MISPLACED TRUST
Why development banks should not rely on their clients to address reprisal risks
**MISPLACED TRUST**  
Why development banks should not rely on their clients to address reprisal risks.

*Coalition for Human Rights in Development, July 2023*

This report was written by Dalile Antúnez, Collaborative Researcher at the Coalition for Human Rights in Development. We additionally acknowledge the valuable insights of Maia Seeger (Executive Director, Sustentarse), Nina Lesikhina (Policy Officer, CEE Bankwatch Network), Hannah Storey (Policy Advisor on Business and Human Rights, Amnesty International), Christian Donaldson (Senior Policy Advisor, Oxfam International), and the various participants of the Defenders in Development campaign. The views expressed herein, and any errors or omissions, are solely the authors’.

“Misplaced Trust” is based on the analysis of 38 case studies included in three other reports previously published by the Coalition for Human Rights in Development. We acknowledge all the organizations and human rights defenders who contributed to these case studies.

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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# ACRONYMS

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<td>AfDB</td>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>CSO</td>
<td>civil society organization</td>
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<td>DFI</td>
<td>Development Finance Institution</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<tr>
<td>EIB</td>
<td>European Investment Bank</td>
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<tr>
<td>ESCP</td>
<td>Environmental and Social Commitment Plan</td>
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<tr>
<td>ESF</td>
<td>Environmental and Social Framework</td>
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<tr>
<td>ESIA</td>
<td>Environmental and Social Impact Assessment</td>
</tr>
<tr>
<td>ESP</td>
<td>Environmental and Social Policy</td>
</tr>
<tr>
<td>ESS</td>
<td>Environmental and Social Standards</td>
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<tr>
<td>FPIC</td>
<td>free, prior and informed consent</td>
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<td>HRD</td>
<td>human rights defender</td>
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<td>HRDD</td>
<td>human rights due diligence</td>
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<tr>
<td>IDB</td>
<td>Inter-American Development Bank</td>
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<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
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<tr>
<td>ISS</td>
<td>Integrated Safeguards System</td>
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<tr>
<td>MICI</td>
<td>IDB's Independent Consultation and Investigation Mechanism</td>
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<tr>
<td>NGO</td>
<td>non-governmental organization</td>
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<tr>
<td>PR</td>
<td>Performance Requirement</td>
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<td>UN</td>
<td>United Nations</td>
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MISPLACED TRUST

GLOSSARY

Client
In this report, with the term “client” we refer to the public or private entities directly receiving any type of financial support (grants, loans, equity, etc) from development banks. Clients can therefore include governments, state agencies, private corporations, or consortiums made up of a mix of public and private actors.

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’ or ‘development banks’.

Human rights defenders

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 should be considered as an ongoing process necessary to ensure that they respect, protect, and work toward the 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.¹

Retaliation/reprisal
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, sharing information, raising concerns, criticizing or opposing a development project. Retaliation 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.

Retaliation risk assessment
Retaliation risk assessment is part of HRDD. It 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. Retaliation 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 HRDs, especially those who have experienced reprisals and their allies.

EXECUTIVE SUMMARY
EXECUTIVE SUMMARY

Too often, human rights defenders (HRDs) and community members who express their views or speak out against projects funded by development banks face high risks of reprisals, ranging from threats to killings. “Misplaced Trust,” which is based on the analysis of 38 case studies of reprisals in the context of development projects,2 shows that in most cases development banks’ clients play a direct role in the perpetration of these attacks. Yet, development banks continue to entrust their clients with addressing reprisals, assessing the project risks and impacts, and conducting consultations.

The first part of this report shows how clients – in almost all the cases – are directly or indirectly responsible for the retaliation in the context of their projects. In some instances, they are directly behind the reprisals or coordinating the actions of the perpetrators. In others, they are instigating the attacks, intentionally dividing the community, and creating tensions.

Time is money, and clients benefit from hastening project development and minimizing scrutiny. In responding to these incentives, they typically fail to create opportunities for meaningful participation or to proactively prevent reprisals. They often avoid disclosing possible reprisal risks or opposition to their projects. In highly repressive contexts, they can also take advantage of the silencing of dissent by state agencies.

In the second part, this report provides a review of the relevant aspects of the policies, declarations and guidelines published by eight major multilateral development banks, in relation to the prevention and response to retaliation, stakeholder engagement, and consultations with the communities affected by their projects.3 This section shows how development finance institutions (DFIs) are relying heavily on the clients for their due diligence, including crucial steps such as mapping stakeholders, conducting consultations, and addressing reprisal issues.

Finally, “Misplaced Trust” offers a series of recommendations that development banks should follow to ensure an independent analysis of retaliation risks in the context of their projects, as well as adequate prevention and response measures. Implementing zero tolerance for reprisals requires DFIs to stop delegating reprisal risk assessment and response to clients. Instead, DFIs should develop – in close consultations with human rights defenders and civil society organizations – protocols and guidelines for what they will do themselves on reprisal issues during the entire project cycle.

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2 The 38 case studies were included in three reports previously published by the Coalition for Human Rights in Development with its members and partners (see methodology section for further details).
3 Asian Development Bank (ADB), African Development Bank (AfDB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter-American Development Bank (IDB), IDB Invest, International Finance Corporation (IFC), and World Bank.
INTRODUCTION
INTRODUCTION

As many CSOs have documented, community members and defenders expressing concerns, voicing their opinion, or sharing information about activities supported by development banks are often threatened, criminalized, attacked, and even murdered.¹ Reprisals send a chilling message to the wider community, curtail the opportunities for participation and engagement—which are mandatory according to most bank policies— and end up jeopardizing the success of the project itself.

Yet, DFIs—even though they acknowledge this need—tend to make a fundamental mistake, which turns their commitments to ensuring participation and tackling reprisals into empty words. In the vast majority of cases, development banks place the primary responsibility to assess/mitigate reprisal risks and respond to reprisals on the clients, despite the fact that clients are often directly or indirectly responsible for perpetrating the attacks. Clients also have conflicts of interest that might prevent them from disclosing or addressing reprisal risks.

This report shows how development banks rely too heavily on the client for carrying out crucial steps related to HRDD, such as mapping the affected communities, conducting consultations, engaging with stakeholders, and assessing the project’s environmental and social risks. The lack of proper due diligence and meaningful

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consultations is a key factor that can lead to the escalation of reprisals. Yet, too often development banks are merely supervising the reports provided by the clients, without accounting for the fact that clients might avoid disclosing information that could jeopardize the approval or continuity of their activities.

As outlined in the second part of this report, most DFIs — in their environmental and social policies — also have some provisions that allow for independent evaluations in specific contexts, which can be relevant for assessing and addressing retaliation risks. However, these policies are discretionary and optional, without clearly establishing how and under what conditions they must be applied.

As indicated in the recommendations, it is crucial for DFIs to assume direct responsibility for the assessment of reprisal risks and for preventing, addressing and remedying reprisals. DFIs should develop protocols and guidelines on reprisal issues that cover the entire project cycle and that should be prepared in close consultations with CSOs, in particular those specializing in human rights issues, as well as with defenders and groups that have directly experienced reprisals in the context of development projects. And most of all, DFIs should be directly responsible for implementing them, instead of relying solely or primarily on their clients for the assessment of reprisal risks, and for the prevention and response to reprisals.
METHODOLOGY
METHODOLOGY

The first part of “Misplaced Trust” consists of a review of 38 case studies, analyzing reprisals against HRDs who have opposed, criticized, expressed their opinion, or shared information about projects and activities funded by development banks. The case studies were documented by members and partners of the Coalition for Human Rights in Development in three reports: Uncalculated Risks (2019), Unhealthy Silence (2021), and Wearing Blinders (2022). They refer to reprisals that have affected one or more HRDs, linked to a project (or a set of linked projects) funded by one or more development banks. For each case study, we analyzed whether the client had direct or indirect responsibility for the reprisal. It is important to note that none of these cases were originally chosen for their respective reports with a lens to evaluate the client’s role. However, we chose this sample as they were cases for which we had existing information.

In total, the cases document reprisals in 27 countries and projects funded by 30 development banks. A table with a summary of the cases, as well as the reference to the reports with further info on each of them, can be found in the Annex A. For the specific sources of information analyzed for each case study, please refer to the methodology section in the relevant report.

For 30 out of the 38 cases analyzed, there was also information on the level of consultations and engagement with the affected communities. We used this information to assess whether the clients failed to conduct adequate consultations and ensure consent, as these failures can lead to high levels of social conflict and eventually contribute to reprisals.

CLIENTS’ RESPONSIBILITY

In this report, we differentiate between direct and indirect responsibility for reprisals. In 36 out of the 38 case studies analyzed, the responsibility for the reprisals can be directly attributed to the clients.

- We consider clients directly responsible when they – or any actor hired by them – have been involved in the reprisals by threatening, stigmatizing, slandering, denouncing, criminalizing, physically harming defenders, or generating internal divisions and instigating others to commit reprisals. We also consider the clients directly responsible when they have control or influence over the perpetrators; for example, when the client is a private company and the reprisals are perpetrated by security forces partially funded by them, or acting to protect their facilities/assets.

- We consider clients indirectly responsible when they create conditions that increase conflict and favor retaliations, such as failing to ensure consent, bypassing meaningful consultations, or doing inadequate assessment of project risks and impacts.

In this analysis, the cases are classified according to whether the client is a country or a public institution, a private company, or a combination of actors from the private and public sectors.

When the client is a public entity – or a combination of the private and public sectors – and reprisals are perpetrated by public security forces, state agencies, or any public authority, then in this analysis we attribute direct responsibility to the client. This is also the case when the perpetrator belongs to a different state agency since we assume that if the loan or grant is assigned to a public entity, then there is a relationship of subordination, influence, control, or coordination between this entity and the other public actors responsible for the reprisals.

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8 Armenia, Azerbaijan, Bangladesh, Brazil, Cambodia, China, Colombia, Egypt, Ethiopia, Guatemala, Guinea, Honduras, Jordan, Kazakhstan, Kenya, Mexico, Myanmar, Nepal, Nicaragua, Peru, Philippines, South Africa, Sudan, Turkmenistan, Uganda, Ukraine and Uzbekistan.
9 A table can be found in the Annex A. For the specific sources of information analyzed for each case study, please refer to the methodology section in the relevant report.
10 This includes all cases where the client is aiding and abetting the parties who carry out the reprisals, or fails to prevent reprisals as a result of negligent behavior.
When retaliations are perpetrated by public security forces, private clients can also be considered responsible when the security officers are acting to protect their headquarters, buildings, facilities, and property, or they are receiving resources from them.

It is worth noting that clients should also be considered directly responsible when reprisals are conducted by their project–level grievance mechanisms, subsidiaries, financial intermediaries’ clients, consulting firms, or companies responsible for building associated facilities. Project–level grievance mechanisms, for instance, are often indicated by development banks as a possible avenue to deal with reprisals. However, this is highly problematic because they are set up and operated by the clients themselves, they have the same conflict of interests, and can be directly involved in the reprisals.

