



COALITION FOR
HUMAN RIGHTS IN
DEVELOPMENT

WEARING BLINDERS

HOW DEVELOPMENT BANKS ARE IGNORING REPRISAL RISKS



Wearing blinders: How development banks are ignoring reprisal risks.

Coalition for Human Rights in Development, June 2022

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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.

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Design by Maria Nela Diaz. Cover photo: Indigenous community in Ichk'isis. Credit: Front Line Defenders.



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ACRONYMS

CPF - Country Partnership Framework

CSO - civil society organization

DFI - Development Finance Institution

EBRD - European Bank for Reconstruction and Development

ESF - Environmental and Social Framework

FPIC - free, prior, and informed consent

HRD - human rights defender

HRDD - human rights due diligence

IDB - Inter-American Development Bank

MICI - IDB's Independent Consultation and Investigation Mechanism

SLAPP - Strategic Lawsuit Against Public Participation

UN - United Nations

GLOSSARY

DEVELOPMENT FINANCE INSTITUTIONS

Development Finance Institutions (DFIs) are national or international institutions that provide loans, grants and other types of financial or technical support for projects, activities and policies around the world. National DFIs receive money from the states that own them, while multilateral institutions often receive a contribution from each of their member countries, as well as additional funds from wealthier countries. Much of these funds come from public, taxpayer money, but DFIs may also raise money in other ways, such as charging interest on their loans. DFIs are owned and governed by governments and they generally have public interest missions, such as poverty alleviation and sustainable development. In this report, we will also interchangeably use the generic word ‘banks’.

HUMAN RIGHTS DEFENDERS

According to the Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998, human rights defenders are “individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means.” See: <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

RETALIATION

In this report, the terms ‘retaliation’ and ‘reprisal’ will be used interchangeably to indicate any type of intimidation or attack against human rights defenders and community members who are targeted for expressing their opinion, raising concerns, criticizing or opposing a development project. Retaliations can include different types of targeted attacks, such as: defamation or stigmatization campaigns, harassment, intimidation, threats, arrests, detention, criminalization, travel or work bans, extortion, unfair administrative measures, gender-based violence, attacks on livelihoods, attacks on properties, physical attacks, maltreatment, torture, kidnapping, enforced disappearance, and killings.

HUMAN RIGHTS DUE DILIGENCE

Human rights due diligence (HRDD) describes an ongoing process necessary to identify, mitigate, and address adverse human rights risks and impacts. For DFIs, HRDD is an ongoing process necessary to ensure that they respect, protect, and work toward fulfillment of human rights. This involves identifying human rights risks and impacts directly or indirectly connected with the DFI’s activities; preventing human rights abuses; mitigating adverse human rights impacts, and maximizing positive human rights impacts where possible; accounting for how human rights are impacted and impacts are addressed, and remedying any adverse impacts. See Annex B at page 55 for a list of resources on HRDD.

RETALIATION RISK ASSESSMENT

Retaliation risk assessment is part of human rights due diligence and is an ongoing process necessary to identify and mitigate risks of reprisals in or related to a project or a bank activity, or that might impact the outcome of that project or bank activity. Reprisal risk assessment should take into account information related to the project, project implementers, the general context, and the civic space situation in the country. It should include specific risk factors for vulnerable groups. The elaboration of such assessment should be carried out in reprisal-sensitive consultations with civil society organizations and human rights defenders, especially those who have experienced reprisals and their allies. See the box “Retaliation risk assessment” at page 53 for further information.

EXECUTIVE

SUMMARY



EXECUTIVE SUMMARY

On paper, most development finance institutions (DFIs) are committed to respect the rights of communities to be consulted and participate in decision-making processes around projects that affect their lives. Yet, meaningful participation is not possible when those who resist, criticize or raise concerns about development activities are subjected to retaliation and face attacks simply for speaking out.¹

This report uses five case studies to show that DFIs are often failing to identify, assess, and avoid or mitigate the risks of retaliation that communities impacted by their projects might face, despite growing documentation of the high levels of attacks against human rights defenders (HRDs) in the context of development projects.² Many DFIs have public commitments expressing zero tolerance for reprisals, but do not have adequate protocols and procedures to actualise their commitments.

This report highlights how reprisal risks can be anticipated and DFIs can prevent contributing to retaliations if they carry out comprehensive human rights due diligence (HRDD), including a retaliation risk assessment, while ensuring meaningful participation and reprisal-sensitive engagement of affected communities.

1 See for example: “Uncalculated Risks: Threats and attacks against human rights defenders and the role of development banks” (hereinafter Uncalculated Risks), Coalition for Human Rights in Development, May 2019, <https://rightsindevelopment.org/uncalculatedrisks/>; “Unhealthy Silence: Development banks’ inaction on retaliation during COVID-19”, Coalition for Human Rights in Development, ARTICLE 19 and IFEX, July 2021, https://rightsindevelopment.org/wp-content/uploads/2021/07/Unhealthy-silence_full-report.pdf; “In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020”, Business and Human Rights Resource Centre (BHRRC), February 2021, <https://www.business-humanrights.org/en/from-us/media-centre/attacks-and-risk-to-business-and-human-rights-defenders-worsened-in-2020>; “Right to be Heard: Intimidation and Reprisals in World Bank Inspection Panel Complaints”, World Bank Inspection Panel, December 2021, https://inspectionpanel.org/sites/inspectionpanel.org/files/publications/Emerging-Lessons-Series-07-Intimidation-and-reprisals-in-IPN-Cases-Dec2021_0.pdf.

2 In 2021, BHRRC recorded 615 attacks against human rights defenders (HRDs) raising concerns about harmful business practices worldwide - with 70% taking place against climate, land and environmental rights defenders. See: “Human rights defenders & business in 2021”, BHRRC, January 2022, <https://www.business-humanrights.org/en/from-us/briefings/hrds-2021/human-rights-defenders-business-in-2021-protecting-the-rights-of-people-driving-a-just-transition/>.

WHEN RED FLAGS ARE IGNORED AND CRITICAL VOICES ARE UNHEARD OR SILENCED, RETALIATIONS END UP ESCALATING.

When red flags are ignored and critical voices are unheard or silenced, retaliations end up escalating. Proactively preventing reprisals should be paramount for DFIs investing in contexts where individuals, communities or peoples risk being harassed, attacked or even killed, simply for criticizing a project. This report, while exposing the consequences of DFIs failures and inaction, provides a roadmap on how they can do so.

KEY RECOMMENDATIONS

Development banks need to make structural changes to their policies and practices to better identify, assess, avoid and mitigate retaliation risks, as well as respond to and remedy retaliations 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 retaliation-sensitive engagement with affected communities and defenders. To do so, DFIs should:³

1. Develop protocols and guidelines for the comprehensive assessment and detection of retaliation risks.
2. Prior to approval, screen all projects for human rights risks, including retaliation risks, assessing contextual risk factors.
3. Assess human rights and civic space situations in the country-level partnership frameworks or strategies.
4. Review all current investments, ensuring that retaliation risks are identified and mitigated.
5. Make human rights impact a determinant factor in investment decisions; do not approve projects when it cannot be reasonably ensured that affected communities are able to safely and effectively raise their concerns, participate meaningfully, and access remedy.
6. Ensure full transparency and fulfill the right to information.
7. Adopt and widely communicate a zero tolerance policy against retaliations.
8. Make protection of defenders and meaningful participation a core component of dialogue with governments and clients.
9. Develop internal institutional expertise on human rights and protection of defenders.
10. Provide capacity building and technical assistance to clients on retaliation risk assessment, prevention, and response.
11. Require clients to respect human rights, avoid abuses and ensure remedy when retaliations occur. These requirements should be tied to disbursement of funds and there should be clear sanctions if these provisions are not upheld.
12. Ensure that affected communities (especially at-risk groups such as women, Indigenous Peoples, and defenders) are able to safely and effectively raise their concerns.
13. Ensure a retaliation-sensitive engagement with project stakeholders and play an active role in stakeholder mapping, consultation, and ongoing engagement and monitoring.
14. Proactively and publicly denounce any retaliation in the context of all current and pipeline projects, including the labeling of critical voices as 'anti-development'.
15. Speak out publicly in support of the work of human rights defenders and their fundamental role in ensuring development is effective.
16. Clearly communicate with communities and defenders how they can engage with the banks to raise cases of retaliations, including through accountability mechanisms.
17. Identify, utilize and increase pathways of influence or leverage points to prevent retaliations, and to respond if they do occur.

³ For a full list of recommendations, please see pages 51-53.

INTRODUCTION



INTRODUCTION

Around the world, human rights defenders, journalists, civil society organizations (CSOs) and communities continue to be targeted and suffer retaliation for resisting or criticizing development projects supported by development finance institutions (DFIs), or for supporting project-affected communities. Retaliations range from defamation to threats, criminalization and even killings.⁴ Apart from intimidating those directly involved, these attacks also have a silencing effect on others. When there is such a climate of fear and intimidation, for the impacted communities there are no real and meaningful opportunities to make their voices heard.

WHEN THERE IS SUCH A CLIMATE OF FEAR AND INTIMIDATION, FOR THE IMPACTED COMMUNITIES THERE ARE NO REAL AND MEANINGFUL OPPORTUNITIES TO MAKE THEIR VOICES HEARD.

In their policies, such as their social and environmental safeguards, most DFIs formally recognize the right to participation of communities affected by their investments, throughout the different stages of project assessment, preparation and implementation.⁵ Many DFIs acknowledge that without effective participation the project might not meet its objectives⁶ and that

there might be reputational risks if their projects present harmful impacts or if they are rejected by the communities that they are supposed to benefit. Some banks have also adopted commitments and declarations of zero tolerance for retaliations against those who share their views about DFI-funded projects.⁷ Moreover, DFIs have human rights due diligence obligations and responsibilities, which stem from the human rights obligations of states and international organizations, the business responsibility of commercial entities, as well as their own development mandate and internal policies.⁸

However, despite their commitments and obligations, DFIs are often failing to identify, assess, and mitigate the risks of retaliation that communities impacted by their projects might face. Through five case studies and the analysis of publicly available documents, this report indicates that risks could be mitigated and reprisals could be prevented, if DFIs were to carry out comprehensive human rights due diligence, including a retaliation risk assessment, and if they would ensure meaningful

DESPITE THEIR COMMITMENTS AND OBLIGATIONS, DFIs ARE OFTEN FAILING TO IDENTIFY, ASSESS, AND MITIGATE THE RISKS OF RETALIATION THAT COMMUNITIES IMPACTED BY THEIR PROJECTS MIGHT FACE.

⁴ See footnote 1.

⁵ See: Environmental and Social Standard 10 on Stakeholder Engagement and Information Disclosure, World Bank, <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=111&zoom=80>; Environmental and Social Standard 10 on Stakeholder Engagement and Information Disclosure, Inter-American Development Bank (IDB), <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-110529158-160>; Environmental and Social Framework, paragraph 18, Asian Infrastructure Investment Bank (AIIB), <https://www.aiib.org/en/policies-strategies/download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf>; Performance Requirement 10 on Information Disclosure and Stakeholder Engagement, European Bank for Reconstruction and Development (EBRD), <https://www.ebrd.com/environmental-and-social-policy.pdf>.

⁶ See for example: “Localizing Development : Does Participation Work?”, page 222, World Bank, 2013, <https://openknowledge.worldbank.org/handle/10986/11859>; “Strengthening participation for development results: an Asian Development Guide to Participation”, pages 2-6, Asian Development Bank (ADB), 2012, <https://www.adb.org/sites/default/files/institutional-document/33349/files/strengthening-participation-development-results.pdf>.

⁷ World Bank Commitments against Reprisals, World Bank, March 2020, <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/world-bank-commitments-against-reprisals>; IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders, International Finance Corporation (IFC), October 2018, https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES;paragraph=20, IDB Invest’s Environmental and Social Sustainability Policy, IDB, December 2020, https://idbinvest.org/sites/default/files/2020-05/idb_invest_sustainability_policy_2020_EN.pdf?ga=2.17170041.1778103236.1607960731-55442420.1606248622.

⁸ “Human Rights Due diligence for DFIs”, Coalition for Human Rights in Development, 2017, <https://rightsinddevelopment.org/wp-content/uploads/2017/06/Human-Rights-Due-Diligence-overview.pdf>.

consultations and reprisal-sensitive engagement of affected communities.

It is also important to note that the specific processes that DFIs should carry out to assess and mitigate retaliation risks are only one of the many components of a comprehensive human rights due diligence approach, and they are interlinked to the assessment of all other human rights impacts. For instance, failing to adequately assess other impacts — such as the risk of social conflicts, opposition to the project due to its harmful environmental impacts, or corruption — leads to a failure in identifying important reprisal risk factors.

Human rights due diligence is also interlinked to the right to participation. When the right to free, prior, and informed consent is not respected or when the conditions for safe and meaningful participation are not met, then human rights impacts cannot be properly identified and mitigated, increasing the risk of conflict and retaliations. In turn, direct consultation with the communities about reprisals risks and civic space issues is also key to identify and mitigate them properly.

However, in contexts where retaliation risks are high and they are not adequately mitigated, neither formal mechanisms (such as stakeholder engagement processes) nor informal ones (such as community-level meetings and public debates) can offer a safe space for affected communities to express their views on DFI-funded

projects. Even in contexts where communities can formally and safely express their opinion, the right to participation can be curtailed when projects are pushed forward without regard to public opposition or concerns expressed by affected communities.

This report shows that when people cannot freely and publicly express their views on a project, or when their views are ignored, social tensions and reprisals tend to escalate. Meaningful participation is a crucial precondition for comprehensive human rights due diligence, and especially for assessing and mitigating retaliation risks. If DFIs want to stay true to what they promise, they must ensure people are able to participate without fearing reprisals. Otherwise their commitment to the right to participation is just illusory.

MEANINGFUL PARTICIPATION IS A CRUCIAL PRECONDITION FOR COMPREHENSIVE HUMAN RIGHTS DUE DILIGENCE, AND ESPECIALLY FOR ASSESSING AND MITIGATING RETALIATION RISKS.



Members of the community living near the Toro Semliki Wildlife Reserve, Uganda. Credit: Twerwaneho Listeners Club

METHODOLOGY

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METHODOLOGY

Through five case studies and the analysis of publicly available documents, this report analyzes how DFIs are failing to adequately assess and mitigate retaliation risks faced by those opposing or raising concerns about the projects they finance.

The five case studies are presented in alphabetical order by the countries where retaliations took place (Armenia, Guatemala, Philippines, Turkmenistan and Uganda). They are not intended to be a representative sample, but were identified after consulting human rights organizations from different regions and selected on the basis of several criteria, including geographical diversity, gender diversity of the people who suffered retaliations, the type and severity of retaliations, the diversity of the institutions that were financing the projects, and the availability of information. In three cases (Uganda, Philippines and Turkmenistan) DFIs gave sovereign loans and grants, and in the other two (Armenia and Guatemala) the loans were granted to private companies. While none of the projects analyzed involve the provision of technical assistance or support through financial intermediaries, the recommendations presented in this report are applicable to these types of projects as well.

The analysis is based on project documents published by the banks, press articles, reports of international and regional human rights treaty bodies and mechanisms, reports and statements of civil society organizations, and 16 in-depth interviews with human rights defenders who were accompanying the impacted communities or leading the struggle against the projects. As it was not possible to travel to the project location, interviews were carried out via phone or online calls.⁹ Given the security risks, interviewees are not identified.

The analysis focuses especially on the stages prior to the project approval, which is a key moment when challenges and obstacles to community participation and engagement should be assessed and addressed, if projects are truly set to serve the development of the communities. For

this reason, in the analysis on how DFIs failed to conduct effective due diligence, only information about reprisal risks that DFIs could have accessed before approving the project is included, omitting more recent information. However, in the context sections also information on retaliations that happened after the projects were approved is included, in order to show how eventually the lack of due diligence led to an escalation of reprisals.

The assessment prior to project approval is also key because in this phase banks have the greatest leverage.¹⁰ Yet, it is clear that the assessment of retaliation risks must continue during project implementation, as the circumstances and the context could change, and other retaliations may occur and hinder opportunities for participation.

Drawing lessons from the five case studies, this report also presents a number of recommendations on what could and should have been done to anticipate and mitigate retaliation risks. This analysis builds on previous collective and comprehensive work on human rights due diligence, coordinated by the Coalition for Human Rights in Development.¹¹ However, the focus of this report is on the key learnings drawn from the case studies analyzed, and therefore the recommendations are not an exhaustive list of all the steps DFIs should take.

While in some of the cases the report draws on engagement with bank staff involved, the focus is on publicly available information and interviews with defenders. This methodological decision was made with the understanding that both the assessment of retaliation risks and related mitigation plans should be transparent and accessible in publicly available project documents.¹²

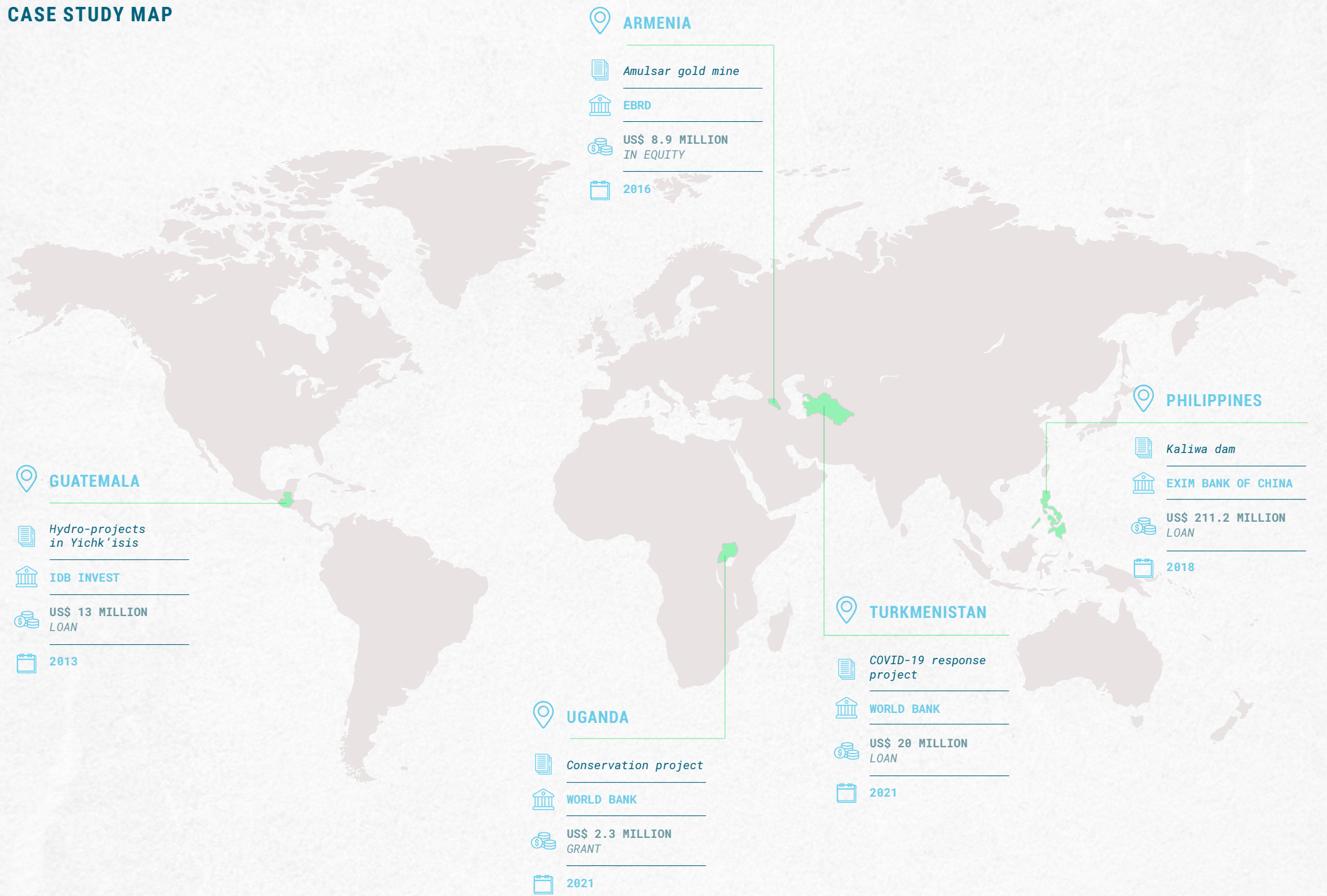
10 Leverage can include the range of resources, relationships, and influence that can be used to promote or compel a specific action by the clients or other influential parties, in order to mitigate risks for defenders or address reprisals. For a toolbox that describes the different types of leverage of DFIs, see: "Uncalculated Risks", pages 23-27: <https://rightsindevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-report-cmpr-h.pdf>.

