

# **Recommendations to ADB from Communities Facing Reprisals**

**To:**

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**Cc:**

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In light of the ongoing stakeholder consultations on the ADB Safeguard Review process, civil society organizations (CSOs), community groups, human rights defenders and project affected people from across Asia came together to discuss and recommend key points in relation to reprisal risks, to be incorporated into the ADB safeguards.

Reprisals pose a real and significant threat to the sustainability and effectiveness of development interventions by institutions such as the ADB. The threat of reprisal in and of itself prevents communities and activists on the ground from effectively engaging and raising concerns that would otherwise go unnoticed by the development institution. Reprisals often begin in implicit forms such as undue pressure on or monitoring and stigmatization of community leaders and defenders before they take more serious forms such as threats, criminal charges, judicial harassments, arbitrary detentions, arrests and torture, physical attacks and even killings and disappearances.

The ADB should commit to zero tolerance of any form of reprisals and it should take immediate action once it is made aware of any reprisals, including holding meetings with the project implementer and the authorities or publicly condemning the reprisals.

During the Safeguard Policy Review and Update Phase 2 Regional Consultations, statements have been made by the ADB team reviewing the Safeguard Policy Statement (SPS) that the

Bank is considering including a contextual risk analysis for all projects, prior to risk categorisation, that would explicitly look at reprisal risks. This would be an important first step forward for the bank to help prevent future reprisals. While important and significant, there are a number of additional issues that need to be addressed for the ADB to effectively tackle reprisals.

## Key points to be included in a revised Safeguard Policy Statement

- Clear statement on zero tolerance for reprisals of all sorts against people who attempt to raise concerns about activities that are either related to or may have an impact on ADB-supported interventions.
- Requirement for the ADB to develop and follow mandatory protocols to assess and mitigate reprisal risks and to take action to address reprisals.
- Requirement for the ADB to develop and follow a mandatory human rights due diligence policy that includes a mechanism for remedy for harm done.

## Effective tackling of reprisals involves

Assessments that are

*... participatory*

- Carry out Human Rights Due Diligence (HRDD)<sup>1</sup> in a participatory manner in close consultation with impacted communities.
- For all projects (rather than just projects categorized as ‘high risk’ under ADB safeguards), directly reach out to impacted communities to ensure FPIC, HRDD, stakeholder engagement and environmental and social impact assessments have been carried out to the satisfaction of the impacted community and in line with international standards.

*... independent of the client/ implementing agency*

- Undertake a robust and detailed assessment/ background check on the implementing agency/client before project approval. The assessment should include, but not be limited to, track record on respecting human rights, ILO conventions and MDB safeguards.
- Directly oversee contextual risk assessments, using reprisal-sensitive methodologies, and reaching out to project affected peoples, human rights defenders (HRDs) and groups working on civic space issues.
- Ensure parties assessing reprisal risk are truly independent from the agencies looking to secure the ADB loan or technical assistance, be they private or public sector actors.

*... ongoing*

- Monitor reprisal risk throughout the lifecycle of the ADB-supported activities and projects: reprisal risks to be monitored should include interactions that go beyond stakeholder engagement processes.

*... transparent and accountable*

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<sup>1</sup> For a full list of recommendations on actions to identify and mitigate reprisal risks, address reprisals and provide access to remedy, please see the recommendations included in the report “Wearing Blinders” (Coalition for Human Rights in Development, July 2022): <https://rightsindevelopment.org/wearing-blinders/>

- Disclose the outcomes of its ongoing monitoring of project-level reprisal risks with the board of directors and make them public in a way that does not put defenders at further risk.
- Disclose and consult with the wider public on the proposed contextual risk methodology (guidance notes for staff, etc), including especially how the issues of reprisal risks are addressed.
- Provide clarity on the level of reprisal risk, ie. red lines considered too high for projects to go forward.

### Mitigation that includes

#### *... clear communication to the client*

- Incorporate and emphasize a zero-tolerance policy on reprisal into all levels of ADB's engagement and communication with project implementers to ensure that the policy is recognized from the management level to the implementation level.

#### *... regulation of the client's behaviour*

- Forbid the government and/or client from deploying security forces and/or private security companies to conduct surveillance or other operations targeting members of affected communities or to disperse peaceful gatherings or protests when project affected communities oppose or raise concerns about development projects in accordance with the [UN General Comment No. 37 on Right of Peaceful Assembly](#).
- Build in effective points of leverage over clients through provisions, including payment schedule, in its loan agreements that cover civic space and reprisal issues.

