

Written Submission on Asian Development Bank's (ADB) September 2023 Draft Environmental and Social Framework (ESF)

Submission from the Coalition on Human in Rights Development
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Comments and recommendations about reprisals due diligence, for the draft ADB Environmental and Social Framework

The undersigned organizations¹ present the following observations and recommendations to the [draft Environmental and Social Framework \(ESF\)](#) shared by the ADB, within the framework of the Bank's policy reform process, related to how the Bank manages retaliation risks,² and responds to retaliations against people who speak about the project or activities supported by the Bank.

We see with concern that despite the consultations carried out with civil society organizations, the draft does not establish rules or processes to assess the risks of retaliation before the approval of the projects, or to ensure prevention and response to retaliations.

In paragraph 5, the draft ESF states that the “*ADB does not tolerate any form of reprisals in projects ADB finances, and will seek to take all steps within the limits of its ability to work with appropriate parties to address them, including requiring its borrowers/clients to provide protection in such projects*”. In paragraph 10, it also establishes that the ADB, through the Environmental & Social Policy (ESP) and the Environmental and Social Standards (ESSs), “*will translate the institutional aspirations set in the Vision into project level mandatory requirements to be applied within the parameters of a project and within the context of its mandate and seeks, among others, to strengthen stakeholder engagement through meaningful consultation and prevent threats of reprisals against project-affected persons through effective grievance mechanism*”.

However, although retaliations are mentioned 14 times throughout the document, these are generic references to the client's obligation to ensure that stakeholder engagement must be free of reprisals, and that reprisals should be prevented through grievance redress mechanisms.³ Despite the general commitment expressed in the draft, there are no provisions intended to clearly regulate the mechanisms through which the Bank itself will evaluate the risks of retaliation, take preventive actions, and respond to allegations of retaliation.

The only mechanism mentioned is the grievance redress mechanism, clearly inadequate to ensure that the risks of retaliation are analyzed before the approval of projects, in a preventive and comprehensive manner, in a way that does not put defenders at risk. As there are no effective provisions to ensure

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² In this submission, the terms ‘retaliation’ and ‘reprisal’ will be used interchangeably to indicate any type of intimidation or attack against human rights defenders, people related to them or community members who are targeted for expressing their opinion, raising concerns, criticizing or opposing a development project. Retaliations can include different types of targeted attacks, such as defamation or stigmatization campaigns, harassment, intimidation, threats, arrests, detention, criminalization, travel or work bans, extortion, unfair administrative measures, gender-based violence, attacks on livelihoods, attacks on properties, physical attacks, maltreatment, torture, kidnapping, enforced disappearance, and killings.

³ For example, under 10. (ix) the draft E&S states that it seeks to prevent threats of reprisals against project-affected persons through effective grievance mechanism.

the independence of grievance mechanisms, they remain institutions created and owned by the clients, who are by and large directly responsible for the reprisals.⁴ This proposed approach may in fact pose a real risk for project-affected persons, since it puts the responsibility for addressing reprisals in actors that often have a conflict of interest, because they are either the perpetrator of the reprisals, or have an interest in concealing the risks created by the project and the social discontent with the project. In addition, in some cases grievance mechanisms have been directly involved in reprisals and they can only operate during project implementation.

The draft makes no explicit mention of the Bank's responsibility in assessing reprisals, putting responsibilities for the assessment of all project risks solely on the client. Reprisal risks have the potential to seriously undermine ADB's commitments, in particular in the area of meaningful stakeholder engagement, anticorruption and integrity. They may also hinder access to the ADB's accountability mechanism.

Below we make a series of specific recommendations to ensure that the new policy adequately regulates ADB's due diligence in relation to the risks of retaliation generated by the activities it funds.

1) Strengthen and communicate ADB's institutional commitment against reprisals

- **About the vision. Strengthen the bank's commitment to assess reprisal risks, prevent and respond to reprisals in the context of the projects throughout the project life cycle.**

In paragraph 5, the draft says that "*ADB does not tolerate any form of reprisals in projects ADB finances, and will seek to take all steps within the limits of its ability to work with appropriate parties to address them, including requiring its borrowers/clients to provide protection in such projects*". This statement, which is part of the Bank's vision, is too general, since it does not include a commitment to develop and implement policies and procedures aimed to assess reprisal risks, prevent and respond to reprisals in all its activities. It should be added that the ADB develops policies and procedures aimed at evaluating, in consultation with civil society, whether an enabling environment for participation exists, and what retaliation risks may be associated with the activities it supports. The provision should add that the ADB develops and implements policies to prevent and respond to retaliations, and should make explicit reference to the UN Declaration on Human Rights Defenders.