11 See Annex B.

12 While calling for more transparency and accessibility about documents on assessment of retaliation risks and related mitigation plans, we also note that it is important not to publicize specific information that might put defenders at further risk.

9 For the questionnaire used for the interviews, see Annex A.

CASE STUDY MAP



ARMENIA

- Amulsar gold mine
- EBRD
- US\$ 8.9 MILLION IN EQUITY
- 2016

GUATEMALA

- Hydro-projects in Yichk'isis
- IDB INVEST
- US\$ 13 MILLION LOAN
- 2013

PHILIPPINES

- Kaliwa dam
- EXIM BANK OF CHINA
- US\$ 211.2 MILLION LOAN
- 2018

TURKMENISTAN

- COVID-19 response project
- WORLD BANK
- US\$ 20 MILLION LOAN
- 2021

UGANDA

- Conservation project
- WORLD BANK
- US\$ 2.3 MILLION GRANT
- 2021

KEY FINDINGS



Citizens protest against the Amulsar mine, Armenia. Photo: Sona Margaryan

KEY FINDINGS

Through five case studies, this research shows that DFIs are often failing at conducting comprehensive human rights due diligence, as they are not assessing the risks of reprisals against people opposing or raising concerns about the projects they fund. Even when they approve projects in sensitive contexts, where there are widespread and severe challenges to stakeholder engagement and participation, DFIs are not putting in place measures to ensure that people can freely and safely express their opinion, or to prevent and discourage reprisals. Often, these failings end up contributing to an escalation of the reprisals.

As noted also by the UN Working Group on Business and Human Rights, despite their commitments DFIs are not effectively preventing and addressing reprisals, as “internal guidance and protocols about who is responsible for handling reprisals and following up on cases is often lacking, as is information about what support can be offered to human rights defenders under threat, the commitment of senior management to the issue overall, and how DFIs and IFIs will work to prevent (as well as respond to) reprisals against human rights defenders”.¹³

DFIs TEND TO SHIRK THEIR RESPONSIBILITIES FOR THE FAILINGS IN HUMAN RIGHTS DUE DILIGENCE AND THE CONSEQUENT REPRISAL.

Human rights defenders interviewed for this research also note that DFIs tend to shirk their responsibilities for the failings in human rights due diligence and the consequent reprisal. This leads to mistrust and grievances towards the banks. As stated by a defender from Armenia, “the banks are responsible for what happened and for not consulting with communities and civil society: if they had done so, they wouldn’t have supported the

¹³ “The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders”, UN Working Group on the issue of human rights and transnational corporations and other business enterprises, June 2021, A/HRC/47/39/Add.2, see: <https://www.ecolur.org/en/news/amulsar/international-finance-corporation-of-world-bank-ifc-refused-from-funding-lydian-internationals-amulsar-project/9492/>

MORE EFFORTS SHOULD BE MADE TO PREVENT REPRISALS, RATHER THAN HAVING TO RESPOND TO THEM, PROVIDE REMEDY OR WITHDRAW FROM A PROJECT WHEN ATTACKS HAVE ALREADY OCCURRED.

project.”¹⁴ Many of the people interviewed do not trust DFIs, and don’t believe in their intentions to improve their operations and promote sustainable development. According to another defender from Armenia, banks only respect “standards for financial risk minimization” while environmental and social safeguards standards are just a box to tick.¹⁵ Defenders also complain about the lack of responsiveness of the banks, which often ignore complaints or only respond with vague commitments without taking concrete actions.

In the case of the hydroelectric project funded by IDB Invest in Guatemala, the bank’s independent complaint mechanism (MICI) recognized numerous failures in compliance with the bank policies, opening the possibility of a responsible withdrawal from the project.¹⁶ In Armenia, both the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD) decided to withdraw from the Amulsar gold mine project, after continuous conflicts with the communities affected by the mine.¹⁷ However, it is always too late when banks recognize that they are causing harm to the people

¹⁴ Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 12, 2021.

¹⁵ Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 15, 2021.

¹⁶ See: Compliance review report, pages 76-84, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHA-RE-1567711961-1773>.

¹⁷ “International Finance Corporation pulls out of Amulsar gold mine following complaints by NGOs and local residents over health concerns”, Ecolur, September 2017, <https://www.ecolur.org/en/news/mining/9492/>; “Major bank investment in disputed Armenian gold mine to end”, Open Democracy, August 2020, <https://www.opendemocracy.net/en/odr/major-bank-investment-disputed-armenian-gold-mine-end/>.

who are supposed to benefit from their projects. More efforts should be made to prevent reprisals, rather than having to respond to them, provide remedy or withdraw from a project when attacks have already occurred.

FAILURE TO ASSESS THE RISKS OF RETALIATION AND HOW THIS AFFECTS THE RIGHT TO PARTICIPATION

On the publicly available documents about the projects analyzed in this report, including country strategies frameworks, there is no evidence of any type of assessment of the risk of reprisals carried out prior to the project approval. These documents fail to take into consideration easily available data and information on restrictions to participation and fundamental freedoms, including reports by CSOs and UN mechanisms about human rights and civic space issues. They also fail to assess the human rights track record of the project clients and implementers.

Official documents and interviews with human rights defenders and CSOs all indicate that DFIs are not carrying out any specific consultation to identify reprisal risks and they are not coming up with possible mitigation measures.¹⁸ In the case of the World Bank project implemented in Uganda, communities experienced an intensification of violence when the bank was negotiating the project. Yet, the banks failed to take these incidents into account while appraising the project.

LACK OF CRITERIA TO EVALUATE MINIMUM REQUIREMENTS FOR CIVIC SPACE

Over the years, many DFIs have put together exclusion lists and identified some criteria for projects they cannot finance, for example those with high-risk environmental impacts. Yet, the fact that DFIs continue financing in extremely

¹⁸ Reprisal risks are rarely mentioned in the banks' documents. One exception is the World Bank assessment for a loan to fund the COVID-19 response in Mongolia. In the Social Risk section, at page 7, the document states: "Another particular risk (...) is the increased incidence of reprisals and retaliation especially against healthcare workers and researchers. This risk will be mitigated through explicit inclusion in robust stakeholder identification and consultation processes at the individual operation level." See: <https://documents1.worldbank.org/curated/en/129171611502360743/pdf/Additional-Financing-Environmental-and-Social-Review-Summary-ESRS-Mongolia-COVID-19-Emergency-Response-and-Health-System-Preparedness-Project-Additional-Financing-P175730.pdf>.

oppressive contexts — where it is impossible to ensure safe participation of stakeholders — suggests that they have not established a set of minimum requirements linked to the participation of civil society and affected communities.

FAILURE TO ASSESS COMPLAINTS ABOUT REPRISALS

In some of the projects analyzed in this report, the information on the risks of retaliation had been presented to the banks prior to the project approval. This was either in complaints related to previous loans to the same client or directly to the bank's management, after basic information about the project under consideration was published. However, the banks did not take this information into consideration.

LACK OF INDEPENDENT EVALUATION OF REPRISAL RISKS

The case studies reveal that the banks rely heavily – if not exclusively – on the information provided by their client in relation to the risks of the projects, the identification of the interested stakeholders, and the results of the consultations. Given the benefits of DFI financing, including as a signaling mechanism to bring in other commercial financiers, clients have an obvious conflict of interest, which prevents them from sharing information that could jeopardize the approval of their projects. Still, in the case studies analyzed, DFIs did not conduct third party assessments on the possible risks of reprisals.

LACK OF MEANINGFUL STAKEHOLDER ENGAGEMENT

In all the cases analyzed, there have been serious deficiencies in the consultations carried out with stakeholders before project approval. Impacted communities have not been correctly mapped out and consulted, affected Indigenous communities are often not identified, the information on the project impacts and potential risks is not accessible, and there is lack of transparency about many aspects of the project. While performing meaningful stakeholder engagement does

not eliminate the risks of retaliation, it is required to anticipate and minimize those risks.

The lack of meaningful stakeholder engagement increases the risk of conflict between the project implementer and those who have not had the opportunity to voice their objections and criticisms, or who have not been able to shape the development project affecting their lives. The greater the social conflict, the greater the risk that project proponents — or those who have an interest in pushing the project forward — will threaten, attack and try to silence those opposing or criticizing the project. When banks fail to conduct meaningful consultation processes, they also fail to prevent and mitigate risks of social conflict, and eventually this increases the risk of retaliation.

LACK OF CONSENT OF INDIGENOUS COMMUNITIES

Many DFIs have outlined in their policies specific criteria to recognize communities as Indigenous and to trigger specific safeguards to protect their rights, such as the requirement of free, prior and informed consent (FPIC). However, in two of the cases presented in this report (Guatemala and Uganda), banks failed to recognize that their projects were going to impact Indigenous Peoples. This is because banks are leaving the responsibility of identifying the affected Indigenous communities to clients, who do not always have the right incentives to recognize and disclose this information. As a result, banks are failing to apply their relevant safeguards policies for Indigenous Peoples.

LACK OF CONSIDERATION OF SPECIFIC RISKS AFFECTING WOMEN

Women human rights defenders who criticize development projects face differentiated and multiple forms of violence, derived from gender discrimination, such as defamation and stigmatization using gender stereotypes, harassment, gender-based violence and sexual attacks. Projects that involve an increased presence of security forces can carry additional risks for women, due to the risks of possible sexual assault and intimidation. We did not see an analysis of these issues in the documents of the projects analyzed, nor appropriate mitigation measures commensurate with the risk. In the case of the hydroelectric dam in Guatemala,

in the initial social assessments the risk of gender-based violence was not identified.¹⁹ In the case of the Amulsar mine project in Armenia, the influx of workers in the area was mentioned as something that could generate sexual violence, but nothing was said about possible reprisals and stigmatization against women for their opposition to the project. Two interviewees stated that the measures planned to mitigate these risks were not adequate.

The lack of participation of women in spaces for consultation about the project has also been pointed out in the case of Guatemala. Surveys, meetings and consultations carried out for the preparation of the environmental impact assessment (EIAs) did not include findings disaggregated by sex, and no effort was made to meaningfully consult with women and to consider the impacts of the projects on them, and the specific risks they could face.

LACK OF TRANSPARENCY

In the cases analyzed, defenders have reported a serious lack of transparency about the project components, including the details and locations of the activities planned. This failure in disclosing important information prevents an adequate evaluation of the possible impacts and risks. Moreover, some people only become aware of the project when implementation begins. This hinders participation and prevents the identification of possible issues and concerns that affected people and their allies would have raised, had they received detailed and accessible information about the project before its approval.

RESTRICTIVE CRITERIA IN THE ASSESSMENT OF THE CONNECTION BETWEEN THE RETALIATIONS AND THE PROJECT

DFIs tend to shirk their responsibility when defenders and CSOs raise concerns about cases of retaliations occurring in the context of their project. They apply undisclosed and seemingly illogical criteria to avoid acknowledging the connection between the retaliation and the project they fund, even when the linkage is clear and direct. For example, in Uganda, World Bank management insisted that an ongoing land conflict, in the same area where the

¹⁹ Compliance review report, pages 29 and 30, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1773>.

project activities were going to take place, did not have any connection with their project and that reprisals taking place there did not fall under their responsibility. In the same case, the bank also dissociated itself from serious human rights violations carried out by the Uganda Wildlife Authority (the project implementer) during monitoring and patrolling activities, even though the bank's project was also financing equipment that could be used to carry out those activities. The bank's complaint mechanism also failed to recognize the connection between the reprisals suffered by the defenders and the activities funded by the World Bank.²⁰ This type of response to cases of retaliation reveals a narrow understanding of the impacts and risks of the activities they finance.

LACK OF CONSIDERATION OF CORRUPTION

Suspected or reported acts of corruption linked to a project can increase the risk of retaliation. Allegations of corruption can have serious consequences, leading to criminal conviction of those involved. They also affect public officials with power and influence, who can use the state apparatus to persecute those who denounce them. In a recent report, the UN Special Rapporteur on the situation of human rights defenders acknowledged that "since uncovering corruption involves the investigation of power structures and those in power, and may lead to direct attacks on political elites, such work is considered to be a dangerous field for activists."²¹ She also stated that environmental human rights defenders who expose corruption in business and development projects are often at risk of physical attack, and those organizing anti-corruption protests may be targeted through surveillance, arrest and excessive use of force.²²

Nevertheless, suspicions and allegations of corruption in relation to projects are not considered as factors that create or increase retaliation risks. Even in the context of the Amulsar mine project in Armenia, where there had been several complaints about possible corruption and

20 The Grievance Redress Service closed the case related to the complaint raised by members of the communities, stating that no harm will be caused to the targeted community by the activities funded by the bank, while the Inspection Panel did not register the complaint due to the absence of a plausible link between the alleged harm and the bank-financed project.

21 "At the heart of the struggle: human rights defenders working against corruption", Paragraph 9, Special Rapporteur on the situation of human rights defenders, December 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/396/47/PDF/G2139647.pdf?OpenElement>.

22 Ibid.

concerns had been raised directly to the EBRD, this was not even mentioned in the relevant project documents.²³

LACK OF CONSIDERATION OF RISKS DERIVED FROM THE USE OF SECURITY FORCES

Some DFI-funded projects involve the use of private or public security forces, though the extent of the use varies. Despite the risk that the deployment and presence of security forces increases the reprisal risk, the banks' documents do not provide a detailed analysis of these specific risks.



Police in Yichk'isis, Guatemala

23 Interviews with human rights defenders (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 9 and 12, 2021.

ARMENIA

THE AMULSAR MINE



PROJECT TYPE

Amulsar gold mine.

FINANCING IN FOCUS

EBRD - US\$ 8.9 million in equity (2016).

REPRISALS

- Intimidation.
- Stigmatization.
- Threats.
- Online gender-based harassment.
- Criminalization.
- SLAPPs.
- Repression of protests.

TIMELINE

2006

Lydian International starts developing the Amulsar mine.

2007

IFC starts investing in the project.

2009

EBRD provides US\$ 4.5 million in equity.

2011

Protests against the project start.
- During community meetings, local activists start being harassed and intimidated.
- Activists address the first letter of complaint to EBRD.

2013

A group of citizens submits a public enquiry to EBRD, complaining about the project.

2014

Armenian CSOs file formal complaints to EBRD and IFC

2016

EBRD provides an additional US\$ 8.9 million in equity.

2017

Construction work start; IFC withdraws.

2018

Local communities block the access roads to the mine; protests and retaliations intensify.

2020

EBRD exits the project.



Credit: Ecoaction

ARMENIA: THE AMULSAR MINE

In south-east Armenia, the Amulsar mine has caused great concerns among local communities, who have been strongly opposing the project and speaking out against its serious environmental, health and economic impacts. The gold mine is located near the town of Jermuk — one of the country's top tourist destinations, famous for its spa resorts — and some rural villages where people mainly rely on agriculture. Pollution caused by the mine and the risk of toxic contamination pose a serious threat to the economic livelihood of these communities, and to endangered animal species in protected areas nearby.

Moreover, there were serious failures in the human rights due diligence process and local communities were not adequately consulted. These failures led to an escalation of social tension and reprisals, with those opposing the project facing harassment, threats, attacks and criminalization.

THERE WERE SERIOUS FAILURES IN THE HUMAN RIGHTS DUE DILIGENCE PROCESS AND LOCAL COMMUNITIES WERE NOT ADEQUATELY CONSULTED. THESE FAILURES LED TO AN ESCALATION OF SOCIAL TENSION AND REPRISALS.

The multinational corporation Lydian International started developing the project in 2006.²⁴ Exploration and construction activities have already been carried out, but the mine infrastructure has not been completed yet and

²⁴ Amulsar Gold Mine Project Environmental and Social Impact Assessment, page 3.2, Lydian International, 2016, <https://www.ebrd.com/sites/Satellite?c=Content&cid=1395250648189&d=&pagename=EBRD%2FContent%2FDownloadDocument>.

the project is currently on hold. Widespread protests and blockades, as well as withdrawal by major financiers, contributed to the project being halted. However, local defenders fear that new investors might provide funds in the near future to push the project forward.

The Amulsar mine project has received a total of US\$ 426 million from DFIs and private investors. The European Bank for Reconstruction and Development (EBRD) provided US\$ 4.5 million in equity to Lydian in 2009 and 8.9 million in 2016,²⁵ but exited the project after Lydian International restructuring in 2020. Apart from EBRD's support, throughout the years Lydian also received a total of US\$ 16.4 million from the International Finance Corporation (IFC), but the bank withdrew in May 2017.²⁶

²⁵ Project documents are available in the EBRD website: <https://www.ebrd.com/work-with-us/projects/psd/dif-lydian-amulsar-gold-mine.html>; <https://www.ebrd.com/work-with-us/projects/psd/lydian-amulsar-gold-mine-extension.html>.