It is incontrovertible that DFIs must – at the very least – meet the basic standards applicable to any business enterprises: to respect human rights by avoiding infringing on the human rights of others and addressing adverse human rights impacts that their activities might cause or contribute to. This basic responsibility applies to any financial institutions that – like any other enterprise – may be directly linked to human rights impacts through their investments.

However, as State–owned entities, DFIs must also meet the higher standards and responsibilities applicable to States, which cannot “deploy international financial institutions to violate international law when they cannot do so in their capacity as individual States.”

According to the UN Guiding Principles on Business and Human Rights (UNGP), States must take additional steps to protect against human rights abuses by DFIs they own or support, by requiring human rights due diligence.

Human rights law – in addition to establishing general due diligence obligations of States with regard to the protection of the human rights of all persons – also establishes specific due diligence obligations with regard to HRDs due to the nature of their work, their vulnerabilities, and the social impacts of threats or attacks against them. The UN Declaration on Human Rights Defenders states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

In their policies, most DFIs recognize the principle of participation and require the implementation of plans for involving and engaging different stakeholders, a principle that cannot be fulfilled when people voicing their concerns face reprisals. In addition, some development banks have established specific policies or statements where they commit to addressing retaliations

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DFIS’ RESPONSIBILITY

Development banks are responsible for preventing and responding to reprisals under international human rights law, which establishes obligations on DFIs’ shareholder States and the DFIs themselves.


However, as State–owned entities, DFIs must also meet the higher standards and responsibilities applicable to States, which cannot “deploy international financial institutions to violate international law when they cannot do so in their capacity as individual States.”

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12 Of all the cases documented, only one (Coal Projects in Bataan province) refers to projects that received DFI funding only through financial intermediary clients. All other cases involve some kind of direct financing by DFIs.
14 See Mombasa-Mariakani Road Project (Kenya) case study in Uncalculated Risks.
18 UNGP, principle 4.
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against those who express critical opinions about their projects (see further details in the second part of this report).

In line with these obligations, DFIs are responsible for acting with due diligence in order to prevent and mitigate reprisals in the context of their investments. They must also take actions to ensure no repetition and help provide access to remedy if reprisals do occur.
PART 1

ANALYSIS OF THE CASES OF REPRISALS
PART 1
ANALYSIS OF THE CASES OF REPRISALS

KEY FINDINGS

The cases of reprisals in the context of development projects analyzed in this chapter show that:

1. In all but two of the cases, clients – including state actors, private companies, and combinations of both – play a role in the perpetration of reprisals against defenders.
2. Reprisals where the responsibility can be attributed to the clients include threats, violent attacks, surveillance, harassment, smear campaigns, criminalization, destruction of property, strategic lawsuits against public participation (SLAPPs), dismissals from jobs, and killings.
3. Reprisals are typically perpetrated by public or private security forces, private companies’ management and other staff/contractors, and state and government officials supporting the projects.
4. Public security forces often play a role in perpetrating, contributing to or facilitating reprisals in the context of development projects.
5. In most cases, clients also contribute to the conditions that could have led to or exacerbated the likelihood of reprisals. For example, they often fail to disclose project risks and adverse impacts, and to provide safe spaces and channels for meaningful communication with communities to voice concerns, questions, or grievances throughout the project cycle; or they continue with the project without the clear consent of communities to proceed.

ANALYSIS OVERVIEW

This analysis focuses on two main aspects:
• the degree of responsibility of the clients in the perpetration of reprisals;
• the failings of the clients in adequately assessing social and environmental impacts, and conducting meaningful consultations, as these are key elements to assess and prevent reprisal risks.

In 36 out of the 38 cases, the client was directly responsible for at least some of the reprisals occurring in the context of their projects because they either perpetrated the attacks, instigated them, or collaborated with other actors (in most cases, state security forces) who committed them. Not all the reprisals documented in the case studies were carried out by the clients or directly connected to them, as some case studies also refer to anonymous perpetrators. However, in all cases, defenders themselves or members of their community indicate that the reprisals occurred as a result of the activism around the project, their opposition, or the fact they shared information or raised concerns about it.

There was no clear evidence of the client’s direct responsibility only in two cases, although the available information shows that the reprisals were linked to the defenders’ opposition to the project.

In all cases, DFIs financing the projects delegated their responsibility under international human rights law to the clients, without adequate supervision or monitoring. By entrusting their clients to conduct key due diligence processes, development banks failed to adequately assess reprisal risks and prevent attacks, and instead ended up bankrolling violations and attacks against defenders.

BY ENTRUSTING THEIR CLIENTS TO CONDUCT KEY DUE DILIGENCE PROCESSES, DEVELOPMENT BANKS FAILED TO ADEQUATELY ASSESS REPRISAL RISKS AND PREVENT ATTACKS, AND INSTEAD ENDED UP BANKROLLING VIOLATIONS AND ATTACKS AGAINST DEFENDERS.
According to the reports analyzed, the two cases where hard evidence of the client’s responsibility was missing were “Jirau Dam” (Brazil) and “Coal projects in Bataan” (Philippines). The defenders in both cases, however, were clearly killed as a result of their activism.

In the first case, HRD Nilce de Souza Magalhães was killed after bringing a complaint against the consortium operating the dam (ESBR). In March 2017, someone was sentenced to 15 years in prison for her murder. The investigation shifted the spotlight onto a personal conflict, but her community believes de Souza was targeted because of her activism. Other people who opposed the dam also received death threats. Moreover, the lack of due diligence in assessing the project impacts could have exacerbated social conflicts that eventually led to the reprisal.

In the second case, HRD Gloria Capitan – a community activist who had spoken out against coal projects in Bataan province – was shot dead by two unidentified men. According to the report “Uncalculated Risks”, it remains unclear who ordered the attack and who was behind the anonymous threat. What is clear is that she was killed because she chose to speak out.
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CASES OVERVIEW

CLIENT’S RESPONSIBILITY

- Public clients 17
- Private clients 14
- Combination of public and private 7

Total cases 38
Cases where clients were directly responsible 36

SECTORS

- COVID–19 response 9
- Hydro 7
- Energy 7
- Mining 4
- Agriculture 3
- Land & natural resources management 3
- Factories and infrastructures 3
- Financial services and budgetary support 2

TYPES OF REPRISALS

- Harassment, threat, intimidation
- Smearing, defamation
- Surveillance
- Dismissals
- Arrest/detention
- Criminalization
- Travel ban
- Evictions/destruction of properties
- Repression of protests
- Physical attacks
- Torture
- Killings*

* In total, in the 38 cases analyzed, clients were directly/indirectly responsible for the killing of at least 135 people.

PERPETRATORS

- Police and public security forces
- Judiciary
- Local/government authorities
- Company security personnel
- Company personnel
- Forest service guards/rangers
- Military

This data indicates in how many of the 38 cases this type of reprisals occurred, not the total number of attacks.
Further information on each case, including reference to the reports where cases are analyzed, can be found in Annex A.
In 2020, the World Bank and the Inter-American Development Bank (IDB) approved four projects to support the COVID–19 response in Nicaragua, for a total of US$ 44.4 million and US$ 20 million respectively. According to the available project documents, both banks failed to conduct meaningful due diligence and to ensure that people could freely speak out on aspects related to the project. They entrusted their client (Nicaragua) with carrying out all the assessments, failing to take into account that the government receiving their loan was actively attacking those expressing dissenting views and criticizing the shortcomings of the COVID–19 response.

In May 2020, more than 700 medical professionals signed a statement criticizing the government’s response to the pandemic. Many signatories to the statement were threatened, and several were dismissed from their jobs as a retaliation for speaking out against their government’s inadequate response to the crisis.

For further details on this case, see “Unhealthy Silence”, pp 35 - 37.
In 17 out of the 38 cases, the clients were state actors (including governments and state-owned companies). In all these cases, these state actors were allegedly responsible for the reprisals occurring in the context of their projects, or at least for some of them. In most of these cases, the perpetrators were police officers or other public security forces, acting to protect their government’s interest in advancing the projects and to intimidate defenders criticizing or opposing the projects.

The most common reprisals were threats, violent attacks, arbitrary detentions, and criminalization, often during protests against projects or policies. Criminalization often involved the use of spurious charges, legislation restricting the right to freedom of expression, and lengthy prison sentences. In many cases, government officials were also threatening HRDs, publicly smearing them and stigmatizing them. In three cases, the officials dismissed public employees; for example, in Nicaragua and Sudan defenders were fired after voicing concerns around the COVID–19 response. There were also several cases of torture and killings.

In all the cases where there was also available information on stakeholder engagement, it emerged that state clients failed to meaningfully consult with the affected communities and failed to create a safe, meaningful and inclusive environment for participation, a factor that has very likely contributed to exacerbating social conflict and escalating the risks of reprisals. In some cases, the banks also failed to ensure the free, prior and informed consent (FPIC) of Indigenous Peoples affected by their projects. Where consent was withheld or unverified, banks failed to put the project financing on hold. There were also failures in the assessment of adverse social and environmental risks of the projects, as well as non-compliance with social and environmental standards.

23 In only three cases the public actors who perpetrated reprisals did not include public security forces: Mombasa Mariakani Road Project (Kenya) and the COVID-19 response project in Nicaragua and Jordan.
24 COVID-19 response project in Guinea and Guatemala, Land Management and Administration Project (Cambodia), and Khimti-Dhakelbar Transmission Line (Nepal).
25 Promoting Basic Services Program (Ethiopia), Land Management and Administration Project (Cambodia), East-West Corridor Highway Project (Myanmar), Khimti-Dhakelbar Transmission Line (Nepal), COVID-19 response project in Bangladesh, China, Guatemala, Jordan, Uzbekistan and Turkmenistan.
26 Mombasa Mariakani Road Project (Kenya), Land Management and Administration Project (Cambodia), West Corridor Highway Project (Myanmar), Khimti-Dhakelbar Transmission Line (Nepal), COVID-19 response project in Uzbekistan, Kaliwa dam (Philippines).
27 In Nicaragua, the government ordered the dismissal of those doctors who had protested against some aspects of the COVID-19 response funded by the World Bank and the Inter-American Development Bank. In Sudan, the government fired a female civil servant for criticizing the COVID-19 response. In Myanmar, Saw Hla Ngwe was removed as village administrator reportedly for refusing to take legal action against residents for damages to a road that led to the quarry.
28 Natural Resource Management Program (Kenya), Land Management and Administration Project (Cambodia), Khimti-Dhakelbar Transmission Line (Nepal), Toro Semliki reserve (Uganda), Kaliwa dam (Philippines), COVID-19 response project in Bangladesh, China and Guinea.
29 Promoting Basic Services Program (Ethiopia), Mombasa Mariakani Road Project (Kenya), Land Management and Administration Project (Cambodia), East-West Corridor Highway Project (Myanmar), Khimti-Dhakelbar Transmission Line (Nepal), Toro Semliki reserve (Uganda), COVID-19 response project (Turkmenistan), and Kaliwa dam (Philippines).
30 Promoting Basic Services Program (Ethiopia), Natural Resource Management Program (Kenya), Water Tower Protection and Climate Change Programme (Kenya), Land Management and Administration Project (Cambodia), East West Corridor Highway Project (Myanmar), Toro Semliki reserve (Uganda), COVID-19 response project (Turkmenistan), and Kaliwa dam (Philippines).
MEXICO
HOW A LARGE WIND FARM LED TO WIDESPREAD REPRISALS

The Eólica del Sur wind farm, in the Tehuantepec isthmus in Oaxaca, was set to be the largest in Latin America. The project received financial support from national and international financiers, including the Inter-American Development Bank (IDB), despite the opposition of the local Ikojt and Binnizá Indigenous Peoples living in the area.

