliance to its ESF in all projects, whether directly financed, co-financed, financed through intermediaries or under ESGs. The Bank will intervene directly to address any shortcomings it uncovers in Clients’ efforts to manage risks and impacts.*

**2.6 An Emphasis on Implementation.** The Bank considers that the management of environmental and social risks and impacts and *human rights risks* is central to the success of a Project. The collective experience of the multilateral development banks and bilateral development organizations in assisting their clients to manage environmental and social risks and impacts *and human rights risks* shows the importance of effective implementation of environmental and social management plans. The Bank supports Clients in the effective implementation of such plans for their Projects, through active field-based reviews, monitoring and verification, implementation support and institutional strengthening.

### III. On Stakeholder Engagement

Free prior informed consent must be stated and required under the ESF. The section on Stakeholder Engagement should be renamed to Stakeholder and Rightsholder Engagement, to recognize the special rights of Indigenous Peoples. Stakeholder and rightsholder engagement should be inclusive and transparent and should not be used as a tactic by the Bank’s clients to divide communities over questionable and controversial projects.

7) Amend Section 2.8 Stakeholder Engagement and include proposed additions in bold, underlined, and italicized texts.

**2.8 Stakeholder and Rights Holders Engagement.** The Bank believes that transparency, ~~and~~ meaningful consultation and **free prior informed consent (FPIC) for indigenous peoples (IPs)** are essential for the design and implementation of a Project and works closely with its Clients to achieve these objectives. Meaningful, **transparent, inclusive** consultation **for affected communities and FPIC for IPs** is a process that begins early, **prior to project approval**, and is ongoing throughout the Project. It is inclusive, accessible and timely, and is undertaken in an open manner. It conveys adequate information that is **disclosed in languages, formats, and terminology** understandable and readily accessible to stakeholders **and rights holders** in a culturally appropriate manner and in turn, enables the ~~consideration~~ **inclusion** of stakeholders' **and rights holders'** views as part of decision-making. Stakeholder engagement is conducted in a manner commensurate with the risks to, and impacts on, those affected by the Project. In the context of a Project in which the Bank determines that there are risks of retaliation against the Project's stakeholders, or of other threats to their safety, **it will engage affected communities or persons** and will ~~seeks to~~ work with Client and **defender security experts to determine the appropriate actions that can be taken to ensure the safety of the affected communities/persons** ~~the~~ to ~~minimize~~ **address** such risks **and ensure no threats or retaliations take place**.

#### IV. Use of Financial Intermediaries, ESGs, Other Innovative Financing Approaches

AIIB is also responsible for risks and retaliation against communities, whistleblowers, and human rights defenders who raise concerns about projects supported by AIIB's financial intermediary clients. Therefore, there is a need to ensure that all modalities that the Bank will be using will be subject to the revised ESF policy, especially in relation to human rights risks.

8) Amend Section 2.15 and include bold, underlined, and italicized texts.

**2.15. Use of Financial Intermediaries.** Financial Intermediaries (FIs) are an increasingly important instrument for promoting and expanding the reach of sustainable growth and lasting improvement in people's living conditions, through Bank financing for economic activities in infrastructure and other productive sectors. The Bank works with a variety of financial service providers, including, among others, banks, private equity funds and the managers of these funds. FIs are engaged in a wide range of activities, ranging from medium- to long-term corporate or project finance, to lending to small and medium enterprises, trade finance, housing finance and microfinance. The Bank's approach under FI operations is adapted to the nature of the activities supported. **Projects supported by the Bank through FIs will be subject to standards set forth under the revised ESF.**

## **V. Require community-led human rights risk assessments within ESPs, ESS, and ESELS**

Require community-led human rights assessments. There is a need to align the supplemental Environmental Social Policy (ESP), Environmental and Social Standards (ESSs), and Environmental and Social Exclusion List (ESEL) to ensure that these policies are backed up with robust due diligence requirements that are able to effectively address human rights related risks.

### **9) Amend Sec. 5.7 of the ESP to include bold, underlined and italicized text.**

**5.7. Scope of the Bank's Due Diligence.** As part of its due diligence, the Bank assesses whether the Project presents reputational risks to the Bank. It also reviews the Client's environmental and social assessment, **community-led human rights risks and impacts assessment**, and documentation in order to determine the extent to which:

5.7.1. All key potential environmental and social risks and impacts of the Project, including those relating to **human rights**, climate change, gender and disability, have been identified;