²⁶ Between 2007 and 2015, IFC supported Lydian International through 12 equity investments. IFC withdrew its funding after the Office of the Compliance Advisor Ombudsman (CAO) issued a report that found shortcomings in IFC's appraisal and supervision of the project, such as the lack of an economic impact assessment of the town of Jermuk. However, when explaining its decision to withdraw, IFC did not mention the conflicts around the project. It only stated that Lydian had succeeded in attracting funding for mine development from private sector sources, and therefore the bank was going to deploy the capital where it was needed most. See: "CAO Investigation of IFC's Environmental and Social Performance in Relation to its Investments in Lydian International (Amulsar Gold Project), Armenia", CAO, June 2017, https://aconsole-static.s3.amazonaws.com/media/public/cases/LydianComplianceInvestigationReport-06192017_forwebsite.pdf; "IFC Refused from Funding Lydian International's Amulsar Project", Ecolur, September 2017, <https://www.ecolur.org/en/news/amulsar/international-finance-corporation-of-world-bank-ifc-refused-from-funding-lydian-internationals-amulsar-project/9492/>.

In this case study, the focus will be on the 2016 EBRD investment, which shows no evidence that the bank conducted a comprehensive human rights due diligence and assessed reprisal risks. By that time, the bank had already received several complaints and was aware of reprisals against local defenders in the context of the project, but nevertheless it provided further support to Lydian International. However, prior EBRD and IFC investments also indicate how both DFIs failed to conduct meaningful consultations with affected communities and failed to adequately assess, identify and address reprisal risks and other human rights impacts.

Retaliations

Since 2011, local residents and environmental defenders have drafted petitions, submitted official complaints and organized numerous protests to oppose the development of the Amulsar mine.²⁷ They have raised concerns regarding the project impacts, as well as the lack of transparency, inadequate environmental and social impact assessment procedures, lack of consultations and meaningful stakeholder engagement, corruption, and the retaliations suffered by those opposing the project.

Protests intensified in 2018, when the Velvet Revolution swept old elites and an authoritarian government out of power. Members of the local communities started blocking the roads leading to the mine and the construction works were suspended. As the protest grew stronger, retaliations against those leading or participating in the protests also intensified.

The risk of social conflict and escalation of attacks against project opponents could have been easily identified by EBRD, as cases of retaliations (such as threats and harassment during community meetings) had already taken place – and had been reported directly to the bank – before approving further funding in 2016.

27 See: “With 3000 signatures Jermuk community members petition the central and local government to ban metal mining in their territory and boost ecologically-friendly economy”, Armenian Environmental Front (AEF) Civil Initiative, 2018, <https://armecofront.net/en/amulsar-2/with-3000-signatures-jermuk-community-members-petition-the-central-and-local-government-to-ban-metal-mining-in-their-territory-and-boost-ecologically-friendly-economy/>; “Amulsar gold mine, Armenia”, CEE Bankwatch Network, <https://bankwatch.org/project/amulsar-gold-mine-armenia>.

Since construction work started, dozens of local activists have been harassed, smeared, threatened and criminalized by the company. These actions are in clear contradiction to EBRD policies, which require stakeholder engagement and opportunities for participation.

SINCE CONSTRUCTION WORK STARTED, DOZENS OF LOCAL ACTIVISTS HAVE BEEN HARASSED, SMEARED, THREATENED AND CRIMINALIZED BY THE COMPANY.

The company has been systematically deploying Strategic Lawsuits Against Public Participation (SLAPPs) as a tactic to silence project opponents, and especially against those who were reporting cases of alleged corruption.²⁸ Lydian has filed more than 20 cases, mostly in 2018 and 2019, and most of them are still ongoing.²⁹ Through defamation lawsuits, it has been demanding people retract their criticism and seeking excessive financial compensation for the damages caused to its reputation.

Dozens of activists have been sued for social media posts or comments during meetings, two media outlets for publishing news stories about the project,³⁰ and two members of parliament for their speeches during parliamentary meetings. In some cases, judges also suspended the bank accounts of activists accused by the company.³¹ Social media has been systematically used to harass activists, damage their reputations, and generate strong pressure to silence them. Women human rights defenders were targeted with offensive and sexist remarks.³² Although the authorship of these web pages

28 “SLAPPd: the Armenian activists fighting a mining multinational’s lawsuits”, CEE Bankwatch Network, June 2020, <https://bankwatch.org/blog/slappd-the-armenian-activists-fighting-a-mining-multinational-s-lawsuits>.

29 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 11, 2021. An overview of 14 of these lawsuits elaborated by BHRRC is available at https://www.business-humanrights.org/documents/19132/SLAPPs_files_by_Lydian_Armenia_bQqxza.docx.

30 Skizb Media was sued for publishing the article titled “What is the way out? Armen Sargsyan can change the situation”, available at <https://www.1in.am/2611361.html>. The online newspaper Lragir and one of his journalists were also sued after an interview was published on the newspaper’s website.

31 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 2021.

32 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 16, 2021; “Armenia: Judicial Harassment and Defamation Campaigns Against Several Environmental Defenders”, Civil Society Institute of Armenia, May 2019, <http://www.csi.am/en/>

is not always known, in one case a police investigation confirmed that Lydian was directly involved.³³

There have also been physical attacks. Police have often cracked down on the protests and detained demonstrators, restricting their right to protest and to participation.³⁴ Additionally, according to local activists, personnel hired by Lydian militarized the area. They threatened people and provoked clashes with community members, also during community meetings.³⁵

EBRD's failed due diligence

EBRD's due diligence was inadequate and failed to identify and address risks related to the project, and in particular risks of retaliation against people opposing the mine.³⁶ According to this research, there is no evidence that the EBRD conducted an independent assessment of the situation and the data gathered suggest that the bank ignored a number of factors which were clearly pointing to the risk of reprisals, including: the lack of consultations carried out prior to the project or meaningful engagement with the affected communities, the vocal and longstanding opposition to the project, the cases of alleged corruption, the retaliations which had already taken place before 2016, and the wider political context.

[armenia-judicial-harassment-and-defamation-campaigns-against-several-environmental-defenders](#).

33 "Criminal case reveals that Lydian Armenia mining company employees were spying and running fake profiles in social media", AEF Civil Initiative, March 2019, <https://armecofront.net/en/news/criminal-case-reveals-that-lydian-armenia-mining-company-employees-were-spying-and-running-fake-profiles-in-social-media/>.

34 "Arbitrary arrest and subsequent release of several environmental rights defenders", OMCT, August 2020, <https://www.omct.org/en/resources/urgent-interventions/arbitrary-arrest-and-subsequent-release-of-several-environmental-rights-defenders>.

35 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 11, 2021.

36 These failings in due diligence processes have had a cascading effect. Although environmental and social standards were not met, the fact that DFIs like IFC and EBRD had supported the project contributed to reassuring other investors. For instance, when letters of concerns were addressed to Ameriabank and a Swedish fund, they both responded that this was a trustworthy project and that adequate standards were being followed as DFIs were behind it. See "Tracing the Overrated Standards of International Banks (IFC, EBRD)", AEF civil initiative, February 2017, <http://armecofront.net/en/news/tracing-the-overrated-standards-of-international-banks/>.

In 2016, when EBRD approved further funding for the Amulsar mine, many of these risk factors had already been communicated to the bank in a number of letters and official complaints. The bank approved the project under its 2014 Social and Environmental Policy. Although the policy does not mention the need to conduct a retaliation risk analysis as part of the due diligence process prior to project approval, it does state that the client must guarantee that "the consultation will be free of external manipulation, interference, coercion, or intimidation".³⁷ However, it does not mention the way in which the bank will evaluate whether these conditions are met and does not mention the word retaliation.³⁸

LACK OF INDEPENDENT ASSESSMENT

A key shortcoming in the human rights due diligence process is that EBRD seems to have relied exclusively on documents prepared by the company.³⁹ Over the years, Lydian approved several stakeholder engagement plans and in 2016 it also produced an environmental and social impact assessment to meet DFIs requirements.⁴⁰ However, in the evaluation documents produced by Lydian, only some of the concerns raised by community members are briefly mentioned, but they have not been taken into account in the project implementation or further explored.⁴¹ There is also no reference to the affected communities's opposition to the project and the possible risks of retaliations. Yet, EBRD left the task of carrying out consultations and risk assessments entirely to the company. Without any measures to account for

37 Environmental and Social Policy, page 57, EBRD, 2014, <https://www.ebrd.com/sites/Satellite?c=Content&cid=1395238867768&d=&pagename=EBRD%2FContent%2FDownloadDocument>.

38 Similarly, the policy approved in 2019 states that prior consultations with stakeholders must be free from retaliation. However, it does not establish a procedure aimed at evaluating the risks of reprisals that guarantees that the communities can express themselves freely about the projects. The established procedure for categorizing projects based on risk does not explicitly mention the risk of retaliation. See "Environmental and Social Policy", EBRD, 2019, <https://www.ebrd.com/environmental-and-social-policy.pdf>.

39 The project documents published on the EBRD page were prepared by the company.

40 The CAO's Compliance Investigation Report mentions three different stakeholder engagement plans, carried out in 2011, 2013 and 2016. See: CAO Compliance Investigation Report, page 48, https://www.cao-ombudsman.org/sites/default/files/downloads/Lydian-ComplianceInvestigationReport-06192017_forwebsite.pdf. The last environmental and social impact assessment, elaborated in 2016, is available at: <https://www.ebrd.com/work-with-us/projects/esia/dif-lydian-amulsar-gold-mine-extension.html>.

41 Amulsar Gold Project Stakeholder Engagement Plan, pages 39-41, GEOTEAM, January 2016, <https://www.ebrd.com/documents/environment/esia-48579-sep.pdf>.

Lydian's interest in minimizing risks and silencing dissent, this led to a flawed process.⁴²

LACK OF MEANINGFUL CONSULTATIONS

During the early stages, local communities were not informed about the project. Later on, to obtain the operating permits, the company conducted hearings in the small villages around the site. In the consultations the company promised jobs, funds for social projects and the reparation of some community buildings, without informing the residents of the potential risks.⁴³

There have also been tensions and attacks during meetings organized by the company in 2011 and 2014, prior to the approval of the project. According to a defender interviewed for this research, the company would bring employees to the meetings, who didn't even live in the communities.⁴⁴ In a consultation held in 2014 there was a conflict when the community raised the issue of corruption. The police got into a fight, and people were attacked during the consultation.⁴⁵ In addition, in Gndevaz many people were pressured to sell the land, under the threat that otherwise the land would be expropriated at a lower price or without any compensation.⁴⁶ However, reference to this was not included in the project documentation.

42 In addition, the bank's financing was through equity. This means that EBRD bought shares in the company and was therefore one of the owners of the mine. Being one of the shareholders of the company, especially one that has historically also designated board members, heightened EBRD's responsibility. However it failed to adequately supervise and monitor the company's consultation process and assessment of project risks. For sources that indicate that the EBRD had designated board members, see for example: "Lydian announces resignation of Director", Yahoo News, October 17, 2012, <https://news.yahoo.com/lydian-announces-resignation-director-111700542.html>; "Lydian International Announces Further Investment by International Finance Corporation and the European Bank for Reconstruction and Development", FinanzNachrichten, March 21, 2014, <https://www.finanznachrichten.de/nachrichten-2014-03/29765573-lydian-international-announces-further-investment-by-international-finance-corporation-and-the-european-bank-for-reconstruction-and-development-256.htm>; "Euromax Announces Appointment of Director and Funding of Second \$3.75 Million Under Royal Gold Sale and Purchase Agreement", Euromax Resources, March 24, 2015, <https://www.euromaxresources.com/wp-content/uploads/2016/09/18.-euromax-announces-appointment-of-director-and-funding-of-second-3.75-million-under-royal-gold-sale-and-purchase-agreement.pdf>.

43 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 12, 2021.

44 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 16, 2021.

45 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, November 9, 2021.

46 Interview with human rights defender (anonymous for security

Additionally, until 2016, Lydian only recognized the villages of Gndevaz, Saravan, and Gorayk as part of the affected area, but did not include the resort town of Jermuk, despite the serious impact on the health and livelihood of its residents. Even after Jermuk was recognized as one of the affected areas, the company did not hold consultations with its residents.⁴⁷

While performing meaningful stakeholder engagement does not prevent retaliations from taking place, it is a precondition for anticipating and minimizing the risk. The case shows that a lack of meaningful stakeholder engagement prior to the approval of the project increased the risks of conflicts, and led to a failure to assess reprisals risks.

WHILE PERFORMING MEANINGFUL STAKEHOLDER ENGAGEMENT DOES NOT PREVENT RETALIATIONS FROM TAKING PLACE, IT IS A PRECONDITION FOR ANTICIPATING AND MINIMIZING THE RISK.

LACK OF ACTIONS FOLLOWING OFFICIAL COMPLAINTS

On several occasions, local residents and international CSOs urged DFIs to stop funding the project, including through official complaints to their accountability mechanisms. In 2014, Armenian civil society representatives filed two complaints to the EBRD's project complaint mechanism (PCM), that identified failures in the consultation with the communities and assessment of the project's impacts.⁴⁸ The complaints were dismissed, as PCM said they were premature as at that moment the bank had only invested in exploration activities.⁴⁹ Two years later, however, the EBRD approved further funding.

reasons), conducted online by the Coalition for Human Rights in Development, November 12, 2021.

47 "Complaint to the PCM" (signed by: residents of the affected communities, CEE bankwatch Network, EcoLur Informational NGO, Forests of Armenia NGO, Green Armenia NGO and Armenian Environmental Front, Civic Initiative), page 5, May 2020, <https://www.ebrd.com/documents/occo/amulsar-complaint-english.pdf>.

48 The first complaint was filed by EcoLur, EcoRight, Save Teghut civic initiative, Pan-Armenian Environmental Front civic initiative, Center for Jermuk Development, Center for Bird Lovers, Armenian Women for Health and Healthy Environment, a Gndevaz villager and an expert in environmental policy, July 2014: https://aconsole-static.s3.amazonaws.com/media/public/cases/amulsar_complaint.pdf; The second complaint was filed by more than 200 residents of the Gndevaz, October 2014: https://aconsole-static.s3.amazonaws.com/media/public/cases/amulsar2_complaint.pdf.

49 Project Complaint Mechanism Eligibility Assessment Report, page 18, EBRD, 2016, <https://aconsole-static.s3.amazonaws.com/media/public/cases/SatelliteContentid1395242938324pagina->

Other letters and communications addressed to EBRD were disregarded. In 2017, instead of addressing the concerns expressed in a letter from CSOs,⁵⁰ EBRD stated that it could no longer have a dialogue as one of the signatories, the Armenian Environmental Front (AEF), had “repeatedly engaged in unprofessional advocacy practices”.⁵¹ According to AEF, this referred to the use of a protest strategy where some people were holding posters with the name of officials responsible for the project. AEF wrote in a statement, “it was puzzling that EBRD used similar wording and actions as Lydian (...): we can only assume that EBRD is trying to avoid responsibility this way”.⁵² During the same period, in 2014, local CSOs also submitted two complaints to the Office of the Compliance Advisor/Ombudsman (CAO), the recourse mechanism for projects supported by IFC.⁵³ The claims provided additional information that should have been taken into account by the EBRD when evaluating its second project.

LACK OF ACTIONS TO ASSESS REPRISAL RISKS AND PREVENT REPRISALS

In the context of the Amulsar mining project, the cases of retaliation were easily foreseeable. When big money is involved, the greater the criticism, the greater the risk that those supporting the project will try to silence those opposing it. This is especially true in contexts where dissent is often repressed and opportunities for meaningful participation are missing. However, activists note that they were never consulted about retaliation risks. Also, when specific instances of reprisals were communicated, the bank did nothing to protect the right to participation and freedom of expression.

[meEBRD2FCContent2FDownloadDocument.pdf](#).

50 “Open Letter: EBRD investment in Lydian International’s mining project in Amulsar and how it threatens the sustainability of the region”, AEF civil initiative, October 2017, <http://armecofront.net/en/news/ebrd-investment-in-lydian-international-mining-project-in-amulsar-and-how-it-threatens-the-sustainability-of-the-region/>.

51 “EBRD renounces its liability in Amulsar mine project”, AEF civil initiative, February 2018, <http://armecofront.net/en/amulsar-2/ebdr-renounces-its-liability-in-amulsar-mine-project/>.

52 Ibid.

53 The first complaint to the CAO was filed by EcoLur, EcoRight, Save Teghut, Pan-Armenian Environmental Front, Center for Jermuk Development, Center for Bird Lovers, Armenian Women for Health and Healthy Environment, a Gndevaz villager and an expert in environmental policy, in April 2014, <https://aconsole-static.s3.amazonaws.com/media/public/cases/ComplainttoFI16.04.2014.pdf>; the second complaint was filed by 148 residents of Gndevaz in July 2014, https://aconsole-static.s3.amazonaws.com/media/public/cases/Lydian-02Gndevazcomplaint_ENG_redacted.pdf.

WHEN SPECIFIC INSTANCES OF REPRISALS WERE COMMUNICATED, THE BANK DID NOTHING TO PROTECT THE RIGHT TO PARTICIPATION AND FREEDOM OF EXPRESSION.

There have also been several allegations of corruption related to the project. As corruption generally involves officials who have the interest, power and resources to silence those who speak out, activists raising their voice around these issues are at greater risk. In fact, activists who reported corruption linked to the Amulsar mine were among the most targeted. However, EBRD did not take into account the numerous allegations and suspicions of corruption in order to identify and mitigate risks of retaliation.

In 2014, civil society organizations had also communicated to the bank that the company had threatened to file judicial cases against defenders who had criticized the project.⁵⁴ In 2010, the then Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, had advised the Armenian government to review legislation with regard to insult and defamation.⁵⁵ She also stated that environmental activists were among the most vulnerable groups of human rights defenders in Armenia.

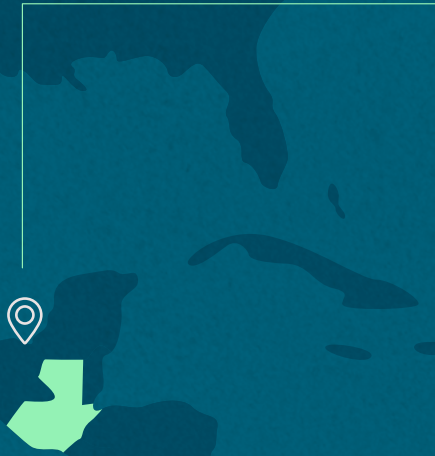
In conclusion, this case study shows that EBRD failed to assess potential reprisal risks and therefore did not plan or implement any risk mitigation strategy. If the bank had carried out a consultation about the different threats and restrictions to participation that local activists and residents were facing, as well as an analysis of the wider context, it would have been able to predict the high risks of retaliations for defenders and potentially take actions to prevent attacks from escalating.