- **The draft's zero tolerance statement on reprisals should not only be concerned about reprisals in projects it finances, and should also express zero tolerance to reprisals that occur as a result of projects it finances and that directly threaten the outcomes of their projects.**

The zero tolerance statement included in the draft is extremely limited, as it only extends to reprisals "in" projects it finances. The policy should also include a reference to reprisals that threaten the outcomes of its projects. In some cases, reprisals do not take place directly in projects, but occur as a result of the project. The ADB has to make clear that it will not tolerate such harms either and set up a system to ensure responsible exit from projects that includes both building longer-term leverage to prevent harm and setting up a system to ensure redress or remedy in cases where a project does result in harm, given the underlying goal that ADB projects achieved their desired outcomes. Reprisals, or the threat thereof, by their very nature, may silence people who would otherwise report issues such as potential harms or even corruption, ie. Issues that undermine the project and put its outcomes at risk.

⁴ See the report [Misplaced Trust](#) (Coalition for Human Rights in Development, 2023)

- **Ensure that in communications with staff, project partners, authorities, and the public, the ADB will 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.**

It is important that the Bank commit to proactively and clearly communicating its institutional commitment against retaliations in its communications with staff, consultants, project partners (including workers at project sites, various contractors and, for financial intermediaries in particular, intermediary institutions and their sub-borrowers), and in any public communication related to its projects.

- **State that the bank will develop and publicly disclose specific directives for bank staff, for the assessment of reprisal risks, and to adequately mitigate and respond to reprisals in the context of the projects. The directives for bank staff should establish procedures and steps for comprehensive contextual, country and project specific retaliation risk assessments, based on reprisal-sensitive engagement with affected communities and defenders.**

The draft does not include provisions related to the development of directives and protocols for the assessment of reprisal risks, and for mitigation and response to reprisals. We recommend the inclusion of detailed provisions in the policy, on how the Bank will assess the risks of retaliation, and adopt proactive prevention and response measures. The key components of the Bank's policy against retaliation should be clearly established, and not left to be subsequently defined in implementation guidance, protocols or directives. Policy provisions related to the assessment, prevention and response to reprisal risks should apply to all the activities carried out by the Bank, including, among others, technical assistance projects. They should also include associated facilities and existing facilities that were not originally financed by the Bank but are being extended, refurbished or supported by the Bank. The Bank must commit itself to supporting and guiding proper implementation of these provisions by developing binding directives for Bank staff.

- **State the bank’s commitment to develop institutional capacities and allocate sufficient resources for the assessment of reprisal risks and the implementation of mitigation and response strategies**

Paragraph 71 of the draft environmental and social policy states that the ADB will allocate responsibilities and appropriate resources to support the effective implementation of the policy. Since the draft policy doesn’t specifically and comprehensively address reprisal risks, it is important to have a specific provision related to the allocation of resources for the assessment of reprisal risks and the implementation of mitigation and response strategies.

2) Comprehensively assess reprisal risks

- **Expand the prohibited investment activities list,⁵ in order to exclude projects implemented in contexts where civic freedoms are heavily restricted.**

There should be a threshold for projects implemented in places with heavily restricted civic space. The Bank should not proceed with investments, where the project cannot reasonably ensure that

⁵ Paragraph 13. ADB will not finance activities on the Prohibited Investment Activities List.

affected communities are able to safely and effectively raise their concerns, oppose projects, participate meaningfully in development decisions and activities, and access remedy for any human rights abuses that may occur.