### **10) Amend Sec. 6.22. Elements of the ESMPPF, provision 6.22.1. to include bold, underlined and italicized text.**

#### **6.22. Elements of the ESMPPF.**

**6.22.1.** The Bank requires the Client to set forth the following in any ESMPPF, LARPF and IPPF: (a) description of the applicable principles, rules, guidelines and procedures to be followed to assess and address: (i) environmental and social risks and impacts **and human rights risks** of the activities; (ii) any Land Acquisition and Involuntary Resettlement that are likely to result from such activities; and (iii) any impacts on Indigenous Peoples that are likely to result from such activities; (b) an explanation of the anticipated environmental and social risks and impacts **and human rights risks and impacts**; (c) screening and assessment activities; (d) provisions for disclosure of and consultation on the ESMPPF, and the LARPF and IPPF (as applicable); (e) provisions for the Project's grievance redress mechanisms (GRM),

### **11) Require Free, Prior and Informed Consent (FPIC) with all affected Indigenous Peoples rather than requiring only Free, Prior and Informed Consultation (FPICon) in the ESP.**

## **VI. On Retaliation**

Putting the main responsibility on the Bank's clients to develop measures against retaliations ignores the fact that threats and reprisals are more often than not carried out in favor of the client (and that the client is often complicit). The Bank itself should develop mitigation measures that include building in leverage points, proactive engagement with communities to be affected

by the project, proactive monitoring of the situation, and speaking out if and when retaliation against affected communities/persons/human rights defenders happen.

The Bank should promptly review ALL allegations of retaliations in connection with the Projects it supports - as it now stands the text suggests only "credible allegations" need be reviewed and there is no definition of what amounts to a credible allegation. It should also define what a "reasonable time" for the client to address retaliation risks. The steps to be taken in cases of retaliation need to be discussed with appropriate experts on defender security - the text currently states that the "Bank will discuss with the Client appropriate efforts to be made by the Client to address retaliation risks under the Project." The bank should center its efforts around the security needs of the affected communities/persons facing retaliations and consult either directly with the affected communities/persons - if it is safe to do so as well as with defender security experts to determine the appropriate to ensure the safety of the affected persons as well as ensuring no further retaliations take place.

Part of retaliatory acts used as a tool by states and other actors to intimidate and silence dissenters is gender based violence. AIIB should have a strong policy framework that disallows financial involvement with activities that cause, contribute or can be linked to gender based violence. AIIB must hold states, and other clients and sub-clients accountable for condoning or promoting acts of sexual violence in infrastructure and other projects, especially in fragile, conflict afflicted and disputed countries and sub-national territories.

## **12) Amend Section 7.11, ESP and include bold, underlined, and italicized texts.**

**7.11. Addressing Retaliation.** Recognizing the increasing risks of intimidation, coercion, manipulation, ~~and~~ retaliation and *gender-based violence* in cases where relevant stakeholders *and rights holders* express views regarding the environmental and social risks and impacts of development projects, if the Bank determines that a Project presents such risks to the relevant Project stakeholders, it requires the Client to develop measures to protect against them. The Bank will promptly review ~~credible~~ *all* allegations of such retaliation *by engaging the affected communities/organizations/institutions/persons* in connection with the Projects it supports. If such allegations are substantiated to the Bank's satisfaction, the Bank will discuss with the Client, *affected communities/persons/human rights defenders and defender security experts* appropriate efforts to be made by the Client to address retaliation risks under the Project. If the Client fails to do so within a reasonable time, the Bank will consider taking appropriate action, including *utilizing all available leverage to safeguard defenders and their rights and utilize divestment or disengagement where effective for mitigation, or where continued engagement poses a risk of exacerbating adverse impacts to impacted communities.*

*The Bank will start and adopt a public sanctions list which will include clients, sub-clients, and implementing agencies that have engaged in or have been repeatedly associated with human rights abuses.*

## **VII. On the Project Affected Peoples' Mechanism (PPM)**

Independent accountability mechanisms are designed to serve as the bank's own internal oversight mechanism. Its purpose is to provide a means for communities and individuals that have been or believe that they will be negatively impacted by a project funded by the mechanisms' parent institutions to raise their issues and seek redress.

But sometimes it is when communities and human rights defenders engage these mechanisms to call attention to their situation that reprisals happen against them. And in some cases, these have held back communities and individuals from raising their concerns or engaging these mechanisms. It is therefore important that AIIB develop protocols that will protect persons submitting

Since in any given case of reprisals, the multitude of actors who will be involved and their actions can-intentionally or unintentionally-contribute to reprisals materializing against communities and individuals, there must be changes in the process in which AIIB shares and discuss submitted grievances/complaints. For AIIB, the process under the PPM policy is for PPM to share and discuss with management from the onset. This is probably in an effort to have the matter dealt with immediately. But by doing so, they might also be compromising the identity of complaining communities or HRDs and exposing them to reprisals.

The independence and impartiality of the PPM is most important. There should be no automatic discussion with management without consent of project affected persons/communities. The request for anonymity of complainants should be respected. Protocols should also be put in place to ensure this and this might mean that at certain times PPM's protocols would allow it to determine based on the circumstance how to ensure that they are not compromising community safety or increasing the risks against communities. Even in cases where there is consent, management should have in place protocols to ensure that their actions do not result in further reprisals against the complainants.