54 See: SOS Amulsar Initiative complaint to EBRD, pages 4 and 5, July 2014, https://www.ebrd.com/downloads/integrity/amulsar_complaint.pdf and EcoLur Open Letter to Geoteam CJSC, June 2012: <https://www.ecolur.org/en/news/mining/ecolur-open-letter-to-quot-geoteamquot-cjsc/3924/>.

55 Addendum: Mission to Armenia, Report of the Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, page 22, December 2010, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add2.pdf>.

GUATEMALA

THE HYDROELECTRIC PROJECTS IN YICHK'ISIS



PROJECT TYPE

Hydroelectric projects in Yichk'isis.

FINANCING IN FOCUS

IDB Invest - US\$ 13 million (2013).

REPRISALS

- Defamation.
- Harassment.
- Criminalization.
- Shootings.
- Torture.
- Killings.

TIMELINE

2009

In a consultation, San Mateo Ixtatán communities express their opposition to mining and hydroelectric projects in their territory.

2011

UN expert publishes a report on the human rights violations suffered by Indigenous Peoples affected by extractive projects in Guatemala.

2012

The Inter-American Commission on Human Rights denounces lack of consultation with Indigenous communities about development projects in their territories.

2013

IDB Invest provides US\$ 13 million to develop two hydro-projects in Yichk'isis.

2014

Militarization of the area

2017

Among an escalation of criminalization, threats and attacks, Sebastián Alonso, an Indigenous community member, is killed during a peaceful protest.

2018

Criminalization and other reprisals continue. Two Indigenous community members, Nery Esteban Pedro and Domingo Esteban Pedro, are killed.

2018

Community members, accompanied by national and international groups, submit a complaint to the IDB's complaint mechanism (MICI).

2019

After MICI's visit, Indigenous leader Julio Gómez Lucas and six family members are kidnapped and tortured.

2021

MICI publishes its report, recognizing that IDB Invest had violated numerous operational policies.



Members of the Peaceful Resistance of Yichk'isis, Guatemala. Credit: Front Line Defenders

GUATEMALA: THE HYDROELECTRIC PROJECTS IN YICHK'ISIS

In 2013, IDB Invest (formerly known as Inter-American Investment Corporation) provided US\$ 13 million to the company Energía y Renovación S.A., to develop two hydroelectric dams in the municipality of San Mateo Ixtatán, in the department of Huehuetenango, in northwestern Guatemala.⁵⁶ The project also included the construction of a transmission line and several electrical substations.

In this area, 97.69% of the local population is Indigenous.⁵⁷ There are different Maya communities (including the Chuj, Q'anjob'al, Akateka and Poptí), for a total of almost 44 thousand people distributed across different villages and hamlets.

The project presents serious environmental, social, security and gender related impacts.⁵⁸ It has polluted the rivers, with a devastating impact in an area where most of the people rely on small-scale agriculture for their livelihoods,⁵⁹ and adversely impacted the local flora and

fauna.⁶⁰ The project has also damaged archeological and sacred sites (impacting the culture and traditional way of life of local Indigenous people), created social conflicts and insecurity, and broken the community fabric.⁶¹ Women have particularly suffered from these social, environmental and economic impacts.⁶²

The local indigenous communities directly impacted by the project have been peacefully resisting the project and mobilized in the Peaceful Resistance of the Microregion of Ixquisis. It is a movement integrated by nine communities, including Indigenous Peoples and persons of mixed Amerindian and European descent, accompanied among others by the Ancestral Plurinacional Government of the Indigenous Peoples Mayas Q'anjob'al, Chuj, Akateka y Poptí.⁶³ They have been protesting against the project impacts and the lack of meaningful consultations. In the project assessment, they were not recognized as Indigenous and therefore the required safeguards were not applied. The lack of proper human rights due diligence

56 The total amount includes two loans approved by the Inter-American Investment Corporation (now IDB Invest) in September 2013, to develop projects that are part of the same hydroelectric complex: Generadora San Mateo S.A. (<https://www.idbinvest.org/en/projects/generadora-san-mateo-sa>) and Generadora San Andrés S.A. (<https://www.idbinvest.org/en/projects/generadora-san-andres-sa>).

57 2018 National Population and Housing Census, Guatemala National Institute of Statistics, <http://redatam.censopoblacion.gt/bingtm/RpWebStats.exe/Qts?BASE=CPVGT2018&ITEM=IND-GENPER5&lang=ESP>.

58 "Mayan women in defense of their rivers: confronting dams and the financing of IDB Invest", Interamerican Association for Environmental Defense (AIDA), 2020, <https://aida-americas.org/en/fact-sheet-mayan-women-defense-their-rivers>.

59 Interviews with human rights defenders (anonymous for security

reasons), conducted online by the Coalition for Human Rights in Development, November 24, December 13 and 14, 2021.

60 Compliance review report, page 17, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHA-RE-1567711961-1773>.

61 Ibid.

62 "Mayan women in defense of their rivers: confronting dams and the financing of IDB Invest", page 3, AIDA, 2020, <https://aida-americas.org/en/fact-sheet-mayan-women-defense-their-rivers>.

63 "Communities defending human rights, the cases of Ixquisis and San Rafael Las Flores, Guatemala", page 2, Protection International, Carea and Farmaceutics Mundi, November 2019, <https://www.protectioninternational.org/sites/default/files/guatemala/triptico-guatemala-en-aaff.pdf>.

led to an escalation of reprisals against those opposing the project, who have been facing violent attacks, including defamation, harassment, criminalization, arbitrary detentions, shootings, torture and killings.

In 2018, members of the affected communities of Yichk'isis (also spelled as Ixquisis) submitted a complaint to the IDB's Independent Consultation and Investigation Mechanism (MICI).⁶⁴ They were represented by the Q'anjob'al, Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government, with the support of the Interamerican Association for Environmental Defense (AIDA) and the International Platform against Impunity. Three years later, MICI published its final report, determining that the bank had violated numerous operational policies.⁶⁵ MICI made 29 recommendations, some of them related to this specific project, and others aimed at the implementation of institutional changes to avoid breaching the social and environmental safeguards in future projects.⁶⁶ In what was pointed out as an unprecedented event, MICI's report also opened the possibility of a responsible withdrawal from the project, as requested by the communities.⁶⁷ Finally, after the publication of the MICI report that detected noncompliance with IDB Invest's policies and safeguards, the bank — setting a historical precedent — announced

its decision to withdraw its financing from the project, and also designed a responsible exit plan.⁶⁸

Retaliations

During the 36-year internal armed conflict (1960–1996), people in the area impacted by the project suffered violence and massacres, perpetrated by the army and paramilitary groups. When the project started, the company hired former paramilitary and military personnel as private security guards.⁶⁹ The area was again heavily militarized, with the national police and the army establishing their stations in the territory of Yichk'isis, deepening historical tensions and bringing back insecurity, fear and violence.⁷⁰ Security guards and the police threatened people opposing the project, and violently and repeatedly cracked down on protests.⁷¹ Many people injured during the protests were hospitalized and even children were intoxicated by tear gas.⁷²

In 2017, Sebastián Alonso, a 72-year-old Indigenous man, was killed during a peaceful protest, when armed men hiding behind bushes shot at protesters, in the presence of public security forces.⁷³ In 2018, Nery Esteban Pedro and Domingo Esteban Pedro, two brothers leaders of the Bella Linda

64 The complainants belong to the Maya Chuj and Maya Q'anjob'al Indigenous Peoples, from the communities of Bella Linda, Yulchen Frontera, Nuevo San Mateo, Pojom Nueva Concepción, and Caserío San Francisco, which are all belonging to the municipality of San Mateo Ixtatán. They were represented by the Q'anjob'al, Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government, with the support of the AIDA and the International Platform against Impunity. See: "Guatemalan Indigenous communities file complaint for dams' damages", AIDA, August 2018, <https://aida-americas.org/en/press/guatemalan-indigenous-communities-file-complaint-for-dams-damages>.

65 The projects were approved under 2016 IDB's environment and safeguards compliance policies, which were then updated in 2020. When the project was approved, the bank should have complied with: Operational Policies of the IDB, the Performance Standards on Social and Environmental Sustainability of the International Finance Corporation (PS), the World Bank Group/International Finance Corporation Environmental, Health, and Safety Guidelines (EHS Guidelines), and relevant industry sector guidelines. In its report, MICI noted that the bank did not comply with its applicable policies. The case shows that in addition to policies, it is important to analyze the bank's practices in the implementation of social and environmental safeguards. See: Compliance review report, pages 76-78, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/get-document.aspx?docnum=EZSHARE-1567711961-1773>.

66 "Approved the 29 recommendations of the MICI on two hydroelectric projects in Guatemala", MICI, 2021, <https://www.iadb.org/en/node/31418>.

67 "Mecanismo de rendición de cuentas del BID allana el camino para un retiro de inversión por incumplimiento de políticas internas", AIDA, October 2021, <https://aida-americas.org/es/prensa/mecanismo-de-rendicion-de-cuentas-del-bid-allana-el-camino-para-un-retiro-de-inversion-por-incumplimiento-de-politicas-internas>.

68 "Indigenous victory as development bank withdraws investment and drafts exit plan following rights violation in Guatemala", AIDA, March 2022, <https://aida-americas.org/en/press/indigenous-victory-as-development-bank-withdraws-investment-and-drafts-exit-plan>.

69 "Who pays the costs of development", Jotay: Acting Together Program, Plataforma Internacional contra la Impunidad, and Bank Information Center, January 2021, https://media.bhrrc.org/media/documents/Who_Pays_the_Cost_of_Development_ENG.pdf; interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 13, 2021.

70 Ibid.

71 See: "Ataque, secuestro y tortura a integrantes de la Resistencia Pacífica de la Microregión de Ixquisis", Front Line Defenders, March 2019, <https://www.frontlinedefenders.org/es/statement-report/peaceful-resistance-microregion-ixquisis-members-attacked-kidnapped-and-tortured>; "Amenazas y violencia en contra de la Resistencia Pacífica de la Microregión de Ixquisis", Front Line Defenders, July 2018, <https://www.frontlinedefenders.org/es/case/threats-and-violence-against-peaceful-resistance-ixquisis-microregion>.

72 "Más de 100 Organizaciones Denuncian Asesinatos, Agresiones contra Resistencia Pacífica de Ixquisis", NISGUA, December 2018, <https://nisgua.org/denuncian-asesinatos-agresiones-ixquisis/>.

73 "Statement on the repression and assassination of the defender Sebastián Alonso Juan", Protection International and other CSOs, January 2017, https://www.protectioninternational.org/wp-content/uploads/2017/01/Comunicado_Represion-y-asesinato-del-defensor-Sebastian-Alonso-Juan-en-Ixquisis.pdf.

community who opposed the project, were murdered.⁷⁴ The killer was identified as a person close to the company.⁷⁵

After the MICI visit in 2019, Indigenous leader and coordinador of the Chuj Indigenous Peoples in the Gobierno Ancestral Plurinacional Julio Gómez Lucas, and six family members, including his wife, were kidnapped and tortured for eight hours by some members of the Tz'ununkab community.⁷⁶ They were dragged to a community center, where local residents were summoned to witness the punishment, and they also suffered sexual violence.⁷⁷

Women, including pregnant ones and young girls, suffered intimidation, harassment, assaults and sexual violence.⁷⁸ Also a young girl was raped. These abuses were reportedly committed by security forces and women are still feeling particularly intimidated by their ongoing presence. Their freedom of movement is restricted, as they fear being sexually assaulted.⁷⁹

According to one organization that accompanies the communities in Yichk'isis, at least 63 people have been criminalized on unfair charges so far.⁸⁰ They were accused of acts of violence, attempts of murder, instigation to

commit a crime, illicit meetings and demonstrations, and being part of illegal armed groups.⁸¹

Members of the Peaceful Resistance movement were also subjected to smear and defamation campaigns through fake social media profiles.⁸² Several media depicted the activists as violent, defining the protests as acts of terrorism, and accused protestors of having attacked the police.⁸³ In the case of one defender – who was accused of having damaged the project machinery – the judge confirmed that media outlets had spread false information that benefited the interest of the company.⁸⁴

IDB Invest's failed due diligence

LACK OF ASSESSMENT OF THE RISK OF SOCIAL CONFLICT

Bank documents published before the project approval had identified the risk of social conflict. However, the documents only analyze the possible impact on the project, rather than the risk for the communities and particularly for those opposing it. The documents also fail to address specific security risks related to the previous armed conflict, such as the impact on the community fabric.

BANK DOCUMENTS PUBLISHED BEFORE THE PROJECT APPROVAL HAD IDENTIFIED THE RISK OF SOCIAL CONFLICT. HOWEVER, THE DOCUMENTS ONLY ANALYZE THE POSSIBLE IMPACT ON THE PROJECT, RATHER THAN THE RISK FOR THE COMMUNITIES AND PARTICULARLY FOR THOSE OPPOSING IT.

74 "Guatemala: asesinan a dos defensores que resisten a proyectos hidroeléctricos en Ixquisis", COPINH, December 2018, <https://copinh.org/2018/12/guatemala-asesinan-a-dos-defensores-que-resisten-a-proyectos-hidroelectricos-en-ixquisis/>.

75 "Ataque, secuestro y tortura a integrantes de la Resistencia Pacífica de la Microregión de Ixquisis", Front Line Defenders, March 2019, <https://www.frontlinedefenders.org/es/statement-report/peaceful-resistance-microregion-ixquisis-members-attacked-kidnapped-and-tortured>.

76 "Ataque, secuestro y tortura a integrantes de la Resistencia Pacífica de la Microregión de Ixquisis", Front Line Defenders, March 15, 2019, <https://www.frontlinedefenders.org/es/statement-report/peaceful-resistance-microregion-ixquisis-members-attacked-kidnapped-and-tortured>.

77 Ibid.

78 "Más de 100 Organizaciones Denuncian Asesinatos, Agresiones contra Resistencia Pacífica de Ixquisis", NISGUA, December 2018, <https://nisgua.org/denuncian-asesinatos-agresiones-ixquisis/>.

79 A detailed account of the different gender impacts of the project is registered in the "Comments from the Requesters on the Preliminary Verification Report on the Compliance of the MICI regarding the Generadora San Mateo S.A. Projects and Generadora San Andrés S.A. in Guatemala", included as Annex III in the MICI report.

80 See: "Annex III: Requesters' Comments on MICI's Preliminary Compliance Review Report on the Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects in Guatemala", Plurinational Government of the Akateko, Chuj, Q'anjob'al, and Popti First Nations, AIDA, and International Platform against Impunity, June 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHA-RE-1567711961-1773>;

"Who pays the costs of development", Jotay: Acting Together Program, Plataforma Internacional contra la Impunidad and bank Information Center, January 2021, https://media.bhrrc.org/media/documents/Who_Pays_the_Cost_of_Development_ENG.pdf.

81 "Es detenido Julio Gomez Lucas, Defensor de los Derechos de los Pueblos Indígenas", Front Line Defenders, January 2020, <https://www.frontlinedefenders.org/es/case/Indigenous-human-rights-defender-julio-gomez-lucas-detained>.

82 "Denuncia pública de la Resistencia Pacífica de la Microregión de Ixquisis", AIDA, 2018, <https://aida-americas.org/es/recurso/denuncia-publica-de-la-resistencia-pacifica-de-la-microregion-de-ixquisis>.

83 "Criminalización a través de la desinformación y difamación: el caso de Ixquisis", Acoguate, March 2018, <https://acoguate.org/criminalizacion-a-traves-de-la-desinformacion-y-difamacion-el-caso-de-ixquisis/>.

84 "Rigoberto Juárez Gobierno Ancestral Plurinacional Maya Q'anjob'al", BHRRC, November 2018, <https://www.business-humanrights.org/en/latest-news/rigoberto-ju%C3%A1rez-gobierno-ancestral-plurinacional-maya-qanjobal/>.

In its final report, MICI found several violations of specific components of IDB's Sustainability Policy related to human rights risks assessment and the impacts of the project on social cohesion, violence and insecurity.⁸⁵ According to MICI, the policies required an assessment that included the risk that people might be stigmatized and criminalized for their opposition to the project.⁸⁶

MICI also recommended specific measures to strengthen the bank's institutional capacity to prevent reprisals and address reprisals risks. IDB Invest's current policy makes reference to reprisals but does not establish a methodology to guide reprisals risks assessments.⁸⁷ The bank, together with IFC, has also co-published guidelines for the private sector, on addressing risks of retaliation. The recommendations however are only addressed to clients, and fail to explain how the bank will act to prevent and address reprisals linked to projects.⁸⁸

FAILURE TO CHARACTERIZE THE AFFECTED PEOPLE AS INDIGENOUS COMMUNITIES

According to MICI, 86% to 96% of the local population in the area impacted by the project is Indigenous.⁸⁹ However, IDB Invest's environmental and social impact assessment stated that communities were mostly non-Indigenous. In May 2009, the communities of San Mateo Ixtatán participated in a good faith consultation, ratified by a municipal act, and expressed their opposition to mining and hydroelectric projects in their territory.⁹⁰ However, the consultation outcome was not respected by municipal authorities and was not taken into account by the bank.

85 Compliance review report, pages 49-65, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHA-RE-1567711961-1773>.

86 Ibid, page 55.

87 IDB Invest Environmental and Social Sustainability Policy, paragraph 20, IDB Invest, 2020, <https://www.idbinvest.org/en/download/12366>.

88 "Good Practice Note for the Private Sector: Addressing the Risks of Retaliation Against Project Stakeholders", IDB Invest, March 2021, <https://www.idbinvest.org/en/publications/good-practice-note-private-sector-addressing-risks-retaliation-against-project/>.

89 Compliance review report, page 22, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHA-RE-1567711961-1773>.

90 The consultation (Act No.020-2009 From Municipality San Mateo Ixtatán) was organized by municipal authorities and was attended by 25,646 inhabitants of 72 communities in the region. Communities expressed their rejection of "open-pit mining exploration and natural resources in the municipality".

The right to FPIC is required by the United Nations Declaration on the Rights of Indigenous Peoples.⁹¹ Violating this right was one of the factors that generated social conflict in the area and led to protests, that the company tried to silence and violently repress. As IDB Invest did not correctly identify the presence of Indigenous communities in the region and did not respect their right to self-determination, it also failed to identify potential human rights risks related to these communities, which could have been avoided through HRDD.

