

Questionnaire for International Financial Institutions by the UN Special Rapporteur on the Situation of Human Rights Defenders

Contact Details

Type of Stakeholder: International Financial Institution

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Can we attribute responses to this questionnaire to your Business publicly?: Yes

Questions

Human rights defenders are persons, who individually or in association with others, work peacefully to promote and protect universally recognized human rights and fundamental freedoms, in accordance with the UN Declaration of Human Rights Defenders.

1. How do you verify that true Free, Prior and Informed Consent was given before you undertake an investment in large infrastructure (extractive mining, hydroelectric dams, agribusiness, etc.)?

IDB Invest requires its clients to comply with its Environmental and Social (E&S) Sustainability Policy, which incorporates the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability (2012). Performance Standard (PS) 7 (Indigenous Peoples) requires clients to obtain the Free, Prior and Informed Consent (FPIC) of Affected Communities of Indigenous Peoples. To demonstrate FPIC, clients are required to document: “(i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.” PS 7 defines Indigenous Peoples as “a distinct social and cultural group possessing the following characteristics in varying degrees: Self-identification as members of a distinct indigenous cultural group and recognition of this identify by others; Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; Customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.” In regards to verifying FPIC, IDB Invest’s new E&S Sustainability Policy (2020) states: “Where a proposed project triggers PS 7 requirement for Free, Prior, and Informed Consent (FPIC) of Indigenous Peoples, IDB Invest reviews the FPIC process conducted by the client as part of the environmental and social due diligence of the project carried out prior to approval [of financing]” (<https://www.idbinvest.org/en/consultation/environmental-and-social-sustainability>).

IDB's E&S Sustainability Policy and the IFC Performance Standards do not generally require the FPIC of Affected Communities that are not Indigenous Peoples (with some exceptions for other vulnerable groups, such as Afro-descendants in Colombia). Instead, the Performance Standards require Informed Consultation and Participation (ICP) through stakeholder engagement, external communications and grievance mechanisms, and ongoing reporting to Affected Communities, as described in PS 1 (Assessment and Management of Environmental and Social Risks and Impacts).

More details regarding IDB Invest's approach to Indigenous Peoples is included in Part II, Section 2.2 of the Draft Implementation Manual for IDB Invest's new E&S Sustainability Policy (https://idbinvest.org/sites/default/files/2020-09/Implementation%20Manual%20-%20DRAFT-%20EN%20-%2009-14-20.pdf?_ga=2.226719263.345946235.1601300984-988899065.1589489387). Among the questions IDB Invest asks clients during the due diligence process is when FPIC is required, what are the legitimate decision-making bodies or institutions among the Indigenous Peoples? Also, how does the project intend to deal with dissent?

It is also worth noting that IDB Invest's new E&S Sustainability Policy requires clients to respect and protect groups that have had limited or no previous contact with outsiders and live in voluntary isolation. Per the policy, any project component or aspect that may result in undesired contact with Indigenous Peoples in voluntary isolation should be cancelled. Attempts at engaging in a project-related consultation process, for example with the objective of achieving FPIC, are by definition unacceptable in these cases, since the groups in voluntary isolation seek to avoid contact with outsiders.

2. How do you assess risks that a project might generate violent conflict or social division prior to investing, and how do you evaluate threats and restrictions on public dissent and civic space at both the project and country-level? What early warning mechanisms do you follow to detect and respond to threats against human rights defenders?

IDB Invest's E&S Sustainability Policy and PS 1 require clients to assess their project or operation's environmental and social risks and impacts. In the case of a project or operation with the potential for significant environmental and/or social risks, this assessment must take the form of an Environmental and Social Impact Assessment (ESIA). In addition, IDB Invest's E&S Sustainability Policy requires its internal E&S appraisals to include a "contextual risk assessment that involves evaluating the risks from the external operating environment and factoring this risks into decision-making and overall risk management." This contextual risk includes the human rights situation in the country and region in which the proposed project or operation is located.

IDB Invest's new E&S Sustainability Policy has a section specifically on human rights, which states: "IDB Invest promotes the responsibility of business to respect human rights [guided by the International Bill of Human Rights and the eight core conventions of the International Labor Organization]. To that end, in accordance with the Sustainability Policy and the Performance Standards incorporated herein, IDB Invest requires its clients to have in place an approach to assess potential human rights risks and impacts, respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts in IDB Invest-supported project[s]."

In regard to public dissent, IDB Invest's new E&S Sustainability Policy states: "IDB Invest does not tolerate retaliation, such as threats, intimidation, harassment, or violence, against those who voice their opinion or opposition to IDB Invest financed projects. IDB Invest takes seriously any credible allegations of reprisals. When complaints of this nature are raised, IDB Invest aims to address them within the scope

of its mandate. In such instances, concerns are raised directly with the client and/or other relevant party and follow up action is taken, if necessary.”

