PHILIPPINES

THE KALIWA DAM

PROJECT TYPE
Kaliwa dam.

FINANCING IN FOCUS

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 68 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.
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”102 to push the project through. These threats are particularly
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. The communities, with the support of national groups, formed a network and started drafting petitions and organizing demonstrations against the dam. 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.

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, which means being labeled as insurgents and rebels by the National Task Force to End Local Communist Armed Conflict. 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. 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.

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. They were promised their unpaid compensations and extra money if they would approve the Kaliwa dam.

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. The following years, COVID-19 restrictions were used as a pretext to limit the organization of communities.
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.\textsuperscript{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.\textsuperscript{115} The police prevented some Indigenous people from entering the venue and intimidated them,\textsuperscript{116} on the pretext that they could not attend because they were not vaccinated.\textsuperscript{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.\textsuperscript{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.\textsuperscript{119}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{116} The objective of the meeting was supposed to be the Memo- randum 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-signato- ries-for-kaliwa-dam-bribed-by-govt-agencies-dumagat-leader/.
\item \textsuperscript{117} Interview with human rights defender (anonymous for security reasons), conducted online by the Coalition for Human Rights in Development, February 11, 2022.
\item \textsuperscript{118} Ibid.
\end{enumerate}
\end{footnotesize}

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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

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\item \textsuperscript{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.
\item \textsuperscript{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/.
\item \textsuperscript{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’s Environmental and Social Policies: Chinese and International Development Banks”, Global Environmental Institute, http://www.geichina.org/_upload/file/report/Polficy_Bank_1_pager_EN.pdf. The Green Credits Guidance elaborated in 2015 are not published in the bank’s website.
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relevant authorities. 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. 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, and had not obtained the necessary permits.

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. The reports that came out of those consultations tried to show that there was no opposition and no concern about the project. 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. 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.

MWSS, the implementing agency, had tried to develop dams in the area since the late 70s. In 2018, prior and during the visit of the president of China, 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. 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.

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and was conditional on the fulfillment of 21 requirements. 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. 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. 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. Reporters Without Borders’ 2018 Press Freedom Index ranked the Philippines 133th out of 180 countries surveyed. At a press conference in 2016, President Duterte stated that journalists killed in the country had done something wrong. In 2017 the Philippines had been identified as the deadliest country for journalists in Asia. Front Line Defenders documented 60 cases of defenders killed in 2017. 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. The list also included the then UN Special Rapporteur on the rights of Indigenous Peoples. 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.

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.