- **Project risk classification. Establish that the bank will initially screen all projects for human rights risks, including reprisal risks, assessing project-related and contextual risk factors. The assessment criteria should look at restrictions to civic freedoms, the situation of defenders, risks related to the client's track record, government or third parties, impacts on marginalized groups, etc, in order to determine the project initial categorization.**

The draft policy does not require the Bank to screen all projects for human rights risks, including reprisal risks, to inform the environmental and project risk classification. The draft mentions that relevant risks may include the host country's legal institutional framework and governance structures, conflict or human security concerns, whether the host country or certain of its geographical areas are emerging from fragile and conflict affected situations with or without activities of security forces, digital risks and data privacy, among others.⁶

The new policy should establish clear criteria related to the assessment of civic space restrictions and reprisal risks, and determine how these criteria will be analyzed in order to determine the project categorization. The assessment should be done independently by the Bank staff and should not rely solely on the information provided by the clients. We suggest the inclusion of an annex with specific criteria and sources of information the Bank will use for the assessment of reprisal risks and civic space issues.

The **retaliation risk assessment done by the ADB and** established in the policy should:

- Be conducted prior to project risk classification and should inform investment decisions about the scope of and resources allocated to the project impact assessment.
- Include an updated assessment of **contextual information** on restrictions on civic space in the country where the project will be implemented, that could potentially undermine the right to participation and freedom of expression. This includes information on the existence of legislation and practices restricting the right to freedom of expression, and on the patterns of criminalization and attacks against defenders and journalists, among other issues. The updated assessment should take into account reports elaborated by independent civil society organizations at the national and international level, as well as reports and information elaborated by UN treaty bodies, regional and international human rights mechanisms.
- Complement the country-level assessment with additional updated **evaluations related to the relevant area or topic, the agency or company in charge of the implementation, and the analysis of the client's background and human rights track record** in other projects⁷, inside and outside the country. Contextual factors at the project level should include an analysis of the sector, presence of security forces in the area where the project will be implemented, local conflicts, lack of land tenure rights, history of reprisals in that area, marginalization of communities impacted by the project, and corruption in local police departments, among other issues.

⁶ Paragraph 21.

⁷ The analysis of the client's track record should include an assessment of reprisal issues related to previous complaints about other projects or activities implemented by the client, reports from civil society organizations, UN mechanisms, press articles and reports, among others.

- Be **based on the results of meaningful consultations** with the communities affected or potentially affected by the project and other civil society organizations, including organizations that promote civil and political rights, such as the right to freedom of association, freedom of expression and participation, journalists' organizations and organizations of human rights defenders. Consultations should be undertaken without putting participants at further risk at a location identified by those participating as accessible and safe at a location identified by those participating as accessible and safe, and follow an inquiry about any prior security incidents and reprisals.
- Be carried out directly and **independently by experts at the bank or qualified independent third parties** commissioned by the bank to do so. This requires direct engagement with civil society to assess both the risks of retaliation and verify information presented by the client in relation to stakeholder identification and engagement.
- Consider all the **information about the project, client or the country that was previously received by the bank**, through direct contact between civil society and management, and complaints mechanisms. The issues raised by civil society organizations should be **explicitly registered and addressed** in the ADB's project appraisal documents.
- The risk assessment should adopt a collective approach, and include an assessment of reprisal risks for the collective, not limited to people that may potentially raise issues.
- Consider and assess **specific risks of reprisals affecting women, Indigenous Peoples, persons with disabilities and other marginalized groups**. To this end, focused consultations should be carried out - in a culturally sensitive way - with women and other vulnerable groups that may be particularly affected by reprisals.
- Include considerations of reprisal risks affecting consultants working for the bank and also members from civil society who are not directly affected by the project but who may raise concerns about the project or who support the affected people in raising concerns.
- Consider and assess allegations and cases of **corruption related to the project and client**, as they may increase the risk of reprisals against those who raise them.
- Consider site specific situations which may increase the risk of reprisals and retaliations and/or make it impossible for civil society groups to monitor the situation, such as closed military zones/security zones or militarized areas in border regions.
- The risk assessment should also take into consideration risks created by associated facilities, and existing facilities that were not originally supported by the ADB but where an extension or refurbishing of the project is being supported.
- Carry out **litigation due diligence on implementing agencies and companies**, including any other company that is part of the same conglomerate, in order to assess their track record and determine if they are involved in litigation that could reveal conflicts with communities or indicate risks of retaliation, such as SLAPPSs, land disputes, and cases of violence, among others.