When community members started protesting against the project, they faced widespread reprisals. They reported attacks by company employees, local authorities, and other project supporters. More than 40 community members were criminalized. Dozens of people were harassed, threatened, physically attacked, and lost access to electricity services and health care.

In 2017, one of the community leaders was beaten to death. In 2018, another human rights defender was shot and killed. Civil society groups believe that the murders of five other community members in 2018 are also related to the social conflict over the project. Despite the known risks, as community members had already faced reprisals, the IDB approved US$ 72 million in financing for the project. The IDB flagged the project as “high risk”, but nevertheless it approved the funding and failed to take action to address reprisals.

In September 2016, the IDB accountability mechanism released its investigation report, finding the bank had failed to comply with requirements to ensure good faith consultation with Indigenous Peoples. The report also found that the IDB lacked adequate guidance for situations of social conflict.
Out of the seven cases where the projects were implemented by a combination of public and private actors:

- in six cases, government authorities or public security forces were directly responsible for the reprisals; in three of these cases, also the private companies implementing the project were involved.\(^{33}\)
- one case involved reprisals that could not be linked directly to the client, according to the available information.\(^{33}\)

Reprisals included harassment, threats, stigmatization, physical attacks, arbitrary detentions, and criminalization. In one case, the military police was used as a de facto private security for the company, which also provided funding to purchase equipment.\(^{34}\)

Reprisals that distinctively and differentially affected women defenders were also documented, such as women defenders subjected to body cavity searches\(^{35}\) and a case of “reputational exploitation” where photos or videos were digitally manipulated to make it appear that the defender had done something scandalous.\(^{36}\)

Apart from having perpetrated, instigated or commissioned the reprisals, clients were also responsible for the lack of meaningful engagement and consultations, which increased the levels of conflict and exacerbated reprisal risks. In six of these cases, the reports also referred to the lack of consultation with stakeholders, lack of FPIC of the indigenous communities,\(^{37}\) and deficiencies in implementing banks’ policies and assessing the risks and impacts.\(^{38}\) In some cases, there was also a lack of compliance with the bank’s policies and commitments.
Between 2007 and 2016, the EBRD and IFC financially supported the development of the Amulsar gold mine near the spa town of Jermuk in Armenia, through a series of equity investments. Local communities strongly opposed the project because of the risk of toxic contamination and the serious impacts on health, the environment, and their livelihoods, which were mainly based on agriculture and tourism. The banks’ investments in this project, despite the opposition of local communities, show serious failures in the HRDD process. Local communities were not adequately consulted, and their concerns, including around reprisals and repression of dissent, were left unaddressed.

These failures led to an escalation of social tension and reprisals, with those opposing the project facing harassment, threats, attacks, and criminalization. The company filed more than 20 defamation lawsuits against activists, two media outlets, and even two members of the parliament. Some of these cases are still ongoing. The company’s security personnel militarized the area and threatened people; an employee from the company was also involved in a sexist online attack and surveillance against a woman human rights defender.

Both DFIs eventually withdrew from the project, but did not provide any type of remedy for the attacks that took place as a result of their failures to adequately assess and manage reprisal risks.
In all the 14 case studies where the clients were private companies, the reprisals were perpetrated by employees working for the companies; in 11 of them, also public security forces or public authorities were involved.

Private security guards perpetrated acts of violence against the communities, surveilled defenders, and used excessive force against protesters\textsuperscript{40}. Women HRDs experienced particular forms of violence, such as sexual harassment\textsuperscript{41} and smearing campaigns based on gender stereotypes.\textsuperscript{42} Militarization in the project locations also led to increased incidents of gender violence and rapes, although many of these attacks go under-reported.\textsuperscript{43}

In many cases, companies acted in coordination with public security forces, providing resources for them or requesting them to guard the company’s properties.\textsuperscript{44} For example, in the case of the Yanacocha mine in Peru, the company forcefully evicted a family and, together with the local police, destroyed the family’s home and physically assaulted them.\textsuperscript{45}

Companies also stigmatized and smeared HRDs using the press and social media,\textsuperscript{46} used civic litigation to deter defenders from criticizing the projects,\textsuperscript{47} and issued formal complaints that led to fines, arbitrary detentions, and lengthy prison sentences.\textsuperscript{48}

In nine of the projects implemented by private actors, there were also deficiencies in stakeholder consultation and engagement, and in the assessment of risks and impacts of the projects, including: lack of FPIC of project-affected Indigenous Peoples, failure to take into account local communities’ opposition to the project, lack of information about the project impacts, and ineffective bank oversight. In one case, there was also a lack of safe working conditions, non-compliance with housing commitments for migrant workers, and insufficient wages.\textsuperscript{49} All these factors contributed to creating conflicts and increased retaliation risks against community members or workers.

\textsuperscript{40} Dinant (Honduras), Rio Salá (Guatemala), Agua Zarca (Honduras), Yanacocha (Peru), Amulsar mine (Armenia), San Mateo and San Andrés dams (Guatemala), Marikana (South Africa).
\textsuperscript{41} Agua Zarca Dam (Honduras).
\textsuperscript{42} Amulsar mine (Armenia).
\textsuperscript{43} San Mateo and San Andrés dams (Guatemala), Uncalculated Risks (p. 15).
\textsuperscript{44} Santa Rita (Guatemala), Rio Salá (Guatemala), Agua Zarca (Honduras), Las Bambas (Peru), Yanacocha (Peru), Marikana (South Africa), Alexandria Portland Cement Company (Egypt).
\textsuperscript{45} Yanacocha (Peru).
\textsuperscript{46} Las Bambas (Peru).
\textsuperscript{47} Santa Rita (Guatemala), Las Bambas (Peru), Yanacocha (Peru), Platinum mine, Marikana (South Africa), Alexandria Portland Cement Company (Egypt).
\textsuperscript{48} Rio Salá (Guatemala), Agua Zarca (Honduras), Amulsar mine (Armenia), San Mateo and San Andrés dams (Guatemala).
\textsuperscript{49} Santa Rita (Guatemala), Rio Salá (Guatemala), Agua Zarca (Honduras), IPP4 Al-Manakher Power Plant (Jordan), Alexandria Portland Cement Company (Egypt), Amulsar mine (Armenia), San Mateo and San Andrés dams (Guatemala).
\textsuperscript{50} For example, Alexandria Portland Cement Company (Egypt), Las Bambas (Peru), Rio Salá (Guatemala).
\textsuperscript{51} Marikana (South Africa). In this case, the IFC Accountability Mechanism found that the bank did not include social and labor commitments established by law in its social and environmental action plan.
PART 2
ANALYSIS OF DFIS’ POLICIES

Alexandria Portland Cement Company (Titan), Egypt.
Clients have a clear conflict of interest that prevents them from disclosing retaliation risks, and from responding effectively to retaliation that they are in most cases responsible for. Yet, as outlined in the following section, banks tend to rely on client–generated information for key processes (such as environmental and social risk assessments, stakeholder engagement, and consultations with affected communities) that are key to assessing and mitigating reprisal risks, and to preventing, addressing or remedying reprisals.

The analysis looks at the environmental and social frameworks, as well as public statements, guidelines, and any document specifically related to the management of reprisal risks, of eight of the largest multilateral development banks. This analysis doesn’t include statements and protocols adopted by independent accountability mechanisms to prevent and address retaliations. DFIs also have other types of processes to guide their strategies and priorities, which may include components that are also relevant to the assessment of retaliation risks (such as country diagnostics). However, this report focuses on the analysis of safeguards policies at the project level, where all other assessments or processes implemented to evaluate reprisal risks should be integrated.

Finally, the analysis focuses on the standards that DFIs apply to projects they finance directly, where there is a higher degree of supervision of project risks and impacts. However, it is worth noting that DFIs apply even weaker due diligence standards for projects implemented through financial intermediaries. Although safeguards still apply and project implementing actors should be compliant, the oversight is typically delegated to the intermediary, and the banks only conduct an analysis of the environmental and social management systems implemented. Moreover, the lack of information and disclosure around projects implemented through financial intermediaries means that communities are unable to identify key decision-makers to address and raise concerns about reprisal risks.

**KEY FINDINGS**

**SPECIFIC POLICIES AND COMMITMENTS ON REPRISALS**

1. Some DFIs (EBRD, IDB, IDB Invest, IFC and World Bank) have adopted specific documents or statements on reprisals, while others (AfDB and EIB) incorporated specific provisions on reprisals in their environmental and social safeguards.
2. IDB–Invest and IFC have jointly adopted specific guidance for clients, but without indicating specific procedures for the banks themselves.
3. The IDB adopted technical notes to support its own staff, borrowers, and executing agencies to identify and evaluate reprisal risks.
4. Some DFIs (AfDB, EBRD, EIB, IDB, IDB Invest, IFC and World Bank) include in their policies specific criteria related to the assessment of risks posed by the use of public or private security forces.
5. All policies analyzed, with the exception of the IDB technical notes, place the responsibility for key steps in the assessment of reprisal risks mainly on the client, without clearly establishing which procedures the bank staff must follow to assess reprisal risks and to prevent and respond to reprisals.
6. Since the assessment of project risks and impacts – as well as the identification of project–affected people and consultations with them – is generally a responsibility of the clients, bank policies do not ensure that HRDD processes can be adequately carried out, and that reprisal risks can be effectively identified and mitigated.
OTHER RELEVANT POLICIES

1 For certain projects that affect Indigenous Peoples, most policies require their FPIC.55

2 All social and environmental policies require the participation of project-affected people free of coercion and intimidation in different stages of the projects, for example, in the assessment and management of environmental/social risks and impacts, and in the design and implementation of mitigation measures.