AIIB should specifically develop a protocol for human rights defenders, whistleblowers etc. accessing the accountability mechanism. Strategies to maintain confidentiality of requesters during the complaint process, as well as during mediation or compliance investigations should be undertaken. In order not to undermine confidentiality, AIIB should eliminate the current requirement that complainants first engage PGMs or management before filing a complaint, given the history of such engagements resulting in threats and intimidations of individuals.

AIIB should also employ risk mitigation measures, including communicating to bank clients 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.

As a bottom line, AIIB had to be willing to steer away from activities and investments that are unable to ensure that environmental and human 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.

**13) Amend Section 7.12 and include bold, underlined, and italicized texts.**

**7.12. PPM.** In addition, in recognition of the seriousness of matters relating to confidentiality and possible risks of retaliation in connection with submissions to the PPM, the Policy on the PPM and its related Rules of Procedure provide for special handling of submissions to the PPM in order to minimize such risks. ***The Bank will develop a protocol for human rights defenders, whistleblowers etc. accessing the accountability mechanism and employ risk mitigation measures, including communicating to bank clients 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.***

Again, thank you for the opportunity.

Sincerely,

Accountability Counsel  
Arab Watch Coalition  
Both Ends  
Buliisa Initiative for Rural Development Organization  
Center for Financial Accountability  
Community Empowerment and Social Justice Network (CEMSOJ)  
Earthrights International  
Gender Action  
GrowthWatch  
Indian Social Action Forum  
Inclusive Development International  
Initiative for Rights View  
International Accountability Project  
Koalisi Rakyat untuk Hak Atas Air - KRuHA Indonesia (People's Coalition for the Right to Water)  
NGO Forum on the ADB  
Recourse  
Pakistan Fisherfolk Forum  
Witness Radio

## ANNEX:

March 20, 2020

To:  
ESF Review Team  
Asian Infrastructure Investment Bank  
Email: [esfreview@aiib.org](mailto:esfreview@aiib.org)

From:  
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Email: [cfobanil@rightsinddevelopment.org](mailto:cfobanil@rightsinddevelopment.org)

### *Via Electronic Mail*

**Subject: Joint submission on policy recommendations regarding reprisals against human rights defenders**

Dear AIIB ESF Review Team,

Azerbaijan lawyer and activist Ilgar Mammadov had to serve jail-time on trumped-up charges after exposing corruption among high level officials and raising concerns about lack of transparency in government transactions.<sup>2</sup> In a letter penned from his prison cell he further highlighted the link between the Trans Anatolian Natural Gas Pipeline Project (TANAP) and the government crackdown on defenders and civil society more widely, including his own case.<sup>3</sup> TANAP is a project receiving AIIB financing.<sup>4</sup>

Mammadov's case is one out of 25 highlighted in a report titled "Uncalculated Risks: Threats and attacks against human rights defenders and the role of development financiers". The report shows how human rights defenders (HRDs) face increasing threats and attacks in the context of infrastructure activities, explores the nature of risks faced by defenders, examines the role of several major international financial institutions (IFIs) in exacerbating or mitigating those risks, and recommends better ways to ensure IFIs respect human rights and safeguard those who defend them. This is of particular importance given research by the World Bank (and others) that 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.<sup>5</sup> At the same time the very ability of these HRDs

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<sup>2</sup> Coalition for Human Rights in Development, *Uncalculated Risks: Threats and attacks against human rights defenders and the role of development financiers* (May 2019), pp. 89-90, available online at <https://rightsinddevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-report-cmpr-h.pdf> [hereinafter, "Uncalculated Risks"].

<sup>3</sup> Ilgar Mammadov, *A letter from an inmate of the Southern Gas Corridor* (January 2017), available online at <https://www.opendemocracy.net/en/odr/open-letter-from-inmate-of-southern-gas-corridor/>

<sup>4</sup> AIIB website, *Azerbaijan: Trans Anatolian Natural Gas Pipeline Project (TANAP)*, available online at <https://www.aiib.org/en/projects/details/2016/approved/Azerbaijan-Trans-Anatolian-Natural-Gas-Pipeline-Project.html>

<sup>5</sup> See, e.g. Ashis Das et al., *Does Involvement of Local NGOs Enhance Public Service Delivery?* World Bank Development Research Group Poverty and Inequality Team (June 2014) available online at <http://documents.worldbank.org/curated/en/303831468043489612/pdf/WPS6931.pdf>

to raise issues around human rights violations is increasingly being restricted. HRDs are often facing risks ranging from smear campaigns to killing. The AIIB has the leverage through its financing to ensure that projects it finances do not put HRDs at risk, and to address any risks or reprisals they may eventuate.