- **In ESS 1, related to the assessment and management of environmental and social risks and impacts,**

state clearly that the assessment of risks and impacts of the project includes the assessment of reprisal risks, including project related and contextual risk factors. The assessment should cover the environment for the stakeholder engagement process, human rights risks related to the government or third parties, and the vulnerability of the affected communities, including differentiated human rights impacts on defenders and other marginalized and vulnerable groups. Private sector clients should also be required to disclose any judicial processes they, or any company that is part of the same conglomerate, have been involved in over the last few years. They should also reveal any complaints against them, or any member of the conglomerate they are part of, at development finance institution independent accountability mechanisms.

The draft states that the borrower/client will ensure that the E&S assessment will take into account all relevant E&S risks and impacts of a project, but does not explicitly mention reprisal risks.⁸ In addition to explicit mention of the risks of reprisals as one of the risks that must be evaluated, it is important to comprehensively detail what information must be disclosed by the client within a clear timebound framework and independently verified and assessed by the bank with regards to these issues. The information requirements should be based on the components of reprisal risk assessment listed above, that should be considered by the Bank during project risk classification. Some examples of the kind of information that should be required from the clients are information about litigation, allegations of reprisals, public opposition or attacks against whistleblowers, journalists and HRDs potentially linked to the project, information about any incident of violence that occurred in the context of protests against the project, reports on the development or implementation of laws which might limit civic space, etc. The policy should also state incentives and sanctions if the client doesn't disclose the information to the bank.

- **Include clear E&S requirements for direct consultations with stakeholders about whether they face reprisal risks and their consent for any action taken to mitigate risks or address reprisals.**

Best practices in reprisal risk assessment and mitigation involves direct consultation with the at-risk stakeholders whenever it can be done without putting them at further risk. They understand their own contexts best and their consent is essential for any measure that looks to mitigate the risks for them. There is no recognition of this in the draft E&S.

- **State that for projects classified as high risk projects the client will be required to engage one or more internationally recognized independent experts in the assessment of project risks, and establish a mechanism to avoid conflict of interest and ensure actual independence from the client.**

The current policy contemplates that for certain high-risk projects, the client will engage internationally recognized experts, or independent third party specialists.⁹ It is important that the

⁸ Paragraph 24

⁹ Among others, paragraph 35. Depending on the nature and scale of E&S risks and impacts, ADB will determine whether a borrower/client will be required to retain independent third-party specialists to assist in the assessment of E&S risks and impacts including the assessment process described in ESS1 and any other assessments required under ESSs2-10. 57. Where appropriate and as required under the ESSs, ADB will require a borrower/client to engage stakeholders and third parties, such as independent experts, local communities, or civil society organizations, to

intervention of independent experts is not discretionary, establishing that it is mandatory for high-risk projects, and that processes and mechanisms are established to ensure and control their independence of the client.

3) Take a preventative approach to deal with reprisal risks

- **Stipulate that stakeholder engagement plans must include concrete measures to implement the client's commitments to prevent reprisals, such as the specific arrangements adopted to ensure security forces will not repress dissent or protest, ensuring that security forces will not participate in the consultations, among other measures. The client's commitments to prevent reprisals must be situated in the specific realities that affected people face.**

In its paragraph 10, ii and iv, the draft states that the ADB seeks to help borrowers/clients strengthen their E&S systems and improve their capacity to manage E&S risks and impacts and support comprehensive and integrated risk and impact assessment and management process, that also considers specific project and country contexts and implementation needs. In addition to that, in paragraph 10, ix, it states that the ADB seeks to strengthen stakeholder engagement through meaningful consultation and prevent threats of reprisals against project-affected persons through effective grievance mechanism. As was stated above, grievance mechanisms are not an effective mechanism to prevent reprisals against project affected people.

As part of this commitment to strengthen the client's capacities to manage project risks and in order to ensure stakeholder engagement is free of reprisals, the policy should state that stakeholder engagement plans must include specific measures and arrangements necessary to ensure an enabling environment for stakeholder engagement and public participation. A similar provision was adopted by the AFDB in its new policy. AFDB's annex states 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's awareness of, ability to access independent grievance mechanisms, or other modifications to project design to mitigate the risks of reprisals*".