3 Social and environmental policies attribute the responsibility for the assessment of the risks/impacts of the projects to the client. For specific projects in sensitive or high-risk contexts, or affecting Indigenous Peoples, the policies of all DFIs indicate that independent experts could or should be hired to conduct the assessments; however, this is generally optional, and there are no rules or guidelines to ensure the experts are truly independent.

4 Social and environmental policies place the responsibility for consulting with stakeholders on the client. For certain types of projects, most policies also indicate the need for stricter scrutiny by the bank, or the participation of independent third parties, but these further measures are generally optional.

5 In general, the banks assume the responsibility of reviewing the information produced by the clients to monitor compliance with their policies, providing technical cooperation to support the implementation of the safeguards, detecting gaps in the information, verifying that the social management plan covers the different risks and impacts of the project, and verifying the client’s capacity to comply with social and environmental safeguards. The possibility of the bank making site visits56 and engaging independent third parties to monitor different aspects of the projects is established in certain cases (ADB, AfDB, EBRD, EIB, IDB, IDB Invest, IFC and World Bank), but it is mostly discretionary.

55 The only bank analyzed that does not require FPIC is the ADB, which only requires the consent (intended as broad community support) of affected Indigenous Peoples for certain cases. On the difference between informed consent and broad community support, see “Effective Participation and Free, Prior and Informed Consent”, Forest Peoples Programme, 2016, https://www.forestpeoples.org/sites/fpp/files/publication/2016/03/fpp-fpic-not-fpicon-final.pdf

56 Bank staff are often claiming they have decided not to make site visits ‘for fear of causing reprisals’. However, site visits are important and should be conducted in a safe way, ensuring they do not exacerbate risks, and planned in close consultation with affected communities and their allies.
SPECIFIC DOCUMENTS ON REPRISALS

The ADB has not published any specific declaration, guidance, or protocol related to reprisal risks or response to reprisals in the context of its projects. The only specific guidelines are related to the protection of key stakeholders in the context of complaints submitted to the independent accountability mechanism.

ENVIRONMENTAL AND SOCIAL POLICY

Reprisals

The Safeguard Policy Statement, approved in June 2009, only makes specific reference to retaliation risks in provisions related to the grievance redress mechanism implemented by the client at the project level. It doesn’t make specific reference to retaliation risks more generally, but it requires prior and informed meaningful consultations with affected persons and requires consultations to be undertaken in an atmosphere free of intimidation or coercion. However, the policy does not establish any procedure aimed at assessing reprisal risks in the context of the projects, as well as procedures to prevent and respond to reprisals.

Consultations

As a general rule, the responsibility for meaningful consultations is placed on the client. The participation of ADB project teams in consultation activities is only contemplated for projects with significant adverse environmental impacts, involving involuntary resettlement or impacting Indigenous Peoples. The policy also establishes that ADB will assure itself, through its own investigation, that broad community support for the project has been demonstrated by the Indigenous Peoples communities.

Assessment of risks and impacts

The responsibility of assessing project risks and impacts is attributed to the client. Only assessments in the context of highly complex and sensitive projects (related to the environment, involuntary resettlement, or Indigenous Peoples) require independent advisory panels of experts not

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57 The ADB is currently reviewing and updating its 2009 Safeguard Policy Statement. Further information on the campaign led by a group of CSOs for stronger safeguards on reprisals can be found here: https://rightsindevelopment.org/news/recommendations-to-adb-from-communities-facing-reprisals.
60 ADB SR 1 (par. 20); SR 2 (par. 29); SR 3 (par. 22).
61 ADB SPS (par. 32, 54). See also SR 1 (par. 19), SR 2 (par. 28), SR 3 (par. 10).
62 ADB SPS (par. 54); SRs: Environment (par. 19); Involuntary Resettlement (par. 28); Indigenous Peoples (par. 10).
63 ADB SPS (par. 54).
64 ADB SPS (par. 55).
65 ADB SPS (par. 73); SR 1 (par. 4); SR 2 (par. 15); SR 3 (par. 13); SR 4 (par. 2).
affiliated with the project during project preparation and implementation. However, provisions for ascertaining when projects are complex or sensitive is discretionary and the development of a panel of independent advisory experts is not subject to input from affected communities or civil society, making the decision-making processes around this highly opaque.

Additionally, when the project affects Indigenous Peoples, an Indigenous Peoples’ expert is required on the advisory panel. For projects that involve activities in critical habitats, the client is also required to retain qualified and experienced external experts to assist in conducting the assessment. In projects that involve negotiated land acquisition, the policy requires the client to engage an independent external party to document the negotiation and settlement processes, in order to address the risks of asymmetry of information and bargaining power.

Clients are required to submit periodic monitoring reports on the implementation of the project. For projects with significant impacts and risks, they must retain qualified and experienced external experts or qualified NGOs to verify monitoring information, and for highly complex and sensitive projects, they must use independent advisory panels. Projects that affect Indigenous Peoples require the client to use dynamic mechanisms to monitor project implementation, such as inspections and audits, to verify compliance with the Indigenous Peoples Safeguards.

The policy defines “external experts” as experts not involved in day-to-day project implementation or supervision. This means they are not necessarily independent or external from the client. Not only can they be selected and hired by the client to monitor the project, but they can be formally and permanently employed by the borrower. The policy does not define the Independent Advisory Panel required for certain projects.

The bank’s role

The ADB conducts due diligence, screens projects, specifies safeguards requirements, reviews, monitors and supervises social and environmental assessments and plans, monitors implementation and seek corrective measures to ensure compliance with the policy requirements. Due diligence involves field visits and desk reviews. The bank helps the client in building capacity to deliver the safeguards, discloses project information on the website and conducts periodic site visits for projects with adverse environmental or social impacts. For projects with significant adverse social or environmental impacts, it will conduct supervision missions with detailed review by ADB’s safeguard specialists, officers or consultants.

66 “Highly Complex and Sensitive Projects” are projects that ADB deems to be highly risky or contentious or involve serious and multidimensional and generally interrelated potential social and/or environmental impacts. See ADB SR 1 (par. 16); SR 2 (par. 24); SR 3 (par. 19).
67 ADB SR 3 (par. 19).
68 ADB SR 1 (par. 29).
69 ADB SR 2 (par. 25).
70 ADB SPS (par. 57); SRs 2 (par. 30); SR 3 (par. 23).
71 ADB SR 3 (par. 23).
72 ADB SPS, Glossary.
73 ADB SPS (par. 46).
74 ADB SPS (par. 56).
75 ADB SPS (par. 58).
The AFDB Integrated Safeguards System (ISS) was initially approved in 2013 and updated in April 2023. It now includes: a Policy Statement on “An African Vision of Sustainable Development” (ISS PS), ten Operational Safeguards (OS), the Environmental and Social Policy (ESP), and the Integrated Environmental and Social Impact Assessment (IESIA). The 10 OS include OS 1: Assessment and Management of Environmental and Social Risks and Impacts; OS2: Labour and Working Conditions; OS 3: Resources Efficiency and Pollution Prevention and Management; OS4: Community Health, Safety and Security; OS5: Land Acquisition, Restrictions on Access to Land and Land Use, and Involuntary Resettlement; OS 6: Habitat and Biodiversity Conservation and Sustainable Management of Living Natural Resources; OS7: Vulnerable Groups; OS 8: Cultural Heritage; OS9: Financial Intermediaries; OS10: Stakeholder Engagement and Information Disclosure.

In its updated Integrated Safeguards System (ISS), the AfDB states it is committed to “open dialogue, safe public consultation free of reprisal, timely and full access to information, and responsive grievance mechanisms.”

It also includes a specific annex on addressing reprisal risks, stating that – when reprisal risks are identified – clients should “implement specific measures to prevent reprisals, such as using best practices in safe consultations, independent monitoring of project implementation, training, proactive community outreach, enhancing project-affected communities’ awareness of, ability to access independent grievance mechanisms, or other modifications to project design to mitigate the risks of reprisals.”

The annex, however, does not explain how reprisal risk assessment should be conducted and it places the responsibility for preventing and responding to reprisals exclusively on the client. With regards to the bank’s role, it only states that specific directives to staff will be issued on application of its commitment against reprisals.

In the ISS, the AfDB commits to ensure – at any time during the operations life cycle – protection of all stakeholders against reprisals. In particular, the ISS states that:

- the client should not retaliate against workers who participate or seek to participate in workers’ organizations and engage in collective bargaining;
- grievance mechanisms will allow for anonymous complaints to be raised and addressed;
- meaningful consultations with affected communities must be free of manipulation, interference, coercion, discrimination, intimidation and reprisal;
- Stakeholder Engagement Plans will include concrete measures to implement the borrower’s commitments to prevent reprisals.

In the ISS, the environmental and social assessments cover all relevant direct and indirect environmental and social risks and impacts, including socioeconomic and cultural, community social structure, gender, vulnerable groups, health, and safety among others. One of the OS applies to health, safety and security (OS 4), and contains specific directives to staff.


76 The AFDB Integrated Safeguards System (ISS) was initially approved in 2013 and updated in April 2023. It now includes: a Policy Statement on “An African Vision of Sustainable Development” (ISS PS), ten Operational Safeguards (OS), the Environmental and Social Policy (ESP), and the Integrated Environmental and Social Impact Assessment (IESIA). The 10 OS include OS 1: Assessment and Management of Environmental and Social Risks and Impacts; OS2: Labour and Working Conditions; OS 3: Resources Efficiency and Pollution Prevention and Management; OS4: Community Health, Safety and Security; OS5: Land Acquisition, Restrictions on Access to Land and Land Use, and Involuntary Resettlement; OS 6: Habitat and Biodiversity Conservation and Sustainable Management of Living Natural Resources; OS7: Vulnerable Groups; OS 8: Cultural Heritage; OS9: Financial Intermediaries; OS10: Stakeholder Engagement and Information Disclosure.

77 AfDB PS (par. 5).
78 AfDB ISS OS 10; Annex 2.
79 AfDB ISS ESP (par. 27).
80 AfDB ISS ESP (par. 27).
81 AfDB OS 2 (par. 20).
82 AfDB OS 10 (par. 31).
83 AfDB OS 10, (par. 9).
84 AfDB ISS; OS 10 (par. 18).
85 AfDB OS 1 (par. 19, 24).
specific provisions related to the assessment of risks posed by the use of security personnel.