Although there were consultations, they were not meaningful. Representatives of the company talked to some community members and promised benefits, such as jobs, electricity, schools, health centers, and roads, without informing about possible risks and impacts. MICI found that "the support was uninformed and largely based on the expectation of benefits" and that the communities did not have access to simple and accessible information in local languages about the project assessments, its impacts, and prevention and mitigation measures. MICI also noted that the community engagement strategy validated by IDB Invest did not include stakeholder mapping and many communities were not consulted. The lack of information about the risks and adverse impacts of the project, the lack of meaningful consultations with all stakeholders, and the promise of benefits to members of the communities supporting the project, through jobs, infrastructure and other assets, led to divisions and tensions among members of the communities.

MICI also found that IDB Invest wrongly assigned a risk category B to the project, which should have been categorized as A for the potential impacts.⁹² Therefore, it did not comply with requirements such as the publication of all environmental impact assessments at least 120 days prior to the Board's approval and at least two meaningful consultations during the preparation stage.

91 United Nations Declaration on the Rights of Indigenous Peoples, Article 19, UN, September 2007, www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/UNDRIP_E_web.pdf.

92 Category A covers projects with significant impacts on protected or sensitive areas and/or vulnerable groups, including critical natural habitats, Indigenous territories, and cultural sites of spiritual, historical, or archaeological importance.

LACK OF CONSIDERATION OF THE GENDER IMPACTS

Many of the reprisals linked to the high militarization of the area differentially affected women and girls, who were subjected to specific forms of violence because of their gender. MICI noted that the risk of gender-based violence was not identified in the initial social assessments and “no measures were taken beyond general statements that workers were subject to a code of conduct, and two training on gender-based violence conducted in 2019”.⁹³ The bank could have anticipated risks of gender-based violence through consultations and effective HRDD, but the risk was not identified and there were no preventive measures in place.

THE BANK COULD HAVE ANTICIPATED RISKS OF GENDER-BASED VIOLENCE THROUGH CONSULTATIONS AND EFFECTIVE HRDD, BUT THE RISK WAS NOT IDENTIFIED AND THERE WERE NO PREVENTIVE MEASURES IN PLACE.

LACK OF AN INDEPENDENT ASSESSMENT

Even though the company had a clear conflict of interest, the bank relied entirely on the information it provided regarding the identification of affected communities, their characterization as non-indigenous, and the consultations with them. An independent evaluation and meaningful consultations would have revealed the risks of social conflict and reprisals. Instead, the bank assigned these crucial tasks to the company implementing the project, which had skewed incentives and failed to disclose potential impacts. The company also ended up amplifying divisions and, directly and indirectly, attacking those opposing the project.⁹⁴ IDB Invest should have looked for information from outside sources, other than the client, given the polarized context.⁹⁵

93 Compliance review report, page 35, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1773>.

94 Some of the reprisals suffered by communities that opposed the project were allegedly perpetrated by people who were recognized as employees of the company, or people who were hired by the company. The company also smeared defenders and contributed to creating divisions in the communities. See: Compliance review report, Annex V: Timeline of violent events, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1773>; “Rigoberto Juárez Gobierno Ancestral Plurinacional Maya Q’anjob’al”, BHRRC, November 10, 2018, <https://www.business-humanrights.org/en/latest-news/rigoberto-juarez-gobierno-ancestral-plurinacional-maya-qanjobal/>, among others.

95 MICI pointed out that “in such polarized climates as this one,

LACK OF CONSIDERATION OF THE SITUATION OF INDIGENOUS COMMUNITIES IN THE COUNTRY

In Guatemala, one of the most common causes of social conflicts is the exploitation of natural resources without consultation with Indigenous communities. The bank could have avoided and mitigated this risk, had it considered the reports by regional and international human rights treaty bodies that have documented many conflicts in Guatemala arising from the use of natural resources without the prior consent of the affected Indigenous Peoples, as well as the violent state response against those opposing extractive projects.⁹⁶

In conclusion, the findings of this case study show that IDB Invest failed to assess potential reprisal risks and therefore did not plan or implement an appropriate risk mitigation strategy. If the bank had identified the Indigenous communities impacted by the project and carried out appropriate consultations, as well as an analysis of the wider context for Indigenous communities affected by development projects in the country, it would have been able to predict the high risks of retaliations for defenders and potentially take actions to prevent attacks from escalating.

an adequate monitoring of social performance requires seeking and receiving information through outside channels besides the Client. In this way, IDB Invest can ensure that the information on the implementation of the measures is comprehensive, systematic, and complete. That has not happened in this case”, Compliance review report, page 45, MICI, 2021, <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1773>

96 Violations of the rights of Indigenous communities similar to those registered in Yichk’isis were already reported by the Rapporteur for Guatemala and Rapporteur on the Rights of Indigenous Peoples, during a working visit of the Inter-American Commission on Human Rights, one year before the approval of the project. See: “IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women”, IACHR, March 2012, https://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp.

Also, in 2011, the UN Special Rapporteur on the rights of Indigenous Peoples published a report on the situation of Indigenous Peoples in Guatemala in relation to extractive and other projects in their traditional territories. See: “Observaciones sobre la situación de los derechos de los pueblos indígenas de Guatemala en relación con los proyectos extractivos, y otro tipo de proyectos, en sus territorios tradicionales”, UN Special Rapporteur on the Rights of Indigenous Peoples, March 2011, https://www2.ohchr.org/english/issues/Indigenous/rapporteur/docs/guatemala16th_auv.pdf.

PHILIPPINES

THE KALIWA DAM



PROJECT TYPE

Kaliwa dam.

FINANCING IN FOCUS

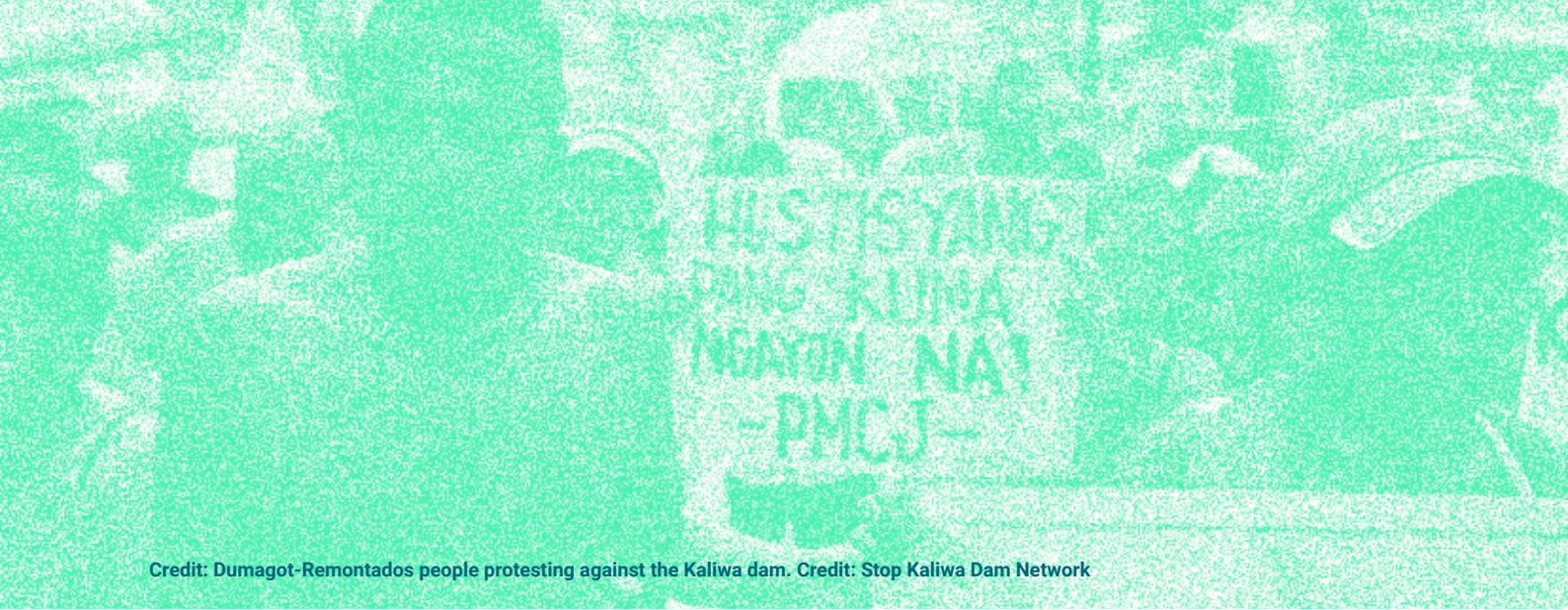
Export-Import Bank of China -
US\$ 211.2 million (2018).

REPRISALS

- Threats.
- Harassment.
- Killings.

TIMELINE

- 2009** *Dumagat-Remontado Indigenous communities successfully fight against a proposed mega-dam in their territory.*
- 2017** *Front Line Defenders documents 60 cases of defenders killed in the Philippines, in a context of continuous threats and attacks, especially against environmental and Indigenous activists.*
- 2018** *Exim Bank of China approves a US\$ 211.2 million loan for the New Centennial Water Source program, which includes the Kaliwa dam.*
- 2019**
APRIL-SEPTEMBER *During consultations, Indigenous communities reject the project.*
- 2019**
OCTOBER *The government approves the Environmental Compliance Certificate for the Kaliwa dam.*
- 2019**
OCTOBER *President Duterte threatens to use "extraordinary powers" to push the project forward.*
- 2021** *Two Indigenous activists are killed by special police forces.*



Credit: Dumagat-Remontados people protesting against the Kaliwa dam. Credit: Stop Kaliwa Dam Network

PHILIPPINES: THE KALIWA DAM

In the island of Luzon in the Philippines, the Dumagat-Remontado Indigenous communities have been fiercely resisting against dams and big infrastructure projects threatening their territory for decades. In 2009, they successfully fought against the massive Laiban hydroelectric project, which was threatening to displace thousands of people and destroy the local ecosystem. A few years later, however, this territory was again under threat.

In November 2018, Manila’s Metropolitan Waterworks and Sewerage System (MWSS) secured a loan for over US\$ 211 million from the Exim Bank of China for the New Centennial Water Source-Kaliwa Dam Project, an integrated dam system that is set to address water shortages in the area of Metro Manila.⁹⁷

Although smaller in scale compared to the hydro-project proposed earlier, the Kaliwa dam risks having a devastating environmental, social, cultural and economic impact. The dam is being built in ancestral lands belonging to Dumagat-Remontado Indigenous communities. The reservoir, which is expected to submerge 230 acres of land, will flood their homes, their sacred sites, part of the forests that are crucial for their livelihoods, and displace members of the communities. It will also affect fishing communities and farmers downstream. The site is part of the Kaliwa Watershed Forest Reserve, which was recognized as a wildlife

sanctuary in 1968.⁹⁸ Activists say around 100,000 people could be endangered because of the project.⁹⁹

In 2019, the Department of Environment and Natural Resources issued a conditional Environmental Compliance Certificate to MWSS, even though a previous government-conducted environmental impact assessment had warned the dam would cause flash floods, endanger endemic wildlife and plants, threaten local biodiversity and force massive species migration.¹⁰⁰

According to the STOP Kaliwa Dam coalition,¹⁰¹ local Indigenous communities have not been properly consulted or have been tricked into signing misleading consent forms, despite Philippine law requiring that such projects ensure FPIC of Indigenous communities.

When local communities started actively and publicly voicing their opposition, Philippine President Duterte warned he would use “extraordinary powers” to push the project through.¹⁰² These threats are particularly

97 “Preferential Buyer’s Credit Loan Agreement on The New Centennial Water Source-Kaliwa Dam Project between Metropolitan Waterworks and Sewerage System as Borrower and the Export-Import Bank of China as Lender”, November 2018, https://www.documentcloud.org/documents/20488747-phl_2018_422.

98 “The Kaliwa dam, an old controversy”, Manila Bulletin, November 2019, <https://mb.com.ph/2019/11/04/the-kaliwa-dam-an-old-controversy/>.

99 “Stop Kaliwa dam, Save our Future”, Change, https://www.change.org/p/president-rodrigo-duterte-stop-kaliwa-dam-save-our-future?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=758e81a0-8f50-11e9-9c53-f5b5529a6c3c.

100 “Controversial dam gets green light to flood a Philippine protected area”, Mongabay, October 30, 2019, <https://news.mongabay.com/2019/10/controversial-dam-gets-green-light-to-flood-a-philippine-protected-area/>.

101 A broad network of local and international organizations, institutions, and sectors actively standing against the controversial New Centennial Water Source-Kaliwa Dam in Sierra Madre. See “Stop Kaliwa dam” Facebook page: <https://www.facebook.com/StopKaliwaDam/>.

102 “Duterte to use ‘extraordinary powers’ to see Kaliwa Dam pro-

concerning, as the Philippines is one of the most dangerous countries for human rights defenders.¹⁰³ Local defenders have reported frequent retaliations, including intimidation, threat, two suspicious killings, and an extensive militarization of their territory.

WHEN LOCAL COMMUNITIES STARTED ACTIVELY AND PUBLICLY VOICING THEIR OPPOSITION, PHILIPPINE PRESIDENT DUTERTE WARNED HE WOULD USE “EXTRAORDINARY POWERS” TO PUSH THE PROJECT THROUGH.

Retaliations

Indigenous communities at risk of being affected by the Kaliwa dam are actively opposing the project, due to its adverse environmental and social impacts, and the lack of free, prior and informed consent. The struggle intensified in 2018, after the MWSS started the construction of a road to access the dam.¹⁰⁴ The communities, with the support of national groups, formed a network and started drafting petitions and organizing demonstrations against the dam.¹⁰⁵ In 2019, local organizations opposed to the project also requested a meeting with the Exim Bank of China, but they were told that they should talk to their government instead.¹⁰⁶

As a result of their activism, the defenders have suffered harassment, intimidation, threats and killings. Since the early stages of the project, the area has been heavily militarized, to threaten local communities and try silencing any dissent. Some defenders have been

smeared and red tagged,¹⁰⁷ which means being labeled as insurgents and rebels by the National Task Force to End Local Communist Armed Conflict.¹⁰⁸ Some members from the communities who were opposing the Kaliwa dam were also summoned to military camps, where they were questioned and threatened. This has had a chilling effect: many people are afraid to speak out, because they risk being labeled as rebels, criminalized or attacked.

In 2021, two Indigenous activists were killed by the Special Action Force, a unit of the national police specialized in counter terrorism and security operations against insurgents.¹⁰⁹ According to a defender, they were killed inside their house while asleep. The police said they carried weapons, but the communities say that the weapons were planted.¹¹⁰

The proponents of the dam also pressured the communities and exacerbated internal divisions by offering money to people affected by the Sumag River Diversion project, who had not yet received compensation.¹¹¹ They were promised their unpaid compensations and extra money if they would approve the Kaliwa dam.¹¹²

In 2019, the project proponents carried out consultations and failed to obtain the consent of the affected communities, as five out of six clusters rejected the dam.¹¹³ The following years, COVID-19 restrictions were used as a pretext to limit the organization of communities

ject through”, Rappler, October 2019, <https://www.rappler.com/nation/243601-duterte-use-extraordinary-powers-for-kaliwa-dam/>. The article reports that president Duterte said: “Let me be very clear to the citizens. You have every right to protest if it places your lives in jeopardy, but if the safeguards are there between your concerns and the crisis that you’re trying to avoid, I will use the extraordinary powers of the presidency”.

103 “Annual Report on Human Rights Defenders at Risk in 2017”, page 15, Front Line Defenders, 2017, https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf.

104 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 11, 2022.

105 See for example: “Stop Kaliwa dam, Save our Future”, available on Change.org: https://www.change.org/p/president-rodrigo-duterte-stop-kaliwa-dam-save-our-future?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=758e81a0-8f50-11e9-9c53-f5b5529a6c3c.

106 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 11, 2022.

107 “Kaliwa Dam excavation to start in December”, Manila Bulletin, June 7, 2021, <https://mb.com.ph/2021/06/07/kaliwa-dam-excavation-to-start-in-december/>.

108 “National Task force to End Local Communist Armed Conflict”, <https://www.ntfelcac.org/>.

109 “Philippines: Dumagat Tribal Members Bury 2 Killed in Police Raids”, Benar News, March 19, 2021, <https://www.benarnews.org/english/news/philippine/activists-buried-03192021154929.html>; “2021- State (of) Tyranny and Terrorism”, Philippine Task Force for Indigenous Peoples Rights, December 9, 2021, <https://philtfip.org/2021/12/09/2021-state-of-tyranny-and-terrorism/>; “Who Were Killed On ‘Bloody Sunday’? Labor Leader, Fisherfolk, Housing Rights Activists, Dumagat Men”, One News, March 9, 2021, <https://www.onenews.ph/articles/who-were-killed-on-bloody-sunday-labor-leader-fisherfolk-housing-rights-activists-dumagat-men>.

110 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 2022.

111 “Quezon province’s IPs reject Kaliwa Dam project”, Rappler, September 8, 2019, <https://www.rappler.com/nation/239608-quezon-province-indigenous-people-reject-kaliwa-dam-project/>.

112 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 2022.

113 “Quezon province’s IPs reject Kaliwa Dam project”, Rappler, September 8, 2019, <https://www.rappler.com/nation/239608-quezon-province-indigenous-people-reject-kaliwa-dam-project/>.

and prevent people from participating in meetings and other actions, without the same criteria being applied to dam workers, who could still freely enter the area.¹¹⁴ In January 2022, however, the dam proponents invited to a meeting some selected community members, who were in favor of the project and signed a memorandum of agreement.¹¹⁵ The police prevented some Indigenous people from entering the venue and intimidated them,¹¹⁶ on the pretext that they could not attend because they were not vaccinated.¹¹⁷ Other Indigenous people were pressured to sign the memorandum, and threatened they would not be reimbursed for the transport if they refused. The draft of the memorandum had not previously been distributed to the communities, so they could not read it and make informed decisions.¹¹⁸

Exim Bank of China's failed due diligence

The loan agreement between the government and Exim Bank was signed during a visit of China's President to the Philippines in 2018. The bank has not published documents about the assessments and consultations carried out prior to the project approval. Even the loan agreement was only made public in March 2019, after civil society and members of the opposition demanded its publication.¹¹⁹

114 "Kaliwa Dam excavation to start in December", Manila Bulletin, June 7, 2021, <https://mb.com.ph/2021/06/07/kaliwa-dam-excavation-to-start-in-december/>.

115 "MOA for China-backed Kaliwa Dam signed despite Dumagats' protests", Philstar Global, February 3, 2022, <https://www.philstar.com/headlines/climate-and-environment/2022/02/03/2158315/moa-china-backed-kaliwa-dam-signed-despite-dumagats-protests/amp/>; "MWSS, NCIP draft MOA on Kaliwa Dam project", Manila Bulletin, May 21, 2021, <https://mb.com.ph/2021/05/21/mwss-ncip-draft-moa-on-kaliwa-dam-project/>; "Talks with Dumagats on Kaliwa Dam MOA 'railroaded', project critics say", Philstar Global, January 26, 2022, <https://www.philstar.com/headlines/climate-and-environment/2022/01/26/2156493/talks-dumagats-kaliwa-dam-moa-railroaded-project-critics-say>.