- **State clearly that all information related to the compliance with performance requirements about the use of security forces/security arrangements will be submitted to the bank and disclosed to project affected people.**

complement or verify project monitoring information, and include such requirement in a project's ESCP/ESAP. Where other agencies or third parties are responsible for managing specific E&S risks and impacts and implementing mitigation measures, ADB will require a borrower/client to collaborate with such agencies and third parties to establish and monitor such mitigation measures, ESS1 Paragraph 25. The borrower/client will ensure that the E&S assessment is an adequate, accurate, and objective evaluation of the E&S risks and impacts of a project, prepared by qualified and experienced specialists. The borrower/client will hire an independent third-party specialist if ADB has determined that the potential significance of E&S risks and impacts requires the assistance of such a specialist. ESS1 Paragraph 26. The borrower/client will engage internationally recognized experts for High Risk and Substantial Risk projects that are contentious, involve serious and multidimensional issues, and generally have interrelated potential E&S risks and impacts. These experts may be engaged individually or as an advisory panel, to carry out the E&S assessment, and assess and/or monitor the implementation of the measures identified through the E&S assessment process.

The current policy establishes certain requirements related to the use of security forces/security arrangements adopted.¹⁰ The policy should clearly state that this information must be submitted to the Bank and disclosed on the Bank's website.

- **Establish that the Bank will utilize and increase available leverage to prevent harm, including by incorporating within contracts with clients, authorities, and relevant parties requirements to:**

1. ensure an enabling environment for participation and defending human rights; 2. respect freedom of expression and participation 3. employ robust due diligence to prevent abuses; 4. avoid human rights abuses; 5. commit not to use litigation against people who criticize or express their views on the project; 6. investigate and remedy reprisals, collaborating in good faith with any investigation of allegations of reprisals that may be related to the project; 7. ensure consistency with the UN Guiding Principles on Business and Human Rights and the UN Voluntary Principles on Security and Human Rights. The contracts should further include an option to adjust the disbursement schedule if reprisals take place and clients do not take remedial actions. In addition, financing agreements with clients must include provisions related to specific rights and remedies in the event the project affected people suffer reprisals for raising their opinions about the project.

- **In ESS 1 (para 68)¹¹ state that an appropriate and effective contractor management system includes assessing retaliation risks associated with contracted works and**

¹⁰ ESS 4, paragraph 43. When a borrower/client retains employees or contractors to provide security services for its personnel and property, it will assess risks posed by the security arrangements to those within and outside a project site and implement and monitor a security management plan that is proportionate to the nature and scale of the assessed risks. In making such arrangements, the borrower/client will ensure that security personnel are hired in accordance with the host country's applicable laws. Paragraph 44. The borrower/client will: (i) make reasonable efforts to verify that the employees or contractors it retains to provide security services are not implicated in past abuses, including those related to SEAH; (ii) train them adequately or determine that they are properly trained in appropriate conduct toward project workers and project-affected persons; (iii) train them adequately or determine that they are properly trained in the use of force and, where applicable, firearms; and (iv) require them to comply with the requirements of the host country's applicable laws. The borrower/client will not sanction any use of force by security personnel except for preventive and defensive purposes proportionate to the nature and extent of the threat. Paragraph 45. If security services are the responsibility of government authorities, the borrower/client will collaborate, to the extent permitted, with the competent government authorities to achieve outcomes that are consistent with this ESS. The borrower/client will communicate to the competent government authorities its intent that the security personnel act in a manner consistent with para 43 and encourage the competent government authorities to disclose the security arrangements for the borrower's/client's facilities to the public, subject to overriding security concerns. Paragraph 46. The borrower/client will establish and maintain an effective grievance mechanism as described in ESS10 to allow project workers and project-affected persons to express concerns about security arrangements and the actions of security personnel and will inform project workers and project-affected persons of the availability and use of the grievance mechanism. Paragraph 47. The borrower/client will investigate any allegations of unlawful or abusive acts by security personnel, take action or urge appropriate parties to take action to prevent recurrence, and report unlawful and abusive acts to competent government authorities and to ADB.