The policy also states that one of the different tools that can be used to undertake the environmental and social assessment is the contextual risk assessment,\(^6\) which gathers information on limitations to meaningful consultation and free speech, including the risks of reprisals to stakeholders. With this analysis, the client can assess whether these risks have the potential to distort stakeholder engagement, to exacerbate social inequality, and to compromise the intended benefits for project-affected people.\(^7\) However, contextual assessment is not mandatory. The policy also says that, in certain cases, this assessment can be carried out by the bank.\(^8\)

**Consultations**
The ISS places the responsibility for meaningful consultations and for ensuring informed consent for certain projects on the client,\(^9\) but the bank has the right to participate.\(^9\) In certain cases, when the environmental and social risks/impacts are high, the borrower may be required to retain independent third-party specialists. These experts could help assist in the stakeholder identification, support the design of an inclusive engagement process,\(^9\) and be required in some Social Engagement Plans to communicate with vulnerable groups.\(^9\)

When the projects affect vulnerable rural minorities, the safeguard OS7 states that the bank may seek the technical advice of specialists with expertise on social and cultural groups in the project area, and that the AfDB will consult both the affected communities and the borrower.\(^9\)

**Assessment of risks and impacts**
The client is responsible for the assessment of different risks and impacts of the projects.\(^9\) When environmental and social risks/impacts are significant, the bank will determine whether the borrower is required to retain independent third-party specialists, who will support the environmental and social due diligence on the project.\(^9\) The specific provisions related to the assessment of risks posed by the use of security personnel.

86 AfDB, OS 1 Annexe 1 (par. 5).
87 AfDB, OS 1 Annexe 1 (par. G - Contextual Risk Assessment). According to the draft Guidance Notes published by the bank to guide the implementation of the safeguards, situations where contextual risk is particularly relevant include, among others, areas where gross human rights abuses or systematic human rights violations exist; areas where the rule of law and governance are weak or non-existent and in areas where respect for human rights is limited or absent; and areas with severely curtailed civic space (AfDB ISS Guidance Note, OS 1).
88 AfDB, ESP (par. 12).
89 AfDB ISS ESP (par. 8, 58, 63, 64, 65); OS 1 (par. 12, 18); OS 2 (par. 20); OS 3 (par. 15, 31); OS 5 (p. 22); OS 6 (par. 18, 31); OS 7 (par. 24, 26, 30, 32, 34, 36, 42, 43); OS 8 (par. 14, 15, 23, 27, 31); OS 10 (par. 6, 8, 9, 12, 13, 15, 23, 25, 26).
90 AfDB, ESP (par. 63).
91 AfDB, OS 10 (par. 14).
92 AfDB, OS 10 (par. 18).
93 AfDB, ESP (par. 64, 67).
94 AfDB ESP (par. 15, 58, 59); OS 1 (par. 2, 11, 12, 19, 50, 53, 55, 56, 57, 59, 60); OS 2 (par. 41); OS 3 (par. 4, 12, 13, 15, 21, 25, 26, 28, 35); OS 4 (par. 6, 11, 12, 13, 16, 23, 28, 32); OS 5 (par. 11, 15, 25, 27, 29); OS 6 (par. 10, 11, 18, 30, 34, 37, 39); OS 7 (par. 18); OS 8 (par. 9, 15, 18, 26, 29, 31).
95 AfDB, ESP (par. 17). The draft Guidance Notes applicable to OS 10 define general characteristics of these independent third party specialists.
involvement of independent specialists is required for high-risk projects, when the borrower has limited capacity,\(^{96}\) where FPIC is required in projects affecting highly vulnerable rural minorities,\(^{97}\) when offsets are proposed for adverse impacts on critical areas,\(^{98}\) and for dams.\(^{99}\)

The client is responsible for monitoring the project implementation and reporting the information to the bank.\(^{100}\) Third-party resettlement professionals are required to monitor the implementation of resettlement plans for projects with large-scale, complex and/or significant involuntary resettlement impacts.\(^{101}\) For projects with significant involuntary resettlement, the borrower will commission an independent completion audit of the plan.\(^{102}\) Where appropriate, the bank will require the borrower to engage stakeholders and third parties, such as independent experts, local communities, CSOs or NGOs, to complement or verify the monitoring information.\(^{103}\) The borrower will facilitate site visits by AfDB staff or consultants acting on the bank’s behalf.\(^{104}\)

**The bank’s role**

The AfDB’s roles include:
- supporting the borrower;\(^ {105} \)
- carrying out due diligence;
- monitoring the environmental and social performance,\(^ {106} \) by reviewing the reports prepared by the client\(^ {107} \) and annual environmental and social audits prepared by independent consultants of the borrower, and during its own supervision missions;\(^ {108} \)
- determining the project risk classification;\(^ {109} \)
- disclosing environmental and social documentation prior to project appraisal;\(^ {110} \)
- carrying out an assessment of gender issues for every project;\(^ {111} \)
- issuing specific directives to bank staff on the protection of all stakeholders against reprisals; sexual exploitation, abuse, sexual harassment, and gender-based violence; or discrimination on the grounds of sexual orientation and gender identity;\(^ {112} \)
- where the bank deems it necessary, it may undertake a contextual risk assessment to complement its environmental and social due diligence;\(^ {112} \)

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\(^{96}\) AfDB, OS 1 (par. 21). In addition, for high-risk or contentious projects, the borrower may also be required to engage one or more internationally recognized independent experts, who will provide independent advice and oversight to the project (OS 1, par. 29); and when structural elements of a project or activities are situated in high-risk locations and their malfunction may threaten the safety of communities, the Borrower will engage one or more independent experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction.

\(^{97}\) AfDB, OS 7 (par. 37).

\(^{98}\) AfDB, OS 4, Annex 1 (par. 40, 43, 44, 45).

\(^{99}\) AfDB, OS 6 (par. 18).

\(^{100}\) AfDB, OS 6 (par. 19).

\(^{101}\) AfDB, OS 5 (par. 32).

\(^{102}\) AfDB, OS 5 (par. 34).

\(^{103}\) AfDB, ESP (par. 71).

\(^{104}\) AfDB, OS 1 (par. 44).

\(^{105}\) AfDB, ISS ESP (par. 2, 66); OS 1 (par. 26), OS 3 (par. 26).

\(^{106}\) AfDB, ISS ESP (par. 2, 63).

\(^{107}\) AfDB, ISS ESP (par. 15, 66); OS 1 (par. 2).

\(^{108}\) AfDB, ISS ESP (par. 66).

\(^{109}\) AfDB, ISS, ESP (par. 29).

\(^{110}\) AfDB, ISS, ESP (par. 62).

\(^{111}\) AfDB, An African vision for sustainable development (par. 7).

\(^{112}\) AfDB, ESP (par. 12).
In January 2019, the EBRD approved a statement about “Retaliation Against Civil Society and Project Stakeholders”. It affirms that the EBRD does not tolerate reprisals by its clients or other project counterparties and that the bank takes credible allegations seriously.

The statement refers to some procedures that can be used to address reprisal cases. For cases related to coercive practices under the bank’s Enforcement Policy and Procedures (EPPs)114 the client is subject to Enforcement Proceedings. For all the other cases, the EBRD affirms it works with clients and other relevant parties to try to address reprisals.

In the statement, the bank commits to raise the issue directly with the client or relevant party, to make EBRD’s position against reprisals clear, and take follow-up action as and where appropriate. It also states that locally affected communities should be able to raise their concerns, without fearing reprisals, through project-level grievance mechanisms or the Project Complaint Mechanism (PCM), which is EBRD’s independent accountability mechanism. The statement also mentions internal guidelines on the handling of allegations of retaliation for criticism and complaints related to EBRD projects, but these documents – as they are not public – have not been included in this analysis.

Reprisals
EBRD’s Environmental and Social Policy (ESP)115 requires the identification and management of all relevant direct/indirect environmental and social risks/impacts of the projects.116 It also recognizes that, in certain cases, it may be appropriate to complement these assessments with further studies focusing on specific risks and impacts, such as human rights.117 One of the performance requirements applies to health, safety and security risks (PR 4), risks that

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116 EBRD ESP PR 1 (par. 12)
117 EBRD ESP (par. 2.4); PR1 (par 12).
should be part of a more comprehensive assessment of reprisal risks.

The policy mentions retaliations in three instances, stating that:
- meaningful consultations in the context of the projects must be free from manipulation, coercion, intimidation, and retaliation;\(^{118}\)
- the client should not retaliate against workers who participate in workers’ organizations;\(^{119}\)
- and in relation to grievance mechanisms.\(^{120}\)

Nevertheless, the policy does not establish any procedure or mechanism specifically aimed at assessing reprisal risks and preventing reprisals.\(^{121}\)

Consultations
The policy places the responsibility for meaningful consultations on the client.\(^{122}\) It establishes that, in some cases, the bank may conduct its own public consultation activities to gauge stakeholder views,\(^{123}\) without specifying the conditions under which the bank will conduct them.

When FPIC is required, the client must retain qualified independent experts to assist in conducting and documenting the good faith negotiations and FPIC process.\(^{124}\) The policy does not specify the criteria applied to determine when an expert is independent. Since the expert will be selected and hired by the client, independence from the borrower is not ensured.

Assessment of risks and impacts
The client is responsible for carrying out an assessment of risks and impacts.\(^{125}\) For example, the client is required to assess and identify project security threats for workers and communities,\(^{126}\) including the risks posed by its own security arrangements and those of its contractors.\(^{127}\) The client must also verify its workers providing security services have not been implicated in past abuses,\(^{128}\) and assess potential risks arising from public security forces.\(^{129}\)

For projects that are complex or contentious, or that involve potentially significant multidimensional environmental and social risks or impacts, the client may be required to engage one or more internationally recognized independent experts. Such experts may form part of an advisory panel or be employed by the client, and will provide independent advice and oversight to the project.\(^{130}\) This is discretionary for the bank, and the policy does not establish specific conditions to ensure actual independence from the client. The client is required to commission an objective and independent study to identify all communities of Indigenous Peoples who may be affected by the project, and – in consultation with them – assess the potential effects of the project on these groups and their views about the project.\(^{131}\) Independent experts are also required when the project could have adverse impacts on a critical habitat.\(^{132}\)

The client is also responsible for monitoring the project implementation.\(^{133}\) For projects that could have significant adverse environmental and social risks and impacts, the bank may require the client to engage relevant external experts to perform independent reviews of the project or to monitor specific environmental and social risks and impacts.\(^{134}\) Independent reviews are not mandatory but rather discretionally demanded by the EBRD, since the policy does not indicate the criteria to require them. The independence of the experts is also not guaranteed since the client is responsible for engaging them.

The bank’s role
During project appraisal and monitoring, the bank reviews the client’s information, provides guidance to assist the client in addressing environmental and social impacts, as well as to help identify opportunities for environmental or social benefits.\(^{135}\) The EBRD may also periodically verify the monitoring information produced by the clients, through site visits by its environmental and social specialists or independent experts.\(^{136}\) This is a discretionary power since the provision does not establish any criteria to determine its application.