116 The objective of the meeting was supposed to be the Memorandum of Agreement validation and Community Royalty Development Program (CRDP) draft."MOA signatories for Kaliwa Dam 'bribed' by Gov't agencies-Dumagat leader", UPLB Perspective, February 17, 2022, <https://uplbperspective.org/2022/02/17/moa-signatories-for-kaliwa-dam-bribed-by-govt-agencies-dumagat-leader/>.

117 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 11, 2022.

118 Ibid.

119 "How Duterte Strong-Armed Chinese Dam-Builders But Weakened Philippine Institutions", Alvin Camba, Carnegie Endowment for International Peace, June 2021, <https://carnegieendowment.org/2021/06/15/how-duterte-strong-armed-chinese-dam-builders-but-weakened-philippine-institutions-pub-84764>.

Exim Bank failed to ensure that organizations and communities were consulted about how risks of reprisals could affect their right to participation. This is consistent with the bank's publicly available policy and practice documents, which do not mention the assessment of retaliation risks prior to the approval of a project.

According to human rights defenders interviewed for this research, the bank did not carry out an adequate human rights due diligence because it failed to ensure the consent of local Indigenous communities and to assess the risks that opposing this project would entail.¹²⁰ Even though the strong opposition to the project was known before its approval, both the environmental assessment and the consultations were flawed and were only carried out afterwards.¹²¹ The risks of reprisals could have been anticipated by the bank if adequate consultations had been carried out with the affected communities.

EVEN THOUGH THE STRONG OPPOSITION TO THE PROJECT WAS KNOWN BEFORE ITS APPROVAL, BOTH THE ENVIRONMENTAL ASSESSMENT AND THE CONSULTATIONS WERE FLAWED AND WERE ONLY CARRIED OUT AFTERWARDS.

LACK OF FREE, PRIOR AND INFORMED CONSENT OF INDIGENOUS COMMUNITIES AFFECTED BY THE PROJECT

The Exim Bank of China has adopted a set of green credit standards in its policies that require a social and environmental impact assessment for its projects.¹²²

Although the latest version of the policies is not available, a bank document published in 2016 indicates that they require that loan projects comply with the environmental protection policies, laws and regulations of China and the host countries, and obtain necessary approval from

120 Interviews with human rights defenders (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 11, 13 and 16, 2022.

121 "A Philippine tribe that defeated a dam prepares to fight its reincarnation", Mongabay, November 5, 2019, <https://news.mongabay.com/2019/11/a-philippine-tribe-that-defeated-a-dam-prepares-to-fight-its-reincarnation/>.

122 According to the Global Environmental Institute, the applicable social and environmental policy from the bank is the 2007 Environmental and Social Evaluation Guideline. See "Comparing Financial Institutions' Environmental and Social Policies: Chinese and International Development Banks", Global Environmental Institute, http://www.geichina.org/upload/file/report/Policy_Bank_1_pager_EN.pdf. The Green Credits Guidance elaborated in 2015 are not published in the bank's website.

relevant authorities.¹²³ If the environmental protection mechanism in a host country is flawed – for example, if it lacks an environmental and social impact assessment policy or standards – the bank will review relevant projects with reference to the Chinese standards or international norms.¹²⁴ Nevertheless, at the time of the approval of the project, the project proponents had not complied with local laws and regulations that require free prior and informed consent of Indigenous communities,¹²⁵ and had not obtained the necessary permits.¹²⁶

The project was approved despite the lack of consent of local Indigenous communities, which was only sought afterwards in 2019. Prior to the project approval, there were some consultations organized by the local government and the project proponent, but the concerns of the communities about the impacts of the dam were brushed aside and ignored.¹²⁷ The reports that came out of those consultations tried to show that there was no opposition and no concern about the project.¹²⁸ For example, when the communities asked what would be done to ensure sacred areas were protected and not flooded, the project proponents gave no answers.¹²⁹ Another defender pointed out that the project proponents only made unfulfillable promises, claiming that their territory would not be flooded. Some people were also asked misleading questions, about another dam in the area.¹³⁰

MWSS, the implementing agency, had tried to develop dams in the area since the late 70s.¹³¹ In 2018, prior and

during the visit of the president of China,¹³² organizations opposing the Kaliwa dam held protests in front of the Chinese embassy and publicly criticized the environmental and social impacts of the project. Their opposition was therefore known to the bank, which went ahead despite this. An anthropologist, who was asked by the government to conduct a social impact assessment in 2018, detailed many deficiencies related to the lack of consultations with the communities. He also stated that almost everyone in the area opposed the project, and their opposition to dams is explicitly stated in their ancestral domain management plan.¹³³ The lack of consent of the Indigenous communities prior to the approval of the project was a clear indicator of possible conflicts that later led to reprisals.

THE LACK OF CONSENT OF THE INDIGENOUS COMMUNITIES PRIOR TO THE APPROVAL OF THE PROJECT WAS A CLEAR INDICATOR OF POSSIBLE CONFLICTS THAT LATER LED TO REPRISALS.

LACK OF ENVIRONMENTAL IMPACT ASSESSMENT

At the time Exim Bank approved the loan, the project proponent had not even submitted the environmental impact assessment, which was only presented more than half a year later, in July 2019.¹³⁴ The environmental compliance certificate (ECC) was obtained in October the same year,¹³⁵

123 “2016 White Paper on Green Finance”, page 24, The Export-Import Bank of China, 2016, <http://english.eximbank.gov.cn/News/WhitePOGF/201807/P020180718416279996548.pdf>.

124 Ibid.

125 The FPIC is required by the Indigenous Peoples’ Rights Act of 1997, and it’s also necessary to obtain the Special Use Agreement in Protected Areas.

126 “MWSS yet to acquire documents for Kaliwa dam project”, The Manila Times, September 15, 2021, <https://www.manilatimes.net/2021/09/15/news/mwss-yet-to-acquire-documents-for-kaliwa-dam-project/1814843>.

127 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 16, 2022.

128 Ibid.

129 Ibid.

130 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 13, 2022.

131 “Infrastructure’s consequences: The case of Kaliwa Dam”, The Guidon, October 14, 2019, <https://theguidon.com/1112/main/2019/10/infrastructures-consequences-the-case-of-kaliwa-dam/>; “A Philippine tribe that defeated a dam prepares to fight its reincarnation”, Mongabay, November 5, 2019, <https://news.mongabay.com/2019/11/a-philippine-tribe-that-defea->

<ted-a-dam-prepares-to-fight-its-reincarnation/>; “Damn the dams: Indigenous Peoples say no to destructive energy projects”, Eco-Business, August 13, 2015, <https://www.eco-business.com/news/damn-the-dams-indigenous-peoples-say-no-to-destructive-energy-projects/>.

132 “Filipinos resist China-funded dams amid Beijing’s growing clout in Southeast Asia”, Deutsche Welle, <https://www.dw.com/en/filipinos-resist-china-funded-dams-amid-beijings-growing-clout-in-southeast-asia/a-42973170>; “Xi Jinping’s Manila visit: South China Sea dispute and Chinese investment deals expected to spark protests”, South China Morning Post, November 18, 2018, <https://www.scmp.com/news/china/diplomacy/article/2173790/philippines-prepares-roll-out-red-carpet-xi-jinping-not>; “Philippine tribal groups protest visit of Chinese president”, UCA News, November 12, 2018, <https://www.ucanews.com/news/philippine-tribal-groups-protest-visit-of-chinese-president/83847#>;

“Indigenous Communities Protest as Xi, Duterte Support Kaliwa Dam”, Asian Farmers’ Association for Sustainable Rural Development”, November 23, 2018, <https://asianfarmers.org/indigenous-communities-protest-as-xi-duterte-support-kaliwa-dam/>.

133 “Why the ECC process for Kaliwa Dam had been faulty, according to an anthropologist”, Inquirer.Net, September 20, 2021, <https://newsinfo.inquirer.net/1490073/why-the-ecc-process-for-kaliwa-dam-had-been-faulty-according-to-an-anthropologist#ixzz7MJAE4MQS>.

134 “Environmental Impact Statement (EIS)-Kaliwa Dam Project”, Metropolitan Waterworks and Sewerage System, July, 2019, https://emb.gov.ph/wp-content/uploads/2019/08/Kaliwa-Dam_EIS.pdf.

135 “Environmental Compliance Certificate for the New Centennial Water Source -Kaliwa Dam Project”, Department of Environment and Natural Resources, October 11, 2019, <https://eiais.emb.gov>.

and was conditional on the fulfillment of 21 requirements.¹³⁶ This implies that the bank was unable to verify compliance with the country's environmental standards prior to the approval of the project, as its policy indicates.

Experts have also pointed out shortcomings in the preparation of the 2019 study.¹³⁷ In 2021, the Commission on Audit, an independent commission established under Philippines constitution, reported that the preconditions set out in the ECC had not been complied with.¹³⁸ The lack of an environmental impact assessment at the time of approval of the project shows that the communities could not be informed about the impacts of the project, including displacement.

LACK OF CONSIDERATION OF THE CONTEXT WITH REGARDS TO THE SECURITY OF ENVIRONMENTAL DEFENDERS

Retaliation risks could have also been foreseen simply by assessing the general context of restrictions to civic space in the country, and the severe level of insecurity for environmental defenders. When the loan was approved, there were widespread attacks and extrajudicial killings of people opposing or criticizing the government.¹³⁹ Reporters Without Borders' 2018 Press Freedom Index ranked the Philippines 133th out of 180 countries surveyed.¹⁴⁰ At a press conference in 2016, President Duterte stated that journalists killed in the country had done something

wrong.¹⁴¹ In 2017 the Philippines had been identified as the deadliest country for journalists in Asia.¹⁴² Front Line Defenders documented 60 cases of defenders killed in 2017.¹⁴³ The vast majority of them were protecting community and/or Indigenous people's rights in the face of agribusiness and extractive industries.

In 2018, many Indigenous activists were labelled as terrorists: a government petition filed in court accused 600 people of terrorism and of being members of the Communist Party of the Philippines and its armed wing.¹⁴⁴ The list also included the then UN Special Rapporteur on the rights of Indigenous Peoples.¹⁴⁵ The practice of red-tagging was similarly used to intimidate and attack people who opposed the Kaliwa dam. UN experts had also warned about the impact of military operations in Indigenous territories that included killings and attacks by members of the armed forces.¹⁴⁶

In conclusion, this case study shows that the Exim Bank failed to assess potential reprisal risks and did not adopt a mitigation strategy. If the bank, before approving the project, had meaningfully consulted with the affected Indigenous communities, it would have detected the strong opposition to the project. At the same time, a proper analysis of the context in the country would have revealed the restrictions to civic space and the practice of red tagging, which signal a high risk of reprisals, in particular for Indigenous environmental defenders.

[ph/internal/Secured/Uploads/ECC/5a59a9b6-0485-4350-b01c-3387db50862d.pdf](https://internal/Secured/Uploads/ECC/5a59a9b6-0485-4350-b01c-3387db50862d.pdf).

136 "Kaliwa Dam project gets ECC nod with many conditions", Manila Bulletin, October 23, 2019, <https://mb.com.ph/2019/10/23/kaliwa-dam-project-gets-ecc-nod-with-many-conditions/>.

137 "Impact report on Kaliwa Dam 'deficient, not conclusive'", Inquirer.net, September 6, 2019, <https://newsinfo.inquirer.net/1161447/impact-report-on-kaliwa-dam-deficient-not-conclusive>; "The Intangible Costs of Building The New Centennial Water Source-Kaliwa Dam", Stratbase ADR Institute for Strategic and International Studies, 2021, https://www.brimonitor.org/wp-content/uploads/2021/07/CS_NCWS.pdf.

138 "COA flags MWSS over P12 billion Kaliwa Dam project", Philstar Global, September 9, 2021, <https://www.philstar.com/nation/2021/09/09/2125794/coa-flags-mwss-over-p12-billion-kaliwa-dam-project>.

139 See, for example: "Philippines, events of 2017", Human Rights Watch, <https://www.hrw.org/world-report/2018/country-chapters/philippines>; "Journalists' killings: UN experts urge Philippines president-elect to stop instigating deadly violence", UN Independent Expert on summary executions and UN Independent Expert on freedom of expression, June 6, 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20061&LangID=E>.

140 "World Press Freedom Index-2018", Reporters without Borders, 2018, <https://rsf.org/en/ranking/2018#>.

141 "Philippines' Duterte denounced for defending killing of some journalists", Reuters, June 1, 2016, <https://www.reuters.com/article/us-philippines-politics-journalists-idUSKCN0YN3TK>.

142 "Philippines 'deadliest country' in Asia for journalists in 2017 - media watchdog", Rappler, December 19, 2017, <https://www.rappler.com/nation/191744-philippines-deadliest-country-journalists-asia-reporters-without-borders-2017-report/>.

143 "Annual Report on Human Rights Defenders at Risk in 2017", page 5, Front Line Defenders, 2017, https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf.

144 "Environmental Rights Defender Killed as Authorities Label Activists as Terrorists", CIVICUS, March 2018, <https://monitor.civicus.org/updates/2018/03/27/environmental-rights-defender-killed-authorities-label-activists-terrorists/>.

145 "Accusations against UN expert a retaliation by Philippines, say fellow rapporteurs", Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on the rights of persons with disabilities and Chairperson of the Coordination Committee of the Special Procedures, March 8, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22783&LangID=E>.

146 "Philippines warned over 'massive' impact of military operations on Mindanao Indigenous Peoples", Special Rapporteur on the rights of Indigenous Peoples and Special Rapporteur on internally displaced people, December 2017, <https://www.ohchr.org/en/press-releases/2017/12/philippines-warned-over-massive-impact-military-operations-mindanao?LangID=E&NewsID=22567>.

TURKMENISTAN

A COVID-19 RESPONSE PROJECT



TIMELINE

2020

Doctors and other medical workers are pressured to cover up the outbreak in the country.

2020

APRIL

Reporters Without Borders' Press Freedom Index ranks Turkmenistan 179th out of 180 countries surveyed.

2020

JULY

Turkmen News' journalist Nurgeldi Halykov is arrested after sharing a photo of the World Health Organization delegation in the country.

2020

SEPTEMBER

Halykov is sentenced to four years in prison on fabricated charges of fraud.

2021

FEBRUARY

UN human rights procedures and the OSCE representative on Freedom of the Media express concern about Halykov's arbitrary detention.

2021

APRIL

Turkmen.News approaches the World Bank, which at that time is considering approving a loan to Turkmenistan to fund the COVID-19 response, to raise concerns about Halykov's case and lack of transparency in the country.

2021

Another CSO also approaches the World Bank to express concerns about reprisals risks and lack of engagement with civil society.

2021

JUNE

The World Bank approves a USD 20 million loan for a COVID-19 project in Turkmenistan.

2021

People who criticize the pandemic response or speak about COVID-19 continue being harassed, intimidated and criminalized.

PROJECT TYPE

COVID-19 response project.

FINANCING IN FOCUS

World Bank - US\$ 20 million (2021).

REPRISALS

- Censorship.
- Threats.
- Arbitrary detention.



Credit: Turkmen journalist Nurgeldi Halykov. Credit: Turkmen news.

TURKMENISTAN: A COVID-19 RESPONSE PROJECT

As of March 2022, the Turkmenistan government has not reported any cases of COVID-19,¹⁴⁷ despite there being several independent reports about outbreaks in the country.¹⁴⁸ Civil society organizations have documented many incidents of retaliation and censorship against people who criticized the state response to the pandemic, or shared information about the spread of the virus.

Reporters Without Borders 2020 Press Freedom Index ranked Turkmenistan 179th out of 180 countries surveyed, ahead of only North Korea.¹⁴⁹

Still, in June 2021, the World Bank approved a project to fund the health response to COVID-19,¹⁵⁰ including through risk communication and community outreach activities, with support from the United Nations Development Programme (UNDP).¹⁵¹ In the project documents, the bank did not indicate whether they assessed potential risks of retaliation given the extremely

restrictive civic space, nor was there evidence of prior consultations with stakeholders, despite specific requests and concerns raised by CSOs.

Retaliations

On July 12, 2020, Nurgeldi Halykov, a 26 years old citizen reporter, shared a photo of the World Health Organization (WHO) delegation in a hotel in the capital, Ashgabat. The photo, obtained through an acquaintance's Instagram, was published on the Turkmen.News website, an independent investigative news portal dedicated to promoting freedom of expression and the rule of law in Turkmenistan.¹⁵² Halykov was a regular contributor to Turkmen.News, and in particular on topics related to the pandemic. The following day, Halykov was summoned by the police for questioning. Since then, his family, friends and colleagues lost contact with him and were not able to receive information on who detained him, where he was taken and why. Two months later, Halykov was sentenced to four years in prison on fabricated charges of fraud, apparently accused of promising people employment overseas, taking money for his service but failing to provide employment. Since his imprisonment, Halykov has not been allowed to receive visits due to COVID-19 restrictions, even though the Turkmen authorities maintain that there are no COVID-19 cases in the country.

147 "Places Without Reported COVID-19 Cases", U.S. News, December 2021, <https://www.usnews.com/news/best-countries/slideshows/countries-without-reported-covid-19-cases>.

148 "Human Rights Impact Assessment of the COVID-19 Response in Turkmenistan", pages 4, 6, 8 and 12, International Partnership for Human Rights, July 2020, <https://www.iphonline.org/wp-content/uploads/2020/07/Covid-19-Turkmenistan-report.pdf>.

149 "Turkmenistan", Reporters Without Borders, <https://rsf.org/en/turkmenistan>.

150 "COVID-19 Response Project (P175131)", World Bank, June 2021, <https://projects.worldbank.org/en/projects-operations/project-detail/P175131>.

151 The project documents justify this agreement because of the government's lack of experience with World Bank-financed projects and the weak implementation capacity at the Ministry of Health and Medical Industry, which is responsible for the overall coordination and oversight of the project during implementation.

152 "Turkmenistan: Man Gets Four-Year Prison Term for Reposting Photo of WHO Delegation", Turkmen.News, December 14, 2020, <https://en.turkmen.news/human-rights/turkmenistan-man-gets-four-year-prison-term-for-reposting-photo-of-who-delegation/>.