¹¹ ESS 1, paragraph 68. The borrower/client will require that all contractors and sub-contractors engaged on a project operate in a manner consistent with the requirements of the ESSs, including the specific requirements set out in the ESCP/ESAP, such as preparation of additional plans or assessments as required by the ESSs and as relevant to the financing modality or product. The borrower/client will manage all contractors in an effective manner, including: (i) Assessing the E&S risks and impacts associated with such contracts; (ii) Ascertaining that contractors engaged in connection with a project are legitimate and reliable enterprises, and have necessary E&S knowledge and skills needed to fulfill their contractual commitments with regards to managing E&S risks and impacts; Incorporating all relevant aspects of the ESCP/ESAP into tender documents; (iii) Contractually requiring contractors to apply the relevant aspects of the ESCP/ESAP and the relevant management tools; (iv) Requiring contractors to implement any corrective action plans to bring a project into compliance as and when needed; (v) Monitoring contractor compliance with their contractual commitments; and (vi) In the case of subcontracting third parties requiring contractors to have equivalent arrangements with their subcontractors.

services, adopting preventative measures when reprisal risks are identified, and responding effectively when allegations of reprisals are received by the client. Non-retaliation commitments should be clearly stated in contractual conditions with all sub-contractors, with the requirement to have a non retaliation policy.

- **The policy should state the client's obligation to establish a non-retaliation policy prior to project approval and make it publicly available.**

4) Respond effectively to cases of reprisals

- **State the bank's commitment to proactively and publicly denounce - with the previous informed consent of affected people - any reprisal in the context of all current and pipeline projects, including labeling of critical voices as "anti-development."**

As was stated above, the draft states that the "ADB does not tolerate any form of reprisals in projects it finances, and will seek to take all steps within the limits of its ability to work with appropriate parties to address them, including requiring its borrowers/clients to provide protection in such projects".¹² In spite of that statement, the draft does not list or specify the characteristics of the Bank's response, and the kind of actions it will adopt. The policy should express that response to cases of retaliation must be proactive, and cannot depend on the drive and efforts of those who suffer retaliation. When the Bank learns of an allegation of a reprisal, it must look to consult with the affected people in order to establish the measures that will be adopted. When deemed appropriate by the affected persons, such measures must include, among others, publicly denouncing the perpetrators.

- **Establish clear protocols that regulate the specific actions that the Bank will adopt in cases of retaliation, and the responsibilities within the Bank.**

The draft does not establish the procedures that will be implemented to regulate how the Bank will process and respond to specific allegations. The policy should clearly establish how the Bank will respond to cases of retaliation, by regulating some of the essential elements of the response protocols, such as the types of actions that will be carried out, the roles and responsibilities within the Bank staff, how to reach out safely to people affected by reprisals or their representatives in order to determine how best to address reprisals, how the Bank will use its leverage, among other issues. The Bank's commitment to use its leverage to respond effectively to cases of reprisals must be clearly established in the policy. Although the specific response that will be given to each case must be defined and based on individual and contextual characteristics and the preferences of the affected people, the protocol should detail the steps and actions that the Bank must take, as well as the type of measures that must be considered in the process. The policy should also establish how the Bank will act to respond to retaliations that may occur when it decides to withdraw its support and end its involvement with a project due to the lack of consent of the affected people.

- **State the Bank's commitment to disseminate widely the ways in which people affected by the projects can engage directly with the bank to raise cases of reprisals, and the procedures and protocols applied by the bank to deal with those cases.**

People affected by reprisals in most cases do not know that they can directly engage with the Bank to bring retaliation cases, and they are unaware of the procedures and protocols applied to deal with such cases. It is important that the policy contemplates the dissemination of accessible information on the ways in which affected people can engage the bank, and on the steps that the Bank follows to

¹² Environmental and Social Policy, paragraph 5.

respond to such cases. This information should be disseminated in the languages most commonly used in the project location.

- **Commit to periodically producing statistical information on the allegations of reprisals received, the kind of reprisals, the sectors involved, the countries where they allegedly took place, and the kind of responses adopted by the bank. This information should be included in the Bank's annual sustainability reports.**

Documentation of cases of retaliation is essential to assess to what extent risk assessment and prevention policies are effective, and to have a better diagnosis of the most problematic areas and sectors. The documentation of the types of responses adopted is important to ensure monitoring and accountability regarding the Bank's commitment to participation and zero tolerance to retaliations.