118 EBRD ESP (par. 7)
119 EBRD ESP PR 10 (par. 7 and 20); PR 2 (par. 15).
120 EBRD ESP PR 2 (par. 21); PR 10 (par. 29).
121 During meetings with civil society organizations, the bank’s staff informed them about the existence of internal guidelines and procedures aimed at assessing reprisal risks. Since these documents are not published, they cannot be included in this analysis.
122 EBRD ESP (par. 2.9, 4.13); PR10 (par. 19-21); PR 1 (par. 8); PR 5 (par. 16, 36, 37, 38, 39); PR 6 (par. 12, 15); PR 8 (par. 9, 10).
123 EBRD ESP (par. 4.13).
124 EBRD ESP PR 7 (par. 15).
125 EBRD ESP (par. 4.8, 2.9, 4.13); PR 1 (par. 2, 4, 7); PR 2 (par. 22, 23, 25); PR 3 (par. 5, 10, 21); PR 4 (par. 16, 18, 26, 30, 32, 39, 41, 42); PR 5 (par. 9, 20, 21, 22); PR 6 (par. 5, 7, 8, 17); PR 7 (par. 1, 7, 8, 9); PR 8 (par. 11).
126 EBRD ESP PR 4 (par. 39).
127 EBRD ESP PR 4 (par. 40).
128 EBRD ESP PR 4 (par. 42).
129 EBRD ESP PR 4 (par. 41).
130 EBRD ESP PR 1 (par. 13).
131 EBRD ESP PR 7 (par. 9).
132 EBRD ESP PR 6 (par. 17, 19).
133 EBRD ESP PR 1 (par. 29, 31).
134 EBRD ESP PR 1 (par. 35).
135 EBRD ESP (par. 4.7 - 4.14, 4.18).
136 EBRD ESP (par. 4.18).
In 2020, the EIB published a Guidance Note on Stakeholder Engagement in EIB Operations, which includes guidance for project promoters on how to address reprisal risks. It also requires promoters to share allegations of reprisal with the EIB, when there is the consent of the affected persons, and states the bank may take follow-up action. However, it does not explain how the EIB will assess/manage reprisal risks.137

ENVIRONMENTAL AND SOCIAL POLICY

Reprisals

The Environmental and Social Sustainability Framework (ESSF), approved in 2022,138 consists of an Environmental and Social Policy (ESP) and Environmental and Social Standards (ESS).139 The ESP states that the bank does not tolerate reprisals.140 The ESS requires project promoters to provide information related to context-specific social risks, including risks of reprisals, in order to determine the need for an environmental and social impact assessment (ESIA),141 and recommends the inclusion of that information on the ESIA report. The assessment of social aspects includes considerations of potential human rights risks, including the right to freedom of assembly and association.142 When preparing stakeholder engagement, the promoter must consider the country context and the public debate about the project and the sector, take into account any risks of reprisals, and identify groups at risk.143

If risks of reprisals are identified, the engagement plan – “as deemed necessary by the EIB” – shall include a strategy for preventing and responding to reprisals, in particular by engaging constructively with those at risk.144 The plan includes requirements related to the assessment and prevention of risks created by private and public security forces.145 The stakeholder engagement plan has to provide secure fora for consulting these groups and ensuring reprisal-sensitive stakeholder engagement.146 If the project is located in fragile or conflict-affected areas, or with a high incidence of human rights violations, or is implemented during a crisis that could impact consultations, the client must develop targeted consultations to ensure a safe space for stakeholders.147

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138 The EIB is legally bound by the provisions of the Charter of Fundamental Rights of the European Union and other EU and international human rights legislation. In its ESS, the EIB affirms its commitment to respecting and promoting human rights in the project it supports and to pursuing an integrated human rights-based approach to environmental climate and social due diligence and monitoring.
140 EIB ESP preamble (par. 17); ESP (par. 4.5).
141 EIB ESS 1, Annex 1b (par. 3); Annex 2 (par. 2).
142 EIB ESS 1 (par. 7).
143 EIB ESS 2 (par. 39).
144 EIB ESS 2 (par. 30).
145 EIB ESS 9 (par. 54 - 59).
146 EIB ESS 2 (par. 30).
147 EIB ESS 2 (par. 39).
Project promoters have to offer protection against intimidation during consultations,\textsuperscript{148} and must ensure grievance mechanisms are free of reprisals.\textsuperscript{149}

Although the policy requires the assessment of retaliation risks and the adoption of preventive measures, the responsibility for this assessment and for the corresponding preventative strategy is attributed exclusively to the client. The policy does not regulate how the bank will assess reprisal risks, and prevent and respond to reprisals potentially carried out by their own clients.

**Responsibilities for consultations**

The client is responsible for stakeholder engagement with project-affected people.\textsuperscript{150} When seeking funding for projects that have already started, the client is required to “demonstrate it has sought and acted upon the opinions of project-affected Indigenous Peoples”; when these requirements have not been met, the requirement is for the client to “carry out or commission an independent assessment”.\textsuperscript{151} Since this evaluation can be carried out by the client, independence is not guaranteed. No other provision requires the direct involvement of bank staff or independent third parties. Some provisions require the involvement of specialists, but don’t require them to be independent from the client.\textsuperscript{152} In order to monitor the consultations, the client is only advised to implement, whenever feasible, monitoring by third parties.\textsuperscript{153}

**Assessment of risks and impacts**

The assessment of risks and impacts of the project is attributed to the client.\textsuperscript{154} For projects that are in an initial design stage, the client has to undertake or commission an independent study by specialists to identify Indigenous Peoples, assess potential impacts, and gather their views about the project.\textsuperscript{155} Where significant labour-associated risks have been identified, the promoter has to commission an independent Labour Assessment or Labour Audit.\textsuperscript{156} Monitoring is also a responsibility of the client,\textsuperscript{157} that may engage stakeholders and/or third parties (such as independent experts, local communities or NGOs) but this is not a requirement.\textsuperscript{158} If major accidents occur, the bank may require an independent investigation.\textsuperscript{159}

**The bank’s role**

The EIB is responsible for conducting due diligence, monitoring and reviewing compliance with requirements based on the information provided by the client.\textsuperscript{160} Due diligence may include:

\textit{Protest in Ixquisis against hydroelectric projects, Guatemala.}
analyzing the country’s context and contextual risks (including those related to human rights);
reviewing the information provided by the client and requesting additional information;
reviewing other available information (including local sources of knowledge related to environmental, climate and social impacts);
categorizing projects;
conducting site-visits and engaging with the client’s staff and relevant stakeholders (including potentially affected communities);
ensuring the findings are reflected in the application of the mitigation hierarchy;
assessing the capacity and commitment of the client to implement the project in accordance with the policy;161
providing technical assistance or advisory support.162

The responsibility for assessing and preventing reprisals is put jointly on the IDB, the borrowers, and executing agencies. In order to prevent reprisals, it also highlights the importance of the IDB conducting additional stakeholder engagement without the involvement of the borrower in high-risk contexts,165 and identifies certain specific circumstances that can be considered as red flags that determine the need to conduct IDB-led consultations.166 It also considers the possibility of requesting the support of independent third parties to defuse tensions and reduce the likelihood that reprisals materialize.167

INTER-AMERICAN DEVELOPMENT BANK (IDB)

SPECIFIC DOCUMENTS ON REPRISALS

In 2022, the IDB adopted a technical note on Reprisal Risk Management163 to support its staff, borrowers, and executing agencies to assess retaliation risks, prevent and respond to reprisals. Among the potential sources of retaliations, the note identifies: state agencies at central and local levels, executing agencies, business partners, non-state armed groups, media, and other community members. It also lists some of the key contextual risk factors to be identified during the initial screening of projects, such as: restrictions on civic space, the track record of the project implementers, past instances of retaliations in the area, conflicts or tensions in the community, and the presence of marginalized groups among others. The technical note also suggests some relevant independent sources of information, including national and international civil society organizations, affected communities, national human rights institutions, and regional and international human rights mechanisms and procedures. This initial screening of the projects has the objective of identifying retaliation risks, their potential perpetrators, and their victims,164 informing IDB’s risk categorization, and how to carry out consultations.

161 EIB ESP (par. 4.17).
162 EIB ESP (par. 4.23).
164 IDB TN (p. 23).
165 IDB TN (p. 35).
166 Such as, for example: lack of representation from members of some or all affected communities; presence of security forces at consultations; how project partners speak about project stakeholders (for example, defining them as troublemakers, anti-development, terrorists); the imposing presence of some project partners at consultations; the fact that project-impacted stakeholders express views during bilateral talks, but few, if no one, express their views in context of public consultations; clear favoritism of some community members, or some communities, that appear to be favoring the project or specific project activities subject to consultation. See IDB TN (p. 35).
167 IDB TN (pp. 24, 33).
MISPLACED TRUST

The technical note is an important tool in the prevention and response to retaliation, as it details some of the key steps that must be taken for risk assessment and the prevention of retaliations, identifies the executing agencies as potential sources of retaliation, requires a contextual assessment, includes sources of information independent of the client and makes the bank responsible for the evaluation of these risks.

ENVIRONMENTAL AND SOCIAL POLICY

Reprisals

The Environmental and Social Policy Framework (ESPF), approved in 2020, states that the bank does not tolerate retaliation, such as threats, intimidation, harassment, or violence, against those who voice their opinion or opposition to an IDB-financed project or to the borrower, and states the client should not retaliate against workers who participate, or seek to participate, in workers’ organizations and collective bargaining. It states the IDB takes any credible allegations of reprisals seriously, and when complaints are raised, the bank works to address them with the involved parties, raising its concerns directly to the borrower or relevant party and taking follow-up action. The policy also states that meaningful consultations and stakeholder engagement must be free of reprisals and requires grievance mechanisms to ensure people can raise complaints free of reprisals.

The assessment of risks and impacts includes those related to human rights, considers all relevant environmental and social risks and impacts, including those related to community safety and threats to human security through the risk of escalation of personal or communal conflict and violence, and risks related to conflict or contestation over land and natural resources. The policy also...
contains specific provisions related to the assessment of risks posed by the use of security personnel.\textsuperscript{177} The policy does not regulate how the bank will assess reprisal risks and how it will prevent those risks, but its application is complemented by a guidance note that establishes some procedures and steps related to addressing reprisals.

Consultations
The client is responsible for stakeholder engagement with people affected by the project, and for obtaining FPIC\textsuperscript{178} of Indigenous communities when it is required.\textsuperscript{179} Depending on the potential significance of the risks and impacts, the client may be required to retain third-party specialists to assist in stakeholder identification and analysis.\textsuperscript{179} The policy does not establish the circumstances under which it is necessary to involve third-party specialists, nor does it specify how to ensure they are independent from the client.

