

RECOMMENDATIONS



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The cases presented in this report demonstrate that retaliation risks could have been detected through proper analysis of the context, considering publicly available information from independent sources, and through consultations and engagement with civil society organizations and communities on the ground.

Development banks need to make structural changes to their policies and practices to better identify, assess and mitigate reprisal risks, as well as respond to and remedy reprisals when they do occur. Specifically, DFIs need to carry out a more comprehensive human rights due diligence and conduct contextual, country-specific and project-specific retaliation risk assessments, based on reprisal-sensitive engagement with affected communities and defenders. They should also develop institutional capacities to assess reprisal risks and implement mitigation and response strategies.²⁰⁴ To do so, DFIs should:

Risk assessment

- » Prior to approval, screen all projects for human rights risks, including reprisal risks, assessing project-related and contextual risk factors such 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, including differentiated impacts on defenders and other marginalized or vulnerable groups.²⁰⁵
- » In the country-level partnership frameworks or strategies, include assessment of human rights and civic space situations, so as to consider risks for

defenders and their communities when discussing support to a country.

Mitigation measures

- » Review all current investments, ensuring that project-specific risks are identified and mitigated.
- » 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, participate meaningfully in development decisions and activities, and access remedy for any human rights abuses that may occur.
- » Ensure full transparency and fulfill the right to information during project development and implementation and provide journalists and civil society organizations with the requested information to investigate corruption, mismanagement, transparency, and accountability issues.
- » Adopt and widely communicate a zero tolerance policy prohibiting threats or attacks against defenders, complainants, and those who express their opinion on the project, client or government, and outline measures for the assessment, prevention, mitigation and remedy of any reprisals.
- » Make protection of defenders and meaningful participation a core component of dialogue with states and engagement with businesses, for example by communicating clearly the need to ensure an enabling environment and zero tolerance to reprisals, denouncing and responding to reprisals when they occur, etc.
- » Develop own institutional expertise and capacity on human rights and defenders.

²⁰⁴ In 2021, the UN working group on business and human rights also published a comprehensive set of recommendations on how DFIs could prevent and address reprisals. For further information, please see: "The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders", pp 36-39, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement>.

²⁰⁵ See box "Retaliation risk assessment" at page 53.

Clients actions

- » 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.
- » Utilize and increase available leverage to prevent harm, including by incorporating within contracts with clients, authorities, and relevant parties requirements to:
 1. ensure an enabling environment for participation and defending human rights;
 2. respect freedom of expression and participation
 3. employ robust due diligence to prevent abuses;
 4. avoid human rights abuses;
 5. commit not to use litigation against people who criticize or expression their views on the project;
 6. investigate and remedy reprisals, collaborating in good faith with any investigation of allegations of reprisals that may be related to the project;
 7. ensure consistency with the UN Guiding Principles on Business and Human Rights and the UN Voluntary Principles on Security and Human Rights.
- » Require clients to report on the development or implementation of laws which might limit civic space, as well as to log and report to DFIs any allegation of reprisals, public opposition or attacks to whistleblowers, journalists and HRDs potentially linked to the project.

Reprisal-sensitive engagement

- » Where there is significant human rights or reprisal risk, or the client does not have capacity to carry out the required tasks, 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.

- » To ensure a reprisal-sensitive engagement, DFIs should:

1. Seek out dissenting voices and ensure that stakeholder mapping exercises explicitly identify defenders or those at risk of reprisal.
2. 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.
3. Ensure and verify that affected communities have access to information in languages and format understandable to them, and in a timeframe that allows them to meaningfully engage and shape decision-making.
4. Require and independently verify that projects have secured and maintain the free, prior and informed consent of the concerned Indigenous Peoples and other rights-holders.
5. 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.
6. Address power imbalances and support affected communities’ capacity to meaningfully engage in development processes and defend their rights.
7. 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.

Reprisal response and access to remedy

- » Proactively and publicly denounce any reprisal in the context of all current and pipeline projects, including labeling of critical voices as “anti-development.”
- » Speak out publicly in support of the work of human rights defenders and their fundamental role in ensuring development is effective.

- » Since the project assessment phase, clearly communicate with communities and defenders how they can engage with the banks to raise cases of reprisals, including through accountability mechanisms.
- » Build on the contextual risks analysis to identify points of contact and ways DFIs can use their leverage

if reprisals do occur. For example, banks could set up mechanisms to adjust their disbursement schedule if reprisals take place and clients do not take remedial actions. Banks should also identify actions that they can take to support the victim of a reprisal.

RETALIATION RISK ASSESSMENT

DFIs should develop protocols and guidelines for the comprehensive assessment and detection of retaliation risks, detailing the steps and processes to be followed prior to the approval of projects, and during the development of country strategies. The elaboration of such protocols should be carried out in consultation with civil society organizations, including in particular those specializing in human rights and security, and persons and organizations that have experienced reprisals as a result of the implementation of development projects. Their participation is crucial because they are familiar with the complex issues that can arise in repressive contexts, or in specific cases of reprisal.

The retaliation risk assessment should:

1. Include an assessment of contextual information on restrictions on civic space in the country where the project will be implemented, that could potentially undermine the right to participation and freedom of expression. This includes information on the existence of legislation and practices restricting the right to freedom of expression, and on the patterns of attacks and criminalization against defenders and journalists, among other issues. The assessment should take into account reports elaborated by independent civil society organizations at the national and international level, as well as reports and information elaborated by UN treaty bodies, regional and international human rights mechanisms.
2. Complement the country-level assessment with additional evaluations related to the relevant area or topic, the agency or company in charge of the implementation, and the analysis of the client's background and human rights track record in other projects, inside and outside the country. Contextual factors at the project level should include an analysis of the type of project, presence of security forces in the area where the project will be implemented, local conflicts, lack of land tenure rights, history of reprisals in that area, marginalization of communities impacted by the project, and corruption in local police departments, among other issues.
3. Be based on the results of consultations with the communities affected by the project and other civil society organizations, including organizations that promote civil and political rights, such as the right to freedom of association, freedom of expression and participation, journalists' organizations and organizations of human rights defenders. Consultations should be undertaken without putting participants at further risk, and inquiring about any prior security incidents and reprisal.
4. Be carried out directly and independently by experts at the banks or qualified independent third parties commissioned by the bank to do so. This requires direct engagement with civil society to assess both the risks of retaliation and the veracity of information presented by the client in relation to stakeholder identification and engagement.
5. Consider all the information about the project or the country that was previously received by the bank, through direct contact between civil society and management, and complaints mechanisms. The issues raised by civil society organizations should be explicitly registered and addressed in the project's documents.
6. Consider and assess specific risks of reprisals affecting women and other marginalized groups. To this end, focused consultations should be carried out with women and other vulnerable groups that may be particularly affected by reprisals.
7. Consider and assess allegations and cases of corruption related to the project, as they may increase the risk of reprisals against those who raise them.
8. Carry out litigation due diligence on implementing agencies and companies, including any other company that is part of the same conglomerate, in order to assess their track record and determine if they are involved in litigation that could reveal conflicts with communities or indicate risks of retaliation, such as SLAPPSs, land disputes, and cases of violence, among others.