- **Provide direct channels of engagement between the communities and the bank, independently from the client, and inform project affected people widely about those channels.**

Frequently, the engagement between the communities and the bank is organized exclusively through the intermediation of clients. It is important that the affected persons have direct communication channels with the Bank, which facilitate both the reporting of cases of retaliation, as well as communication about other circumstances that may contribute to increasing the risk of retaliation. The ADB country offices should be responsible for creating safe accessible channels for meaningful engagement with affected communities in the country of operation.

- **Commit to providing emergency assistance to defenders at risk.**

It is essential that the Bank contribute to protecting defenders at risk for having expressed their opinion on the Bank's activities, through direct support and assistance to defenders who need it.

- **Establish the client's obligation to collaborate in good faith and support any investigation of allegations of reprisals carried out by the Bank that may be related to the project and, and the client's obligation to remedy reprisals.**

The Bank should clearly establish the requirements applicable to clients when cases of reprisals are raised. Clients' good faith cooperation with the investigation of cases, prompt provision of necessary information, and collaboration during the investigation should be required.

5) Strengthen the Bank's independent oversight and monitoring

- **State clearly the bank's responsibility to verify, independently from the client, all the information used during the project appraisal and implementation; and the bank's responsibility to create effective mechanisms so that project affected people can reach out to the bank, independently from the client. The bank should establish specific tools and mechanisms that will be used to independently verify all the information used during the appraisal and monitoring of the project, in particular information that is relevant to reprisal risks assessment and management.**

The draft states that the client is responsible for undertaking the environmental and social assessment,¹³ and that the Bank will review the information provided by the client.¹⁴ Often, clients and project promoters provide incomplete and inadequate information in relation to key aspects of the project, to favor its approval. The policy should clearly establish how the Bank will independently verify all the information received from the client, and in particular information that is relevant to reprisal risks assessment and management.

- **State that all projects will be monitored by the Bank through reprisal sensitive site visits, and the bank will engage directly with project affected people, independently from the client, to verify the information.**

In its section related to Monitoring, Adaptive Management, and Reporting, the draft states that the client will facilitate site visits by ADB staff or consultants acting on ADB's behalf.¹⁵ It is important to establish that all projects must be monitored through reprisal sensitive site visits, to independently verify the information provided by the client.

- **Require clients to automatically notify the bank about any reprisal allegations and establish an *ex officio* duty for the independent Accountability Mechanism to carry out an investigation of such allegations.**

The draft states that the borrower will notify the ADB of any incident or accident relating to a project which has, or is likely to have, a significant adverse effect, on the environment, project affected persons, project workers, or the public.¹⁶ Around the issue of reprisals in particular, however, there is

¹³ Among others, Environmental and Social Policy, paragraph 10. Based on the risk classification, ADB will determine the scale and extent of the E&S assessment to be undertaken by a borrower/client. ADB will require a borrower/client to conduct E&S assessment in accordance with ESS1 and to prepare and implement a project so that it meets the requirements of the ESSs applicable to the project. Paragraph 28. ADB will review the E&S assessment process undertaken by a borrower/client in accordance with ESS1 to meet the requirements of the relevant ESSs. ADB will provide appropriate guidance to a borrower/client on ways in which E&S risks and impacts may be addressed in the assessment, development, and implementation of a project. ESS 1, Paragraph 6. The borrower/client will meet all requirements under ESSs applicable to a project and will provide ADB with information reasonably requested to ascertain the appropriate risk classification of a project in accordance with the E&S Policy. The assigned risk classification will form the basis for assessing and managing a project's E&S risks and impacts. Paragraph 7. The borrower/client will determine the scope of E&S assessment. Based on the scope, the borrower/client will screen, assess, manage, and monitor the E&S risks and impacts of a project in accordance with the relevant ESSs, proportional to the nature and scale of its potential E&S risks and impacts..

¹⁴ Environmental and Social Policy, paragraph 3: To carry out this E&S Policy, ADB will: a. determine a project's E&S risk classification; b. review the E&S assessment undertaken by a borrower/client of a proposed project, proportionate to the nature and scale of the potential E&S risks and impacts of a project; c. assist borrowers/clients in identifying assessment tools and management tools for the potential E&S risks and impacts of a project; d. support borrowers/clients with strengthening of their E&S systems and encourage improved E&S performance, in ways that recognize and enhance borrowers'/clients' capacity; e. agree with borrowers/clients on the conditions under which ADB will consider providing financing to a project, which will be set out in an environmental and social commitment plan/environmental and social action plan (ESCP/ESAP); f. support borrowers/clients to carry out early and continuing meaningful consultation with relevant stakeholders and to provide project-level grievance mechanisms, consistent with the ESSs; and g. review and monitor the E&S performance of a project throughout a project cycle in accordance with the ESSs and the ESCP/ESAP.