Assessment of risks and impacts
The assessment of risks and impacts of the project is attributed to the client.\textsuperscript{180} The clients may be required to involve external experts to assist in the risks and impacts identification and monitoring processes, throughout the project’s lifecycle.\textsuperscript{181} The engagement of external experts is also required when the client is considering the development of an offset,\textsuperscript{182} when FPIC of indigenous communities is required, and to assist in the assessment and protection of critical cultural heritage.\textsuperscript{183}

The client must also engage external experts, separate from those responsible for the design and construction, in order to conduct a review when structural components of the project are situated in high-risk locations and their failure or malfunction may threaten the safety of communities.\textsuperscript{184} For some projects that involve involuntary resettlement, depending on the scale and complexity of physical and economic displacement, the borrower has to commission an external completion audit of the Resettlement Action Plan or Livelihood Restoration Plan.\textsuperscript{185} When projects are implemented in areas of critical habitats, in a legally protected area, or an internationally recognized area, the borrower should retain external experts to assist in the development of a mitigation plan.\textsuperscript{186} The policy does not clarify which process or rules must be followed in order to ensure the experts are independent of the client.

Clients are also responsible for project monitoring.\textsuperscript{187} For projects with significant impacts, the borrower has to retain external experts to verify its monitoring information.\textsuperscript{188} The IDB may require the client to engage stakeholders and third parties, such as independent experts, local communities, or civil society organizations, to complement or verify project monitoring information.\textsuperscript{189}

The bank’s role
The IDB is responsible for:

- carrying out its own environmental and social due diligence, in accordance with the standards of the ESPF and the Environmental and Social Review Procedures.
- reviewing the information provided by the client;
- providing technical assistance and guidance to the client to fulfill the ESPF’s requirements;\textsuperscript{190}
- requesting additional information where there are gaps;\textsuperscript{191}
- monitoring the environmental and social performance of the project;\textsuperscript{192}
- assigning the social risk classification and disclosing the environmental and social documentation produced by the client and the bank.\textsuperscript{193}

If clients do not comply with the policies, the IDB should work with them to achieve compliance, and may provide additional technical assistance and increased monitoring by the bank and/or stakeholders and third parties.\textsuperscript{194} When FPIC of Indigenous Peoples is required, the IDB has to assess the outcomes of the meaningful consultations; if FPIC cannot be verified, the bank should not proceed further. The IDB can also consider adopting additional measures in its due diligence process, to obtain the information required for its decision-making processes.
SPECIFIC DOCUMENTS ON REPRISALS

In 2021, IDB Invest issued a Good Practice Note in collaboration with IFC,"195 to provide practical guidance to companies on how to address risks of retaliation against project stakeholders and respond to reported incidents. The guide does not establish any steps the banks themselves must take to address these risks, even though it mentions that company representatives and partners can be among the potential perpetrators of retaliation.196 In relation to the role of the banks, it only states that they seek to prevent reprisals through the identification of risks, in their due diligence processes, and in the engagement with their clients and partners on environmental and social risk management for their projects.197

ENVIRONMENTAL AND SOCIAL POLICY

Reprisals

In 2020, IDB Invest adopted an Environmental and Social Sustainability Policy (ESSP).198 In addition, the bank applies the Performance Standards (PS) on the Environmental and Social Sustainability of the IFC (see further details in the section below).199

The ESSP states that meaningful stakeholder engagement must be free of intimidation or coercion,200 and that IDB Invest does not tolerate retaliation (such as threats, intimidation, harassment, or violence) against those who voice their opinion or opposition to its projects.201 It says the client cannot retaliate against workers who participate, or seek to participate, in workers’ organizations and collective bargaining,202 or against those who raise concerns through the grievance mechanisms.203 It also affirms that the bank takes any credible allegations of reprisals seriously and aims to address them, raising concerns directly with the client and/or other relevant party, and that it takes follow-up action when necessary.204

The assessment of risks and impacts includes environmental, social, and human rights aspects,205 including those related to community safety (eg: escalation of personal or communal conflict, and violence or contestation over land and natural resources).206 The policy also contains specific provisions related to the assessment of risks posed by the use of security personnel.207

196 IDB Invest & IFC GPN (p. 9).
197 IDB Invest & IFC GPN (pp 6, 7).
200 IDB Invest ESSP (par. 18); IFC PS 1 (par 30).
201 IFC ESP (par. 20).
202 IFC PS 2 (par. 14).
203 IFC PS 2 (par. 20).
204 IDB Invest ESSP (par. 20).
205 IDB Invest ESSP 1 (par. 6, 9).
206 IDB Invest ESSP 1 (par. 9 vi, viii); ESS 4 (par. 5).
207 IDB Invest ESSP (par.17); IFC PS 1 (par. 3, 7); PS 4 (par. 2).
One of the performance standards applies to health, safety and security risks, and requires the assessment of some risks that should be part of a reprisal risk assessment, such as risks posed by the use of security personnel, including government security forces. Despite its explicit commitments against retaliations, the policy does not establish a detailed process for comprehensively assessing retaliation risks, or for preventing and responding to retaliations.

Responsibilities for consultations
The client is responsible for consulting potentially affected stakeholders. When FPIC is required, the client must engage external experts to assist in the identification of the project risks and impacts. As the IFC performance standards do not define these external experts, it means they may be directly appointed or hired by the client.

Assessment of risks and impacts
The policy places the responsibility for the assessment of project risks on the client. For projects with potentially significant adverse impacts or that involve technically complex issues, IDB Invest requires the application of IFC standards (see IFC section below).

The bank’s role
IDB Invest conducts due diligence of proposed direct investments; when there are significant environmental or social impacts associated with the project, the bank works with its client to determine possible remediation measures.

Environmental and social due diligence for direct investments include:

- a review of available information, records, and documentation, including local sources of knowledge related to the environmental and social risks and impacts;
- environmental and social risk categorization of the project;
- requesting additional information when gaps are identified;
- contextual risk assessment through a review of informed consultation, participation, and FPIC conducted by the client;
- conducting a site visit and interviews with client’s staff and stakeholders, including potentially affected communities;
- monitoring the client’s community engagement during implementation and evaluation of the environmental and social management plans and performance;
- development of an Environmental and Social Action Plan;
- disclosure of the project information on the website;
- a gender risk screening assessment for investments with potential disproportionate gender-based risks and impacts;
- screening and assessment of climate-related risks that may affect its investments, particularly for areas highly prone to disasters;
- revision of the client’s monitoring reports and updates on the environmental and social commitments, taking into account information from third parties (including affected communities, stakeholders and other relevant organizations).
MISPLACED TRUST

INTERNATIONAL FINANCE

CORPORATION (IFC)

SPECIFIC DOCUMENTS ON REPRISALS

In 2018, IFC adopted a Position Statement on Retaliation Against Civil Society and Project Stakeholders,221 stating it does not tolerate any action by a client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or its clients. In this statement, the bank explicitly references retaliation perpetrated by its clients. The bank also affirms it takes any credible allegations of reprisals seriously. When complaints about reprisals are raised, the bank works with the clients or appropriate parties to try to address them, by raising concerns directly with the client or relevant party, making clear the bank’s position against reprisals, and taking follow-up action where appropriate. In addition to environmental and social requirements related to risk identification, stakeholder engagement, and complaint mechanisms, the bank states it is working on internal protocols and staff guidance to raise awareness and guide action, including integrating these concerns in their contextual risk screening procedures to identify contexts that are high-risk for retaliation and violence.

In 2020, IFC published a Tip Sheet for clients to prevent reprisals during the pandemic, providing practical advice to minimize risks and flag specific issues that could be exacerbated in the context of COVID-19.222 The Tip Sheet mentions the previous Position Statement, but no additional reference is made to the actions the bank adopted to assess the increased reprisal risks, and to prevent and respond to reprisals in the context of the pandemic.

In 2021, IFC published a “Good Practice Note for the Private Sector, Addressing the Risks of Retaliation Against Project Stakeholders”, in collaboration with the IDB Invest (see section above).223

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221 Position Statement on Retaliation Against Civil Society and Project Stakeholders, IFC, 2018, https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b346-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf
223 IDB Invest & IFC GPN (pp. 6 - 7), https://www.ifc.org/wps/wcm/connect/93aac9ef-0230-4af9-98df-a916b27b440f/IDB+Invest+and+IFC+Reprisals+GPN.pdf?MOD=AJPERES&CVID=nxFspS5
ENVIRONMENTAL AND SOCIAL POLICY

Reprisals
In 2012, the IFC adopted its Policy on Environmental and Social Sustainability,224 applied in conjunction with IFC’s Performance Standards on Environmental and Social Sustainability.225

According to IFC’s Performance Standards, meaningful stakeholder engagement must be free of external manipulation, interference, coercion, or intimidation.226 This policy also states that clients cannot retaliate against workers who participate, or seek to participate, in workers’ organizations and collective bargaining,227 or against those who raise concerns through the grievance mechanisms.228

The risk assessment includes potential human rights, environmental and social risks and impacts.229 One of the performance standards applies to health, safety and security risks and requires the assessment of some risks that should be part of a reprisal risk assessment, such as those posed by the use of security personnel, including government security forces.230

Despite its explicit commitments against retaliations, the policy does not establish a detailed process for comprehensively assessing retaliation risks or preventing and responding to retaliation.

Responsibilities for consultations
The client is responsible for consulting potentially affected stakeholders.231 When FPIC is required, the client must engage external experts to assist in identifying the project risks and impacts.232 According to IFC’s environmental and social review procedures manual they are experts appointed by the client to assist with its assessments or other tasks, or by the bank to help with its review or supervision activities.233 This means they may be directly appointed or hired by the client.

Assessment of risks and impacts
The policy places the responsibility for the assessment of project risks on the client.234 For projects with potentially significant adverse impacts or involving technically complex issues, clients may be required to involve external experts to assist in the identification process of risks and impacts.235 This requirement is discretionary, and the policy does not clarify how to assess the independence of the experts.

The client must retain external experts to assist in assessing and protecting critical cultural heritage.236 When structural elements or components are located in high-risk areas, and their malfunction may threaten the safety of communities, the client will also engage external experts with relevant and recognized experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible and throughout all the stages of the project.237

The client is also responsible for monitoring the project.238 For projects with significant impacts, the client will retain external experts to verify its monitoring information (for example, when the project involves a resettlement plan, livelihood restoration, critical habitats, biodiversity offsets, and production of living natural resources).