Several international human rights and press freedom organizations published statements to call for Halykov's release.¹⁵³ In February 2021, four UN human rights procedures addressed a letter to Turkmenistan expressing concern about his arbitrary detention.¹⁵⁴ Recalling similar cases, they stated that this case reflects a deliberate and systematic pattern of severe restrictions on freedom of expression in the country, which has a chilling effect on other journalists, human rights defenders and civil society activists. The Organization for Security and Co-operation in Europe (OSCE) representative on Freedom of the Media, Teresa Ribeiro, also expressed her concerns and requested information on Halykov's case during a meeting with the Turkmen ambassador and representative of the International Organizations in Vienna.¹⁵⁵ The short response that the OSCE received from the Turkmen government, only stated that Halykov was accused of a criminal deed.

There are several documented cases of false accusations being used to restrict freedom of expression in the country and journalists being sentenced and detained under false charges.¹⁵⁶ In a report published in July 2020, the International Partnership for Human Rights (IPHR) wrote that health workers were being pressured to help cover up the outbreak in the country, by hiding COVID-19 cases and refraining from sharing information and data about the spread of the virus.¹⁵⁷ In 2021, after receiving the

World Bank loan, the government continued to intimidate people speaking about COVID-19 in public places and at least three activists were criminalized after criticizing the pandemic response.¹⁵⁸

IN 2021, AFTER RECEIVING THE WORLD BANK LOAN, THE GOVERNMENT CONTINUED TO INTIMIDATE PEOPLE SPEAKING ABOUT COVID-19 IN PUBLIC PLACES AND AT LEAST THREE ACTIVISTS WERE CRIMINALIZED.

The pandemic has only worsened an already worrying situation. According to the Committee to Protect Journalists, Turkmenistan is one of the most censored countries in the world.¹⁵⁹ The state of civic space is rated as "closed" on the CIVICUS Monitor. Serious human rights violations in the country include the forced disappearances of at least 120 detainees,¹⁶⁰ the complete control of the media by the government,¹⁶¹ limited internet coverage, severe control of the content people can access by blocking VPNs and servers, and the use of security services to surveil activists and those criticizing the government.¹⁶² People who protest peacefully are prosecuted under false charges. Also, critics living

153 "Journalist Nurgeldi Halykov jailed in Turkmenistan since September 2020 on fraud charges", Committee to Protect Journalists, May 2021, <https://cpj.org/2021/05/journalist-nurgeldi-halykov-jailed-in-turkmenistan-since-september-2020-on-fraud-charges/>; "Four year jail term for independent website's correspondent in Turkmenistan", Reporters Without Borders, December 2020, <https://rsf.org/en/news/four-year-jail-term-independent-websites-correspondent-turkmenistan>.

154 "Communication to Turkmenistan", Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Vice Chair of the Working Group on Arbitrary Detention, Chair Rapporteur of the Working Group on Enforced or Involuntary Disappearances, and Special Rapporteur on the Situation of Human Rights Defenders, February 2021, <https://turkmen.news/wp-content/uploads/2021/05/Communication-to-Turkmenistan.pdf>.

155 "OSCE Representative on Freedom of the Media meets with Ambassador of Turkmenistan", OSCE, February 2021, <https://www.osce.org/representative-on-freedom-of-media/478252>

156 See: "Turkmenistan: Drop Charges, Free Wrongfully Imprisoned Lawyer", Human Rights Watch, October 2020, <https://www.hrw.org/news/2020/10/22/turkmenistan-drop-charges-free-wrongfully-imprisoned-lawyer>; "Turkmenistan attacks the credibility of independent news sources and locks up critics", CIVICUS, August 2019, <https://monitor.civicus.org/updates/2019/08/27/turkmenistan-monitors-loyalty-citizens-attacks-credibility-independent-news-sources/>. "Jailed, Harassed RFE/RL Correspondent leaves Turkmenistan", Radio Free Europe/Radio Liberty, March 2019, <https://www.rferl.org/a/jailed-harassed-rfe-rl-correspondent-leaves-turkmenistan/29839464.html>; "Turkmen Activist Gaspar Matalaev Released", Turkmen.News, September 2019, <https://en.turkmen.news/human-rights/turkmen-activist-gaspar-matalaev-released/>.

157 "Human Rights Impact Assessment of the COVID-19 Response in Turkmenistan", pages 8-14, International Partnership for Human Rights, July 2020, <https://www.iphronline.org/wp-content/>

[uploads/2020/07/Covid-19-Turkmenistan-report.pdf](https://www.iphronline.org/wp-content/uploads/2020/07/Covid-19-Turkmenistan-report.pdf).

158 See: "Doctor Demanding Justice Detained in Turkmenistan", Human Rights Watch, July 2021, <https://www.hrw.org/news/2021/07/20/doctor-demanding-justice-detained-turkmenistan>; "Crackdown in Turkmenistan: Activist Given Four-Year Term, Doctor's Trial Imminent", Turkmen.News, August 2021, <https://en.turkmen.news/human-rights/civil-society-crackdown-in-turkmenistan/>; "Turkmenistan's government targets critics at home and abroad in its relentless crackdown on dissent", International Partnership for Human Rights, October 2021, <https://www.iphronline.org/turkmenistan-s-government-targets-critics-at-home-and-abroad-in-its-relentless-crackdown-on-dissent.html>; "Five-year Sentence for Turkmen Blogger Who Wrote Poem about Coronavirus", Turkmen.News, November 2021, <https://en.turkmen.news/human-rights/five-year-sentence-for-turkmen-blogger/>.

159 The 10 Most Censored Countries list assesses direct and indirect government censorship based on CPJ research, as well as the expertise of the organization's staff. Countries are evaluated based on a series of benchmarks. . See: "10 Most Censored Countries", Committee to Protect Journalists, 2019, <https://cpj.org/reports/2019/09/10-most-censored-eritrea-north-korea-turkmenistan-journalist/>.

160 "Updated list of the victims of enforced disappearances", Prove They Are Alive, September 2019, <https://provetheyarealive.org/updated-list-of-the-victims-of-enforced-disappearances/>.

161 "Turkmen journalist Ruslan Myatiev: three of my colleagues have been through prison", Varsity, February 2021, <https://www.varsity.co.uk/interviews/20876>; "10 Most Censored Countries", Committee to Protect Journalists, 2019, <https://cpj.org/reports/2019/09/10-most-censored-eritrea-north-korea-turkmenistan-journalist/>.

162 "Turkmenistan: new internet restrictions, new cases of persecution of outspoken activists", International Partnership for Human Rights, May 2021, <https://www.iphronline.org/turkmenistan-dec-20-mar-21.html>; "Nations in transit 2020: Turkmenistan", Freedom House, <https://freedomhouse.org/country/turkmenistan/nations-transit/2020>.

abroad are subjected to threats, sometimes through their relatives living in the country.¹⁶³

THE PANDEMIC HAS ONLY WORSENERD AN ALREADY WORRYING SITUATION. ACCORDING TO THE COMMITTEE TO PROTECT JOURNALISTS, TURKMENISTAN IS ONE OF THE MOST CENSORED COUNTRIES IN THE WORLD.

Human rights organizations and UN mechanisms have confirmed grave human rights violations and civic space restrictions, including incommunicado detentions, enforced disappearances, torture, deaths in custody, the absence of a genuine independent media, restricted internet access, and widespread retaliations against journalists and activists.¹⁶⁴

World Bank's failed due diligence

THE LACK OF A REPRISAL RISKS ASSESSMENT PRIOR TO THE APPROVAL OF THE PROJECT

The bank was fully aware of the serious limitations on freedom of expression in the country, and the risks faced by those criticizing the government, but approved a project without identifying any risk of reprisals and measures to mitigate them. According to a defender, "the loan generates the idea in the population that the bank is complicit with the government and [its] lies about COVID-19, that they work together, and the bank is supporting the government's lies".¹⁶⁵

163 "Turkmenistan: Authorities pressure critics in exile by threatening their relatives at home", May 2021, <https://www.hrw.org/news/2021/05/13/turkmenistan-threats-against-relatives-dissidents-abroad>.

164 "Concluding observations on the second periodic report of Turkmenistan", paragraphs 16, 20 and 42, Human Rights Committee, April 20, 2017,

165 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 13, 2021.

THE BANK WAS FULLY AWARE OF THE SERIOUS LIMITATIONS ON FREEDOM OF EXPRESSION IN THE COUNTRY, AND THE RISKS FACED BY THOSE CRITICIZING THE GOVERNMENT, BUT APPROVED A PROJECT WITHOUT IDENTIFYING ANY RISK OF REPRISALS AND MEASURES TO MITIGATE THEM.

The World Bank's Environmental and Social Framework (ESF) does not require the application of a specific contextual reprisals risk assessment prior to the approval of development projects. It states that stakeholder engagement is free of external manipulation, interference, coercion, discrimination, and intimidation,¹⁶⁶ but makes no explicit requirements or procedures on how to identify risks, put in place preventive measures, and establish how to respond in case a retaliatory situation arises. In 2020 the bank issued a public statement of zero tolerance against reprisals, affirming that it does not tolerate retaliations against those who share their views about bank-financed projects, but there are no public protocols that establish how the bank responds to cases of reprisals or reprisals risks.¹⁶⁷

THE LACK OF STAKEHOLDER ENGAGEMENT

The project documents do not mention any kind of stakeholder consultation implemented by the borrower or by the bank before the project approval.¹⁶⁸ This would be in violation of the bank's policy¹⁶⁹ and its commitment to comply with citizen engagement requirements during COVID-19.¹⁷⁰

There is also no evidence of stakeholder engagement during the project, despite the documents referring to spaces for participation and consultation during its implementation. The draft stakeholder engagement plan was published

166 "Environmental and Social Framework", pages 98 and 100, World Bank, <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=111&zoom=80>.

167 World Bank Commitments Against Reprisals, World Bank, <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/world-bank-commitments-against-reprisals>.

168 The Bank affirms that the appraisal of this project occurred in the context of worldwide lockdowns to address the spread of COVID-19, and hence, consultations had to be deferred. However, even during the lockdown, consultations could have been done online prior to the project approval.

169 Under the World Bank's ESF, Stakeholder Engagement Plans are required as part of the preparation for each project. Paragraphs 10-21 of the policy regulate extensive requirements related to stakeholder engagement during project preparation.

170 "Citizen Engagement and Stakeholder Consultations during COVID-19", World Bank, November 2020, <https://www.worldbank.org/en/news/factsheet/2020/12/01/citizen-engagement-and-stakeholder-consultations-during-covid-19>.

in October 2020. A Turkmen civil society organizations presented some recommendations, which remained unanswered and were not integrated in the final plan. Moreover, despite repeated requests from CSOs, the World Bank consistently refused to provide information on how the project would address the lack of enabling environment for citizens to request and access information without fear of retaliation, as well as absence of accessible data on COVID-19 and government response.

The lack of engagement with civil society organizations prevented the bank from assessing the extent of the risks of retaliation, and it is a tacit recognition that participation is not possible in the country.

FAILURE TO CONSIDER CONCERNS RAISED BY CSOs

In April 2021, Ruslan Myatiev, editor of Turkmen News, approached the World Bank and requested the management assessing the project to raise concerns about Halykov's arbitrary detention with Turkmen authorities.¹⁷¹ Myatiev also requested the disclosure of verified information about COVID-19 in the country and expressed concern about the serious restrictions on freedom of expression.¹⁷² Bank staff said they would respond to Myatiev after an internal discussion. However, they never provided a response.¹⁷³ The bank subsequently announced the project through a press release in July 2021.¹⁷⁴

The project documents refer to a meeting conducted by the WHO to assess the country's preparedness to the pandemic, but do not mention the reprisal against Halykov for sharing a picture about it. The bank did not make an assessment of the government's decision to deny the existence of COVID-19 and the risks of retaliation this message entailed, even though risk communication was one of the project components.

Also, another CSO expressed concern to the World Bank about the lack of an enabling environment to request information or raise concerns about the project, as well as the risk of reprisals.¹⁷⁵ But, these concerns were not

171 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 13, 2021.

172 Ibid.

173 Ibid.

174 "COVID-19 Response in Turkmenistan Strengthened with World Bank Financing", World Bank, July 2021, <https://www.worldbank.org/en/news/press-release/2021/07/09/covid-19-response-in-turkmenistan-strengthened-with-world-bank-financing>.

175 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 3, 2021.

addressed and no information was provided on how the bank was assessing these issues.¹⁷⁶

FAILURE TO ASSESS THE RESTRICTIVE CONTEXT WITH REGARDS TO CIVIC FREEDOMS

The project documents do not make any reference to the general context of restrictions and human rights violations in the country, although even a superficial review would have revealed the potential risks. There is also no mention of strategies to mitigate risk given this context.

THE PROJECT DOCUMENTS DO NOT MAKE ANY REFERENCE TO THE GENERAL CONTEXT OF RESTRICTIONS AND HUMAN RIGHTS VIOLATIONS IN THE COUNTRY, ALTHOUGH EVEN A SUPERFICIAL REVIEW WOULD HAVE REVEALED THE POTENTIAL RISKS.

Also, the latest World Bank's strategy for Turkmenistan for 2016-2017 does not mention obstacles to participation. It only mentions risks related to the lack of work experience with the bank, the instability of the external environment, and reputational risks, "given the country's governance, data availability and other challenges".¹⁷⁷ In its strategy, the bank only pays attention to the risk for its own reputation, but not the risks for the people, who are supposed to be beneficiaries of its projects.

Had the bank assessed the restrictive context regarding civic freedoms and the possibility – or lack thereof – of engagement and participation of project beneficiaries, it could have led to a realistic assessment of reprisal risks.

LACK OF ASSESSMENT OF THE SPECIFIC RISKS POSED BY COVID-19 RESTRICTIONS

During the pandemic, many governments used measures to control the spread of the virus as a pretext to unduly restrict individual freedoms, including freedom of expression and the right to participation.¹⁷⁸ Despite the fact that the World Bank project includes a series

176 Ibid.

177 Country Engagement Note for Turkmenistan for the Period FY16-FY17, World Bank Group, October 2015, <https://documents1.worldbank.org/curated/en/371591467987825776/pdf/99556-CRN-P151985-Box393225B-OUO-9-R2015-0199.pdf>.

178 "COVID-19 Triggers Wave of Free Speech Abuse", Human Rights Watch, February 2021, <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>; "Democracy Under Lockdown", Freedom House, 2020, <https://freedomhouse.org/report/special-report/2020/democracy-under-lockdown>; "Coronavirus and Civic Space", International Center for Not-for-Profit Law, <https://www.icnl.org/coronavirus-response>.

of measures that can be used to arbitrarily deepen restrictions on civic space (such as isolation centers and contact tracking systems), there is no evidence in the project documents of how such risks were assessed and whether there were any mitigating measures.

In conclusion, this case shows how the World Bank failed to analyze the risks of retaliation and establish a plan to mitigate those risks, despite a context of severe and widespread restrictions on civic space and despite being alerted - before approving its project - about the case of a journalist criminalized, simply for publishing a photo of the WHO delegation in the country. The project documents do not reflect any consultations with stakeholders, which were virtually impossible given that Turkmen authorities deny the presence of COVID-19 in the country. The project documents also fail to identify the risks linked to the use of surveillance technologies and other tools in such an oppressive context.



Turkmen journalist Nurgeldi Halykov. Credit: Turkmen news.

UGANDA

A CONSERVATION PROJECT IN THE TORO SEMLIKI WILDLIFE RESERVE



PROJECT TYPE

Conservation project - Toro Semliki Wildlife Reserve.

FINANCING IN FOCUS

World Bank - US\$ 2.3 million grant (2021).

REPRISALS

- Displacement.
- Harassment.
- Threats.
- Extortion.
- Physical attacks.
- Shootings.
- Killings.

TIMELINE

1998

A rebel group invades the Toro Semliki Wildlife Reserve and Indigenous Peoples are forced to flee.

2005

The conflict ends, but the authorities prevent displaced people from returning home. In different national parks, Uganda Wildlife Authority (UWA) rangers violently evict and attack people.

2015

Indigenous communities claiming their land in the Toro Semliki Wildlife Reserve start being harassed and attacked by the UWA.

2016

Indigenous communities file a lawsuit to claim back their land.

2021

MAY

The World Bank approves a US\$ 2.3 million grant to be implemented by the UWA in the Toro Semliki Wildlife Reserve.

2021

Communities continue to suffer killings and attacks perpetrated by the UWA; they present a complaint to the World Bank Grievance Redress Service and to the Inspection Panel, but their complaints are considered ineligible.



Members of the community living near the Toro Semliki Wildlife Reserve, Uganda. Credit: Twerwaneho Listeners Club.

UGANDA: A CONSERVATION PROJECT IN THE TORO SEMLIKI WILDLIFE RESERVE

The Indigenous Peoples living near the Toro Semliki Wildlife Reserve, in western Uganda, have suffered human rights violations for decades. The Uganda Wildlife Authority (UWA) rangers, in charge of patrolling the area, have systematically used violence against those who attempt to access their land and claim their rights.

In 2021, the World Bank approved a project involving different protected areas in Uganda,¹⁷⁹ including the Toro Semliki Wildlife Reserve. The aim of the project was to improve sustainable management of these areas and benefit local communities impacted by the pandemic. Despite its poor human rights track record, the World Bank assigned the project implementation to UWA, as well as the related assessments, preparation and stakeholder engagement.

IN THE TORO SEMLIKI WILDLIFE RESERVE, UGANDA WILDLIFE AUTHORITY RANGERS HAVE BEEN SYSTEMATICALLY HARASSING, DISPLACING AND ATTACKING LOCAL INDIGENOUS COMMUNITIES.

In the Toro Semliki Wildlife Reserve, Uganda Wildlife Authority rangers have been systematically harassing, displacing and attacking local indigenous communities. Yet, despite its poor human rights track record, the World Bank assigned to UWA the implementation of a conservation project in the reserve.

The project supports UWA's patrolling activities through the provision of protective equipment, food rations, monitoring equipment and fuel. It also aims to support local communities through livelihoods and employment opportunities, and to involve them in the management of forest and wildlife areas. However, local communities report ongoing harassment and attacks, and have not received any benefit from the project.

In 2021, local communities submitted complaints to two World Bank complaints offices: the Grievance Redress Service and the Inspection Panel. Both failed to take effective actions to address the retaliations and other harms linked to the project, and ultimately decided not to pursue the complaints.

Retaliations

In 1998, the Allied Democratic Forces (ADF), a coalition of rebel groups, invaded the Toro Semliki Wildlife Reserve and Indigenous Peoples residing in the park and surrounding areas were forced to flee. After the end of

¹⁷⁹ The project funds were provided by the Swedish International Development Agency (SIDA) and assigned to two implementing agencies, the Uganda Wildlife Authority (UWA) and the National Forestry Authority. The project's activities will be carried out in the Murchison Falls National Park, Queen Elizabeth National Park, the Toro-Semliki Wildlife Reserve, and other areas. See: "Securing Uganda's Natural Resource Base in Protected Areas Project", World Bank, 2021, <https://projects.worldbank.org/en/projects-operations/project-detail/P174337>.

the conflict in 2005, the authorities further extended the boundaries of the reserve and prevented displaced people from returning to their homes.