¹⁵ ESS 1, paragraph 50: The borrower/client will facilitate site visits by ADB staff or consultants acting on ADB's behalf.

¹⁶ ESS 1, paragraph 51. The borrower/client will notify ADB promptly of any incident or accident relating to a project which has, or is likely to have, a significant adverse effect on the environment, project-affected persons, project workers, or the public. The borrower/client will include in the notification sufficient detail describing such an incident or accident and its consequences, including any fatalities or serious injuries. The borrower/client will take immediate measures to satisfactorily address the incident or accident and to prevent any recurrence, including in accordance with the host country's applicable laws, including those laws implementing the host country's obligations under international

a tendency to try to cover these up or downplay the incidents. The new policy should make it clear that clients are required to notify the ADB already about allegations of reprisals. This should trigger an automatic investigation - without any need for a formal complaint to be lodged - by a body that is independent and has a deeper understanding of reprisal issues, such as the independent accountability mechanism.

- **Establish in which cases the bank will conduct its own public consultation in order to assess stakeholder views. This should not be a discretionary power, and should be mandated for all high risk projects, projects implemented in contexts with restrictions to civic freedoms, where there is significant human rights or reprisal risk, or the client does not have capacity to carry out the required tasks.**

The draft policy states that the Bank will participate in consultation activities led or organized by a borrower/client, where necessary, to understand the concerns of project-affected persons, and how such concerns will be addressed by a borrower/client in project design and mitigation measures in accordance with ESS10.¹⁷ The policy should state in which cases the Bank will participate in the consultations organized by the clients, and should establish that in certain cases, the Bank will also conduct its own public consultation. This should be a mandatory requirement for high risk projects, projects implemented in contexts with restrictions to civic freedoms, where there are significant human rights or reprisal risks or the client lacks capacity to implement the stakeholder identification and engagement. Where the bank won't conduct its own public consultations or won't engage directly with stakeholders, the policy should establish specific mechanisms to independently verify the information about stakeholder identification and engagement provided by the client.

- **Ensure that all environmental and social standards, requirements and processes will be comprehensively applied in fragile and conflict affected situation.**

The draft states that for projects in fragile and conflict-affected situations where there are constraints to the availability of information and data required to prepare assessment and management tools proportionate to the nature and scale of E&S risks and impacts, the borrower/client will address key risks and impacts and propose management measures, to the extent possible. It also states that where it is not possible to complete the assessment process before ADB's approval, the borrower will agree with the ADB to adopt a framework approach and an ESMF will be prepared.¹⁸

In fragile and conflict affected situations, where reprisal risks can be heightened, it is particularly relevant to ensure the application of all the environmental and social safeguards, in order to ensure proper assessment of project risks and impact, and effective mitigation and response measures. This broad exception established for fragile and conflict affected situations should be eliminated, and the policy should clearly state that all elements of environmental and social appraisal should take place before board approval. The policy should state that in those contexts, ADB staff should be directly involved in the consultations, to ensure they are free of coercion and reprisals.

- **Paragraph 61. Eliminate the requirement of good faith efforts to resolve the problems with ADB's relevant operations departments before approaching the Accountability Mechanism.**

Paragraph 61 of the draft states that Project-affected persons will first make good faith efforts to resolve the problems with ADB's relevant operations departments before approaching the

laws, and the applicable ESSs. For any injury, ill-health, or fatalities caused by project activities, the borrower/client will provide appropriate compensation as set out in ESS4.

¹⁷ Environmental and Social Policy, paragraph 53.

¹⁸ ESS1 paragraph 45.

Accountability Mechanism. This requirement puts defenders at risk. They should have the option to freely choose the most effective mechanism to raise their complaints safely. When a defender considers that raising the issues with ADB's operation departments could put them at further risk and could delay effective action, they should be able to approach the Accountability Mechanism directly.

Signatories

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