The bank’s role
IFC conducts due diligence on the level and quality of the risks and impacts identification process, carried out by its clients, against the requirements of the Performance Standards.239 Environmental and social due diligence on direct investments typically includes reviewing available information, records, and documentation related to the environmental and social risks and impacts; site inspections and interviews of client personnel and relevant stakeholders, where appropriate; analyzing the environmental and social performance of the project; identifying gaps and additional measures and actions needed to ensure the project meets the Performance Standards.240

IFC monitors the client’s community engagement process.241 For projects with potentially significant adverse impacts on communities or potentially adverse impacts on Indigenous Peoples, the bank

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226 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
227 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
228 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
229 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
230 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
231 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
232 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
233 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
234 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
235 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
236 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
237 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
238 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
239 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
240 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
241 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
242 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
243 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
244 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
245 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
246 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
247 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
248 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
249 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
250 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
251 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
252 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
253 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
254 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
255 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
256 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
257 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
258 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
259 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
260 Performance Standards on Environmental and Social Sustainability (PS), IFC, 2012, https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-
will determine through its own investigation if the client’s community engagement involves informed consultation and participation,242 and leads to “broad community support” for the project.243 When FPIC is required, the bank undertakes an in-depth review of the process conducted by the client.244

To monitor its direct investments, the IFC reviews the information reported by the client and the updates on the environmental and social action plan, identifies opportunities for improvement, addresses adverse impacts caused by changes in the circumstances, and works with the client to achieve compliance.245 When the IFC invests in extractive industries, it assesses the governance risks to expected benefits, promotes transparency of revenue payments to host governments, and requires that clients publicly disclose their payments.246

Mountains in Yichk’isis, Guatemala. Credit: Front Line Defenders.

242 IFC PS 1.
243 IFC ESSP (par. 30).
244 IFC ESSP (par. 31).
245 IFC ESSP (par. 45).
246 IFS ESSP (par. 49).
SPECIFIC DOCUMENTS ON REPRISALS

In March 2020, the WB adopted a statement on zero tolerance for reprisals against those who share their views about bank–financed projects, stating that “any form of intimidation against people who comment on Bank projects, research, activities and their impact, goes against our core values of respecting the people we work for and acting with utmost integrity.”247 The statement refers to the bank’s commitments against reprisals contained in its environmental and social policies and supporting guidance, as well as in other policies.248 However, none of these policies establishes specific protocols to regulate how due diligence is applied to assess and mitigate reprisal risks, or how the bank will act to prevent and address reprisals.

ENVIRONMENTAL AND SOCIAL POLICY

Reprisals

The Environmental and Social Framework (ESF)249 requires the identification and prevention of all social and environmental risks generated by the projects,250 and establishes that consultations with interested parties251 and grievance mechanisms must be free of coercion and intimidation.252 However, the policy does not establish any procedure aimed at assessing reprisal risks in the context of the projects, as well as procedures to prevent and respond to reprisals.

Consultations

The ESF places the responsibility for meaningful consultations on the borrower.253 The direct consultation of the WB with affected people is only required to determine the applicability of safeguards related to Indigenous Peoples and Sub-Saharan African historically underserved traditional local communities.254 The bank can – at its own discretion – decide to support the borrower as and when required, to carry out engagement and meaningful consultations, and participate in consultations to understand and address the concerns of project-affected people.255

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248 In addition to the ESF, other specific documents and policies mentioned in the statement are the Environmental and Social Framework Directive on Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups, the Standard Procurement Documents, the Grievance Redress Service, and the Inspection Panel and its Guidelines to Reduce Retaliation Risks and Respond to Retaliation During the Panel Process. The Good Practice Note on Addressing Sexual Exploitation and Abuse and Sexual Harassment in Investment Project Financing Involving Major Civil Works is also mentioned, but only in relation to grievance mechanisms.


250 WB ESP (par 4.b); ESS1 (par. 28, Annex 2); ESS 4 (par. 2, 24-27).

251 WB ESP (par. 7); ESP (par. 53).

252 WB ESP (par. 27), ESS 2 (par. 22).

253 WB ESP (par. 7); ESP (par. 53).

254 WB ESP (par. 54).

255 WB ESP (par. 3.b, 53).
The policy also considers the possibility of requiring the borrower to retain independent third-party specialists, to assist in stakeholder identification and to support designing an inclusive engagement process, depending on the potential significance of environmental and social risks and impacts. However, the policy does not establish rules to ensure the independence of third-party specialists.

**Assessment of risks and impacts**
The assessment of different risks and impacts of the projects is a responsibility attributed to the client. Depending on the potential significance of environmental and social risks and impacts, the bank determines whether the borrower will be required to retain independent third-party specialists to assist in assessing environmental and social impacts. For high and substantial risk projects, and when the borrower has limited capacity, the borrower will retain independent specialists to carry out the environmental and social assessment. The engagement of independent experts by the borrower is also required in other specific situations. The policy adds that the borrower must take measures to ensure any conflict of interest is avoided, and the assessment will not be done by the consultants who prepare the engineering design, unless the borrower can demonstrate that no conflict of interest exists and such consultants include qualified environmental and social specialists. Since these specialists will be selected and hired by the client, who is also defining the scope of their work, there is a high risk their assessments will not be independent and comprehensive. Assistance by the bank is only contemplated in some specific cases.

The client is also responsible for monitoring the project implementation and reporting that information to the bank. The bank will require the borrower to engage stakeholders and third parties such as independent experts, local communities or NGOs to complement or verify project monitoring information, where appropriate and as set out in the Environmental and Social Commitment Plan (ESCP). The bank can carry out field visits as part of the monitoring, facilitated by the client.

**The bank’s role**
The bank has the responsibility to review the assessment of the risks and impacts of the projects, based on the information produced and provided by the client at the different stages of the project, and can also request additional information if gaps are identified. In addition, banks are responsible for assessing risks inherent to the type of project and the specific context in which it will be developed and implemented, the capacity and commitment of the borrower to develop and implement the project in accordance with the ESS, and the significance of the gaps in information.
RECOMMENDATIONS

Why development banks should not rely on their clients to address reprisal risks

Dumagat–Remontados Indigenous people protesting against the Kaliwa Dam in the Philippines. Credit: Stop Kaliwa dam coalition.
RECOMMENDATIONS

As indicated in this report, DFIs’ clients are often directly responsible for the reprisals occurring in the context of their projects and have incentives to avoid disclosing information related to reprisals. Implementing zero tolerance for reprisals requires DFIs to stop entrusting their clients with reprisal risk assessment and response, unless the clients have actively worked with directly affected communities and defenders to earn their trust first. DFIs cannot uncritically delegate reprisal risk assessment and response to clients.

Instead, DFIs should develop protocols and guidelines for what they will do themselves on reprisal issues. These protocols and guidelines must cover the entire project cycle and should be prepared in close consultations with those who have directly experienced reprisals in the context of development projects, as well as with the wider community and their allies, including CSOs specializing in human rights issues.

Under these protocols and guidelines, DFI should:

1. Assess reprisal risks and respond when reprisals occur
   a. Carry out an initial reprisal risk assessment, related to contexts and clients, through reprisal-sensitive consultations with communities directly affected by the project or policy. This assessment should precede any further steps on the project.
   b. Continue to independently assess reprisal risks related to contexts and clients, on an ongoing basis throughout the project lifecycle, as part of holistic human rights due diligence. Communities must be given the opportunity to actively and safely participate in this ongoing monitoring of the project.
   c. Take the lead: if there are allegations of reprisals, work directly with the person or peoples facing reprisals in a reprisal-sensitive manner to respond to reprisals.

2. Strengthen capacity and incentives of bank staff, management and consultants to prevent and respond to reprisals
   a. Strengthen internal capacity to provide oversight and supervision for the implementation of environmental and social safeguards.
   b. Invest in staff capacity to independently verify information from clients to assess reprisal risks and develop protocols to respond to reprisals independently from clients. For higher risk contexts, this should include reprisal-sensitive field visits in the project preparation phase, where the banks can engage directly with communities, independently from the client.
   c. Align incentives of staff, management and consultants to avoid reprisal risks, including implementing concrete adverse consequences for inadequate due diligence or failure to respond to cases of reprisals.
   d. Build in-house capacity on reprisal prevention and response, and maintain a roster of independent experts on reprisal prevention and response, ensuring they adhere to specific guidelines to avoid conflicts of interest.

3. Align client incentives (including by implementing negative consequences) to avoid reprisal risks and respond when reprisals occur
   a. Require clients to provide greater information transparency and disclosure around reprisal risks and cases of reprisals.
   b. Align client incentives and develop capacity to prevent reprisals and support a human rights-based response to cases of reprisals.
   c. Develop consequences for clients who withhold information about reprisal risks, fail to act in good faith in response to allegations of reprisals, or actively suppress dissent. Consequences can include higher borrowing costs, blacklisting, remedy framework, etc.

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269 A more comprehensive list of recommendations for DFIs, related to the assessment of reprisal risks and the prevention and response to reprisals in the context of development projects, can be found in the reports this analysis is based on: Uncalculated Risks (2019), Unhealthy Silence (2021) and Wearing Blinders (2022).

270 For more information on HRDD to avoid reprisal risks please see the recommendations in the report “Wearing Blinders.”
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 the 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 confidential, 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.
# Annex A: Table of Cases

<table>
<thead>
<tr>
<th>Project Reference</th>
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<th>DFIs Involved</th>
<th>Reprisals (With Direct Client’s Responsibility)</th>
<th>Alleged Author of Reprisals</th>
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<td>Harassment, threats, smearing, SLAPPs, violent repression of protests</td>
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<td>Southern gas corridor</td>
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<td>Combination of public and private</td>
<td>Consorocio Energia Sustentável do Brasil (ESBR)</td>
<td>* A defender was threatened and killed. The client is likely to be responsible for the reprisals, but clear evidence is lacking. Uncalculated Risks (pp 62-63)</td>
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<tr>
<td>Land Management and Administration Project</td>
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<td>Land management</td>
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<td>Cambodian government</td>
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<td>Local government of Antioquia, Empresas Públicas de Medellín (EPM), minority shareholders</td>
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<td>Rio Salá Hydroelectric Project</td>
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<td>Former paramilitary and military personnel as private security guards</td>
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<td>Company security guards in some cases acting with the military</td>
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<td>Dinant Corporation</td>
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<td>Finnfund, FMO, CABEI</td>
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<td>AES Levant Jordan</td>
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<td>Project Reference</td>
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<td>Lukoil Overseas Karachaganak</td>
<td>Kazakhstan</td>
<td>Oil and gas</td>
<td>IFC</td>
<td>Harassment, threats, physical and verbal attacks, discrimination, surveillance, detention</td>
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<td>Lukoil Overseas Karachaganak B.V. received funding for the Karachaganak Petroleum Operation B.V., a joint venture partially owned by the government.</td>
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<td>Mareña Renovables / Eólica del Sur</td>
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<td>Harassment, threats, arbitrary detention, criminalization, physical attacks, cut off basic services</td>
<td>Government authorities, police, judiciary, company representatives and employees, investors and representatives of the company union</td>
<td>Combination of public and private</td>
<td>Public private partnership by MMIF, Macquarie Asset Finance Limited and FEMSA, with funds from Mexico’s FONADIN and BANOBRAS</td>
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<td>Rizal Commercial Banking Corporation and BDO Unibank (FI)</td>
<td>*A defender was threatened and killed. It remains unclear who was behind the anonymous threats and the killings, but all reports confirm the defender was killed as a result of her activism.</td>
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<tr>
<td>PROJECT REFERENCE</td>
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<td>Kaliwa Dam</td>
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