#### *... ensuring safe space*

- Engage with authorities to help improve the environment for public participation around its operations.
- Ensure there is an enabling environment and adequate measures for individuals to participate in consultations and raise concerns around the project and engage with the ADB accountability mechanism (including community members, human rights defenders and journalists), without the fear of threats and intimidation.<sup>2</sup>

#### *... taking into account restrictions on freedoms*

- Ensure risk mitigation strategies account for the fact that ADB operates in a number of countries known for restricting freedoms and civic space.
- Refuse to carry out activities in which reprisal risks cannot be adequately minimized.
- Establish or strengthen internal procedures that would ensure effective and independent investigation processes in cases where the complainant is at-risk and faces security threats (e.g. when communication with ADB poses a risk).

#### *... support for HRDs and communities at risk*

- Make available a list of resources or contacts of referring agencies / NGOs to share with the affected communities, HRDs, etc.

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<sup>2</sup> The process needs to be made simple, easy and accessible to communities; maintaining anonymity and confidentiality, both online and offline. The process must further be made explicit and public, including in local languages of people living around project sites. Care should also be taken to ensure translators and other locally hired staff do not face reprisals or threats following such meetings.

- Take proactive measures, including dialogues with HRDs, and support the strengthening of national laws that protect the rights of HRDs, in line with the [UN Declaration on Human Rights Defenders](#) and the [EU guidelines on HRDs](#).

### Timely and relevant responses<sup>3</sup>

- Take a proactive role in addressing complaints of reprisals by acknowledging, publicly condemning and raising them directly with the client reprisals that occur, including red tagging, interfering with or withdrawing social services and/or SLAPP cases.
- Set up a reprisal response protocol commensurate with the reprisal risk in the context in which it is operating; and that when requested, respects confidentiality and protection of the identity of individuals.
- Conduct in depth investigations on reprisals to address root problems that led to the reprisals and not just the cessation of threats, harassments and other forms of reprisals.<sup>4</sup>
- Commit to providing remedy for harm when it occurs, including for reprisals, through compensatory and non-compensatory measures (e.g. public apology, guarantees of non-repetition) and as requested by the affected persons.
- Take measures to suspend or withdraw project financing when complaints of reprisals have been recorded by the ADB after consultation with communities to determine whether withdrawal and any subsequent loss of leverage over the implementer/ client would leave the community in an even more vulnerable position. Before resuming any financing for the project, the ADB should require a public and written commitment from the implementers that they will not engage in or directly/ indirectly contribute to reprisals.
- Sanction entities identified as complicit in reprisals, clearly preventing them from accessing future funding from the ADB.

We would very much welcome an opportunity to engage in in-depth discussions both with the ADB Board and Management on the recommendations above coming from communities experiences with reprisals in development projects.

### **Signatories**

1. Accountability Counsel
2. Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)
3. Bank Information Center
4. Both ENDS
5. Buliisa Initiative for Rural Development Organization (BIRUDO)
6. CEE Bankwatch Network

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<sup>3</sup> Before engaging in any course of action to be taken in response to reprisals, the ADB needs to (1) ensure its measures will not worsen the situation for the individuals facing reprisals and (2) whenever possible, seek the consent of the affected individuals on behalf of whom it may act.

<sup>4</sup> The investigation should take place at two-levels: (1) case-specific and (2) issue-/industry-based. It should be timely and independent, looking at the root causes of the reprisals and the results should be shared with all stakeholders

7. Centre for Financial Accountability (CFA)
8. Center for International Environmental Law (CIEL)
9. Centre for Research and Advocacy Manipur (CRAM)
10. CIVICUS: World Alliance for Citizen Participation
11. Coastal Livelihood and Environmental Action Network (CLEAN)
12. Community Empowerment and Social Justice Network (CEMSOJ)
13. DebtWatch Indonesia
14. Defenders in Development Campaign (DiD)
15. Defenders Protection Initiative
16. Environics Trust
17. Environmental Defender Law Center (EDLC)
18. Equitable Cambodia
19. Front Line Defenders (FLD)
20. Global Alliance for Incinerator Alternatives - Asia Pacific (GAIA)
21. Green Advocates International
22. Green Alternative
23. Indian Social Action Forum (INSAF)
24. Indigenous Peoples Rights International (IPRI)
25. Indigenous Women Legal Awareness Group (INWOLAG)
26. Initiative for Right View (IRV)
27. International Accountability Project (IAP)
28. Just Finance International
29. Koalisi Pemantau Pembangunan Infrastruktur Indonesia (KPPI)
30. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
31. L'Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE)
32. Lumière Synergie pour le Développement
33. Manushya Foundation
34. Mekong Watch
35. Natural Resource Women Platform
36. NGO Forum on ADB
37. Oil Workers' Rights Protection Organization Public Union
38. Oyu Tolgoi Watch
39. Pakistan Fisherfolk Forum
40. Protection International Africa
41. Protection International Mesoamérica
42. Recourse

43. Rivers without Boundaries Coalition

44. Voice

45. Witness Radio