The submission below relates to your current review of the Environmental and Social Framework (ESF), and makes observations and recommendations specifically related to HRD issues. We urge you to take these on board during this review.

Firstly, the AIIB's current ESF has some language with respect to HRDs that we welcome, notably the following:stands

- Under “Social Development and Inclusion”, it states that AIIB “embraces action to remove barriers against vulnerable groups, who are often excluded from the development process, and to ensure that their voices can be heard. In this regard, the Bank seeks, through the Projects it finances, to be supportive of these human rights and to encourage respect for them”<sup>6</sup>
- The ESF further states that “Meaningful consultation is a process that: [...] (e) is undertaken in an atmosphere free of intimidation or coercion;”<sup>7</sup>

However, there remain, a number of issues that the current ESF does not cover and we strongly urge you to incorporate the recommendations from Uncalculated Risks.<sup>8</sup> We have included the relevant recommendations here for your convenience:

## Policy Recommendations from “Uncalculated Risks”

### A. 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. **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

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<sup>6</sup> AIIB, *Environmental and Social Framework - Approved February 2016 (Amended February 2019)*, p. 3, available online at <https://www.aiib.org/en/policies-strategies/download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf>. [hereinafter, “AIIB ESF”].

<sup>7</sup> “AIIB ESF” under “15. Meaningful Consultation”, p. 30.

<sup>8</sup> “Uncalculated Risks” under “Annex 2: Policy Recommendations” pp. 99-101.

concerns, oppose projects, and participate in development decisions and activities, and to be able to adequately address any human rights abuses that may occur.

4. **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.
5. **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<sup>9</sup> and UN Voluntary Principles on Security and Human Rights<sup>10</sup>, tying these requirements to disbursement and building in additional moments of traction.
6. **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.
7. **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.

## **B. Require Reprisal-Sensitive Engagement with Communities and Defenders**

8. **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.
9. **Use contractual provisions and other necessary leverage** with clients, authorities, and relevant parties to ensure an enabling environment for participation and human rights defense.
10. **Where there is significant human rights or reprisal risk or inadequate implementer capacity, 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.
11. **Seek out dissenting voices** and ensure that stakeholder mapping exercises explicitly identify defenders or those at risk of reprisal.
12. **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.

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<sup>9</sup> Available online at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>10</sup> Available online at <https://www.voluntaryprinciples.org/>.

13. 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 at the earliest stages of design and preparation.
14. 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.
15. 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.
16. **Make protection of defenders and meaningful participation a core component of dialogue** with states and engagement with businesses, and proactively and publicly denounce any labelling of critical voices as “anti-development.”
17. 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.
18. **Address power imbalances and support affected communities’ capacity** to meaningfully engage in development processes and defend their rights.

### **C. Ensure Effective Monitoring of Reprisal Risk and Grievance Redress**

19. **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.
20. 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.
21. **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.
22. **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.
23. 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 the **Project-Affected People’s mechanism (PPM),** without fear.

24. Require the PPM and project level grievance mechanisms to adopt and implement policies and internal protocols and capacities for assessing, preventing, mitigating, reporting, and responding to reprisals.
25. 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.
26. Establish **sanctions for any grievance mechanism involvement in reprisals** or significant mismanagement of reprisal risk.

#### **D. Respond Effectively to Threats and Attacks**

27. Establish an **institutional reprisal response protocol** committing the institution to act promptly and effectively to mitigate harm, prevent future attacks, and to ensure remedy.
28. **Assess each threat or attack** and establish a specific response plan together with the communities and defenders at risk.
29. **Investigate each instance and call for prompt and impartial investigations** by relevant authorities or human rights bodies.
30. **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.
31. **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.
32. **Expand public sanctions lists** to include clients and implementing agencies that have engaged in or have been repeatedly associated with human rights abuses.
33. **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.
34. **Track, report, and ensure institutional learning and accountability.**

For further clarification of the overall approach to ensure the safety of HRDs, we encourage you to use the illustration under “Annex 1: Reprisal Prevention and Response”<sup>11</sup> and also reach out to Coalition for Human Rights in Development at [cfobanil@rightsindevelopment.org](mailto:cfobanil@rightsindevelopment.org) for clarifications or any questions that may remain.

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<sup>11</sup> “Uncalculated Risks”, p. 98.

Sincerely,

Accountability Counsel  
Arabwatch Coalition  
Buliisa Initiative for Rural Development Organization  
Cairo Institute for Human Rights Studies  
Center for Financial Accountability  
Earthrights International  
Equitable Cambodia  
Gender Action  
Initiative for Rights View  
Institute for Global Justice  
International Accountability Project  
Oyu Tolgoi Watch  
Recourse  
Witness Radio

## Annex 1: Reprisal Prevention and Response Process

Unremitigated Risks