UWA rangers have been brutally attacking community members to prevent them from accessing the forest and its resources.¹⁸⁰ In the past two decades, local Indigenous communities have been deprived of their basic human rights, including their right to food, water, and housing. They have been forcibly evicted, their properties have been confiscated or destroyed, and they have been psychologically and physically violated. Women are particularly affected, as they are traditionally responsible for collecting food and natural medicine. They are frequently harassed by UWA rangers, beaten up and forced to pay ransoms in order to access resources in the forest. Those who are peacefully defending their land rights are systematically threatened and attacked.

In 2016, with the support of the Twerwaneho Listeners Club (TLC),¹⁸¹ members of the Indigenous communities filed a lawsuit against the UWA and the Attorney General of Uganda, requesting to be recognized as legitimate land owners and calling for an end to violence and forced evictions. However, no one from UWA has ever been prosecuted or held accountable.¹⁸²

Reprisals escalated during the World Bank project negotiation phase and continued after its approval. According to a defender, “in people’s minds, reprisals are a practice so entrenched that if you are in a national park, it seems normal that you will end up being beaten. People don’t even talk about reprisals because it is a structural issue, it is an enforced culture”.¹⁸³

Since 2015, in the Toro Semliki Reserve, UWA rangers have been responsible for more than 86 attacks, including 34 people beaten, shot, or injured, 15 arrested, and at least

29 killed. Many victims have not been buried, as UWA guards only allow relatives to retrieve the bodies of their loved ones from the forest if they pay an extortion.

UWA rangers have also restricted the right to freedom of association, by attacking people gathered for public meetings, through the use of tear gas and arrests. Since 2020, all public gatherings have been prohibited, supposedly due to COVID-19 restrictions, even though mass rallies during the January 2021 General Elections were allowed.

World Bank’s failed due diligence

LACK OF ANY REPRISAL RISK ASSESSMENT PRIOR TO APPROVAL OF THE PROJECT

Despite the long history of attacks against the Indigenous communities in the area, the bank documents do not reflect any form of assessment of the risks of retaliation and any measure to mitigate them. The project is instead further amplifying these risks, as it directly provides UWA with equipment and resources for patrolling and surveillance, despite evidence that this type of activities has resulted in serious human rights violations and brutal attacks.¹⁸⁴ Moreover, the project is being implemented in disputed land, from where Indigenous communities were forcibly evicted and prevented from returning back to. Yet, the project documents do not reference this, nor the situation more generally in Uganda where there are widespread human rights violations due to the lack of recognition of the rights of Indigenous Peoples to their lands, territories and resources.¹⁸⁵

The World Bank project directly provides UWA with equipment and resources for patrolling and surveillance, despite evidence that this type of activities has resulted in serious human rights violations and brutal attacks.

180 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 16, 2021; Complaint to the Inspection Panel, World Bank, https://www.inspectionpanel.org/sites/www.inspection-panel.org/files/cases/documents/155-Request%20for%20Inspection_Redacted-18%20October%202021.pdf.

181 Twerwaneho Listeners Club is a local civil society organization based in Fort Portal, that promotes good governance and respect for human rights and fundamental freedoms of the marginalized and most vulnerable to ensure improved service delivery, equitable development and peace: <https://www.tlc-uganda.org/>.

182 Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, December 16, 2021.

183 Ibid.

184 Responding to concerns raised by a group of CSOs, Bank’s staff affirmed that activities related to patrolling, militarization and land acquisition in the area are not financed by or required for the project, which will exclusively finance livelihood support. Nevertheless, the project documents do not expressly exclude patrolling in the area of the Toro Semliki Wildlife Reserve, despite this is a regular activity carried out by the project implementer (UWA).

185 “Compilation on Uganda”, paragraphs 84 and 85, Office of the United Nations High Commissioner for Human Rights, August 29, 2016, <https://documents-dds-ny.un.org/doc/UNDQC/GEN/G16/191/02/PDF/G1619102.pdf?OpenElement>.

LACK OF AN INDEPENDENT ASSESSMENT

NGOs and experts around the world have identified significant risks associated with conservation projects, including forced evictions of Indigenous and local communities from their lands, abuses and excessive force during patrolling and monitoring activities.¹⁸⁶ Yet, the bank did not carry out a prior and independent evaluation of UWA before identifying it as the project implementing agency. If the bank had consulted local CSOs and communities impacted by the project, it would have easily identified the risk of entrusting UWA to implement a stakeholder engagement plan, given the long history of conflict with local Indigenous communities and human rights violations (including killings) directly linked to its patrolling activities.¹⁸⁷

LACK OF PARTICIPATION OF THE COMMUNITIES

The stakeholder engagement and consultation process was deeply flawed, as it was carried out by the same agency responsible for serious human rights violations against local communities.¹⁸⁸ Consultations were dominated by UWA's selected allies. In some cases, impacted communities, who had been displaced and were trying to claim their rights back, were kept out.¹⁸⁹ In other cases, communities decided to reject the consultations altogether, to avoid legitimizing UWA's activities, and

yet others were pressured to accept the project in order to receive some benefits.¹⁹⁰

In its Country Partnership Framework for Uganda, the World Bank identified the risk posed by lack of adequate and meaningful consultations, and committed to proactively engage with implementing agencies to support their assessment.¹⁹¹ Yet, by entrusting UWA to carry out the required consultations, the bank failed to comply with this commitment and failed to identify the high risks of social conflict and reprisals.

FAILURE TO IDENTIFY THE IMPACTED COMMUNITIES AS INDIGENOUS

The project documents falsely state that no known Indigenous Peoples exist in the project area, but without explaining how this was assessed and which criteria were followed.¹⁹² According to the banks' own policy, the affected communities should have been recognized as Indigenous and this should have triggered specific safeguards, including the requirement of obtaining their free, prior and informed consent.¹⁹³

186 "Cornered by PAs: Adopting rights-based approaches to enable cost-effective conservation and climate action", V. Tauli-Corpus, J. Alcorn, A. Molnar, C. Healy and E. Barrow, World Development, pages 6-8, June 2020, <https://www.sciencedirect.com/science/article/pii/S0305750X20300498>; "Human rights-based approaches to conserving biodiversity: equitable, effective and imperative", pages 6-9, UN Special Rapporteur on Human Rights and the Environment, August 2021, <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf>; "Nature conservation projects marred by human rights violations", Deutsche Welle, May 16, 2019, <https://www.dw.com/en/nature-conservation-projects-marred-by-human-rights-violations/a-48765516>.

187 According to the World Bank's Environmental and Social Safeguards, "Depending on the potential significance of environmental and social risks and impacts, the Borrower may be required to retain independent third party specialists to assist in the stakeholder identification and analysis to support a comprehensive analysis and the design of an inclusive engagement process" (ESS10, paragraph 12).

188 The stakeholder engagement plan and the consultations that were implemented prior to the approval of the project are available at <https://documents1.worldbank.org/curated/en/373941619720318710/pdf/Revised-Stakeholder-Engagement-Plan-SEP-Securing-Uganda-s-Natural-Resource-Base-in-Protected-Areas-P174337.pdf>.

189 Only one group was selected to represent over 30,000 households settled on a stretch of land of over 100 km. After the consultation, the same group was given part of the land belonging to those complainants who had filed the court case claiming back their land in 2016. Issues related to lack of meaningful consultations were reported in a complaint to the World Bank (August 2021) and in e-mail communication from TLC (September 2021).

190 E-mail communication from TLC to the World Bank, October 22, 2021. Communities were told to accept the project in order to be considered under the revenue sharing program, meant to strengthen partnership between local communities and the conservation body.

191 "Country Partnership Framework for the Republic of Uganda for the period FY16-21", paragraphs 108 and 109, World Bank Group, 2016, <https://documents1.worldbank.org/curated/en/170721468179663842/pdf/101173-CAS-P155948-UO-9-IDA-R2016-0049-2-Box394874B.pdf>.

192 The Constitution of Uganda, under its Third Schedule, provides a list of the 56 indigenous communities present in Uganda as of 1 February 1926. The Batoro and Bakiga communities, settled along the Toro Semliki Wildlife Reserve, are also recognized as indigenous. See "Uganda's Constitution of 1995 with Amendments through 2017": https://www.constituteproject.org/constitution/Uganda_2017.pdf?lang=en. The bank affirms that there are no communities or groups within the project area that qualify as Indigenous or Sub-Saharan African Historically Underserved Traditional Local Communities under the Environmental and Social Standard 7, and that the bank does not rely on national definitions or legislation to make that decision. However, the project documents do not explain how the bank ruled out that characterization, even though the communities do have characteristics identified in the policy, such as self-identification and the collective attachment to geographically distinct habitats and the natural resources in these areas, among others.

193 The Bank did not apply the Environmental and Social Standards 7 on Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, and the Environmental and Social Standards 5 on Land Acquisition, Restrictions on Land use and Involuntary Resettlement. See, "Environmental and Social Framework", World Bank, <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=99&zoom=80>.

LACK OF ASSESSMENT OF UWA'S TRACK RECORD

Amnesty International and Human Rights Watch have documented widespread abuses committed by UWA against the Benet indigenous communities, including forced evictions, extortions, physical attacks, rapes, torture and even killings.¹⁹⁴ In the village of Appa, in northern Uganda, UWA rangers and the army executed forced and violent evictions in an area set aside as a game and forest reserve. They fired live ammunition, destroyed properties, and attacked and beat members of the community.¹⁹⁵ The Office of the United Nations High Commissioner for Human Rights country office in Uganda also documented that UWA rangers forcibly and violently evicted communities of returned internally displaced persons in the village of Appa.¹⁹⁶ Yet, the World Bank failed to take into account UWA's concerning human rights track record.

LACK OF ASSESSMENT OF THE WIDER CIVIC SPACE CONTEXT

The project documents do not make any reference to the general civic space context in Uganda and ignore numerous reports by international human rights organizations and institutions that have documented restrictions to civic participation and human rights abuses. Reporters Without Borders' 2020 Press Freedom Index ranked Uganda 125th out of 180 countries surveyed.¹⁹⁷ In 2020 and 2021, CIVICUS Monitor ranked the state of civic space as "repressed".¹⁹⁸ UN mechanisms as well as international, regional and national human rights organizations have reported severe restrictions to civic participation and human rights abuses. These include killings perpetrated by security forces, forced evictions, criminalization and other attacks (especially against Indigenous Peoples, human rights defenders, journalists and members of the LGBT community), persecution of political opponents, restrictions to freedom of expression online, suspension of internet services and other restrictions on civic space.¹⁹⁹

194 "13 Years in Limbo: Forced Eviction of the Benet in the Name of Conservation", Amnesty International, 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/11/AFR5941382021ENGLISH.pdf>.

195 "Forced Evictees in Northern Uganda Entitled to a Remedy", Human Rights Watch, July 2018, <https://www.hrw.org/news/2018/07/23/forced-evictees-northern-uganda-entitled-remedy>.

196 "UN Human Rights in Uganda", United Nations Office of the High Commissioner for Human Rights, <https://www.ohchr.org/EN/Countries/AfricaRegion/Pages/UN-Human-Rights-in-Uganda.aspx>.

197 "World Press Freedom Index, Ranking 2020", Reporters Without Borders, <https://rsf.org/en/ranking/2020#>.

198 "Monitor, Tracking Civic Space", CIVICUS, <https://monitor.civicus.org/>.

199 "Internet access cut, social media banned during Uganda elections",

Violations escalated in the context of the 2021 general elections, and there was widespread violence against political opponents and their supporters.

In 2019, the UN Committee on Economic, Social and Cultural Rights expressed concern that many Indigenous Peoples in Uganda, including the Benet, Batwa and pastoralist communities, were denied access to their ancestral lands and were prevented from preserving their traditional way of living.²⁰⁰ The Committee recommended that Uganda recognize Indigenous Peoples' rights and strengthen efforts to consult them and to ensure their effective enjoyment of their economic, social and cultural rights.

LACK OF LITIGATION DUE DILIGENCE

The project documents do not mention the legal dispute between the communities and the UWA over the land where the project would be developed. A litigation due diligence on the agency implementing the project, in order to review all its pending and closed cases, would have revealed the ongoing litigation over the land, and the conflicts with communities that led to reprisals.

FAILURE TO ASSESS REPRISAL RISKS IN UGANDA'S COUNTRY PARTNERSHIP FRAMEWORK

The World Bank's Country Partnership Framework (CPF) for Uganda (2016–2020)²⁰¹ does not make a comprehensive analysis of the civic context in the country. It does not take into account the numerous violations of the right to freedom of expression in the country and does not assess the risks of retaliation against people who express critical opinions about development projects.

In the political context section, the CPF mentions that, during the last reelection of President Museveni, observers reported irregularities and incidents of intimidation and harassment, restrictions to freedom of speech, and unequal access to resources and the media.²⁰²

Committee to Protect Journalists, January 2021, <https://cpj.org/2021/01/internet-access-cut-social-media-banned-during-uganda-elections/>.

200 "Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation", paragraph 31, Expert Mechanism on the Rights of Indigenous Peoples, September 2019, <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G19/259/91/PDF/G1925991.pdf?OpenElement>.

201 "Country Partnership Framework for the Republic of Uganda for the Period FY16-21", World Bank group, 2016, <https://documents1.worldbank.org/curated/en/170721468179663842/pdf/1011173-CAS-P155948-OUO-9-IDA-R2016-0049-2-Box394874B.pdf>.

202 Ibid, paragraph 4.

However, it fails to analyze the implications of this political climate to civic freedoms and civic engagement.

The bank's last systematic country diagnostic, approved in 2015, states that "since 2006, the freedom of media organizations to monitor corruption appears to be on a declining trend."²⁰³ However, it fails to assess how these restrictions on civic space affect the right to participation of communities impacted by development projects, their right to freedom of expression, and the risks of retaliations.

In conclusion, this case shows that the World Bank failed to identify and mitigate the risks of reprisals. These risks would have been evident if the bank had properly consulted local communities before approving the project and if it carried out meaningful due diligence, including a review of the current litigation cases involving the project implementing agency. The bank also failed to assess the inability of the implementing agency (UWA) to conduct consultations with communities, given its history of systematic violence against Indigenous Peoples, and the general context of severe civic space restrictions in the country.



Members of the community living near the Toro Semliki Wildlife Reserve, Uganda. Credit: Twerwaneho Listeners Club.

203 "Uganda Systematic Country Diagnostic", paragraph 5.34, World Bank, 2015, <https://documents1.worldbank.org/curated/en/401861467998756667/pdf/97145-CSD-P151913-IDA-SecM2015-0247-IFC-SecM2015-0173-MIGA-SecM2015-0119-Box393266B-OUO-9.pdf>.

RECOMMENDATIONS



Credit: Indigenous community in Ichk'isis. Credit: Front Line Defenders.

RECOMMENDATIONS

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.

ANNEX A: QUESTIONNAIRE FOR HUMAN RIGHTS DEFENDERS

1. What incidents of retaliation occurred after the project was approved? Ask about the type of incident, date it occurred, who was retaliated against, their gender, and possible perpetrators. Did some of these incidents have a differential impact on women or other groups? How?

2. What damages / consequences generated the reprisals suffered?

3. Before the approval of the project, was there any indication that retaliation could occur? What kind of clues? Did some of these risks have a differential impact on women or other groups? How?

4. Were these incidents / signs known? Do you know if the bank knew about these risks? If they knew, how did they learn about them? Did the bank do anything to mitigate the risks of retaliation? What did they do? If the bank did not know, is there anything you think the bank should have done differently in order to identify and assess those risks?

5. What types of consultations were carried out prior to the approval of the project and what were they aimed at? What authorities organized the consultations with civil society and what is the relationship of the organizations with those authorities? Who were the people and organizations consulted? Did you participate in those spaces?

6. Were there consultation mechanisms applied aimed at project affected communities or civil society organizations, in which they have been specifically

consulted on the risks of reprisals or on incidents of reprisals suffered by organizations, journalists, and human rights defenders? Were there instances of participation aimed at civil society organizations in which they have been specifically consulted on restrictions on the right to freedom of expression or the right of association and participation in the country?

7. Were there instances of participation or consultation aimed specifically at women or women's organizations in which they were asked what specific risks or incidents of retaliation they face?

8. What questions do you think development banks should ask project affected communities, organizations and civil society in general during project assessment in order to adequately assess the risks of retaliation faced by those who express opinions critical of the projects they intend to approve? Who should they consult? What should those consultation processes look like?

9. What would you tell the bank about the fact that it is financing projects in contexts in which the right to freedom of expression and participation on the impacts of those same projects is not guaranteed?

ANNEX B: RESOURCES ON HUMAN RIGHTS DUE DILIGENCE

This report builds on previous collective and comprehensive work on human rights due diligence, coordinated by the Coalition for Human Rights in Development. Below, a list of resources on HRDD for DFIs:

What is HRDD for DFIs?: <https://rightsindevelopment.org/wp-content/uploads/2017/06/Human-Rights-Due-Diligence-overview.pdf>

Difference between Human Rights Informed Risk & Impact Assessment vs Conventional Risk & Impact Assessment: <https://rightsindevelopment.org/wp-content/uploads/2017/06/Human-Rights-Informed-Impact-Assessment-vs-Conventional-Impact-Assessment-v2.pdf>

HRDD Protocol: <https://rightsindevelopment.org/wp-content/uploads/2018/01/HRDD-Process-flowchart-1.5.18.pdf>

Contextual Risk Indicator Questions and Data Sources (see Part I): <https://rightsindevelopment.org/wp-content/uploads/2018/04/HuRRA-Contextual-and-Project-Risk-Indicators.pdf>

Project Standards and Risk Indicator Questions (see Part II): <https://rightsindevelopment.org/wp-content/uploads/2018/04/HuRRA-Contextual-and-Project-Risk-Indicators.pdf>

Human Rights Risk Analysis standards: <https://rightsindevelopment.org/human-rights-due-diligence-project/standards/table-of-Contents>

Further resources on Human Rights Due diligence for DFIs can also be found in the UN Working Group website:

Corporate human rights due diligence – identifying and leveraging emerging practices <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>

and specifically, the Working Group’s 2018 report to the UN General Assembly, A/73/163, which takes stock of business and government action to advance the implementation of corporate human rights due diligence as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>.

The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders, presented to the UN Human Rights Council in 2021, A/HRC/47/39/Add.2 (for the specific recommendations to DFIs, please see pp 36–39): <https://www.ohchr.org/en/documents/thematic-reports/ahrc4739add2-report-human-rights-defenders-and-civic-space-business-and> and <https://www.ohchr.org/en/documents/thematic-reports/ahrc4739add2-report-human-rights-defenders-and-civic-space-business-and>

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