Regarding warning mechanisms, IDB Invest’s E&S Sustainability Policy states: “Where there are Affected Communities, IDB Invest requires the client to establish a grievance mechanism to receive and facilitate resolution of concerns and grievances about the client’s environmental and social performance in accordance with PS 1. Stakeholders may submit complaints regarding an IDB Invest investment to the project grievance mechanism.” PS 1 requires that grievance mechanisms for Affected Communities “seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate and readily accessible, and at no cost and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies. The client will inform the Affected Communities about the mechanism in the course of the stakeholder engagement process.” IDB Invest is also in the process of establishing a Management-led Grievance Mechanism, per its new E&S Sustainability Policy (effective December 15, 2020), for stakeholders to lodge concerns and grievances directly with IDB Invest regarding the projects and operations it is, or is considering, financing. Under this mechanism, the identity of complainants will be confidential, thereby reducing the risk of reprisals. In addition, IDB Invest has an Independent Consultation and Investigation Mechanism (ICIM) “to investigate allegations of harm as a result of IDB Invest’s failure to comply with its Sustainability or Access to Information Policies.”

As part of its environmental and social due diligence and supervision process, IDB Invest’s environmental and social specialists also use a variety of outside sources to evaluate threats and restrictions on public dissent and civic space at the country level. These can include but are not limited to the following.

- The Inter-American Commission for Human Rights, which provides information on retaliation against local activists in its member countries, including through press statements, country reports, and precautionary measures in favor of individuals or groups under threat (https://www.oas.org/en/iachr/media_center/press_releases.asp).
- The United Nations (UN) Special Rapporteur on Human Rights Defenders, which has a global mandate and addresses the situation of individuals and groups that, because of the work they do, are referred to as human rights defenders. The Rapporteur produces country reports and communications with State authorities (<https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx>).
- The CIVICUS Monitor, which tracks, on an ongoing basis, the state of civic space in all countries of the world and provides rankings for each. It also includes information on reprisals that have taken place in each country (<https://monitor.civicus.org/>).
- The ITUC’s global rights index, which provides an overview of the state of trade union rights by country. The index is updated annually (<https://survey.ituc-csi.org/ITUC-Global-Rights-Index.html?lang=en>).
- Reporters Without Borders’ World Press Freedom Index, which ranks 180 countries and regions according to the level of freedom available to journalists. It is a snapshot of the media freedom situation based on an evaluation of pluralism, independence of the media, quality of legislative framework, and safety of journalists in each country and region (<https://rsf.org/en/ranking>). Freedom House assesses the challenges for media and online freedom in its annual Freedom of the Media and Freedom on the Net reports and provides scores for each by country (<https://freedomhouse.org/explore-the-map?type=fiw&year=2020>).

In addition, IDB Invest has worked with UN Human Rights Offices in the field to obtain additional information on issues occurring in specific region as they relate to private sector investments. IDB Invest

also consults with various civil society organizations (CSOs) and utilizes specialized consulting firms to address human rights issues on its projects.

3. How do communities affected by your clients' operations know about your institution's commitment to safeguard human rights defenders and provide access to remedy? (NB: EBRD, IFC and World Bank have published commitments to zero tolerance to reprisals; IDB and EIB are soon to publish their own commitments)

As mentioned above, IDB Invest's new E&S Sustainability Policy states: "IDB Invest does not tolerate retaliation, such as threats, intimidation, harassment, or violence, against those who voice their opinion or opposition to IDB Invest financed projects. IDB Invest takes seriously any credible allegations of reprisals. When complaints of this nature are raised, IDB Invest aims to address them within the scope of its mandate. In such instances, concerns are raised directly with the client and/or other relevant party and follow up action is taken, if necessary." In addition, IDB Invest held a meeting in May 2020 with stakeholders to reiterate how the new policy addresses issues that came up during the consultation process for the policy, including those related to reprisals and human rights.

In 2018, to commemorate the UN Declaration on Human Rights Defenders 20th anniversary, the Vienna Declaration and Programme of Action 25th anniversary, and the Universal Declaration of Human Rights 70th anniversary, IDB Invest reaffirmed its commitment to human rights in a statement on its website. In addition to including the same policy on reprisals cited above, it states: "IDB Invest reaffirms its commitment to good international practice in the context of all social aspects of the projects in finances, including human rights. The sustainability practices of IDB Invest integrate human rights considerations throughout the project cycle. IDB Invest aims to identify, avoid and mitigate risks for those individuals and communities affected by their projects, valuing the importance of a robust stakeholder engagement and proper disclosure of information. Clients are also required to establish a project-level grievance mechanism for local communities, which is accessible and implemented without retribution to the party that originated the issue or concern."

4. If a human rights defender(s) or their organization is threatened in connection with your client's operations, what steps do you take to help protect them? How do you determine whether a threat to a human rights defender is connected with your client's operations, and what connections are sufficient to cause you, as an investor, to intervene?

In 2020, IDB Invest retained an external specialist to work with it to prepare guidance, including practical measures, to proactively identify risks of retaliation associated with its projects and to support its clients to address these risks more explicitly in project design, implementation, and supervision. The internal guidance includes measures that can be taken at both the project level and at the institutional level. It does so by cross-referencing and building upon existing requirements, for both IDB Invest and its clients, in IDB Invest's new E&S Sustainability Policy.

IDB Invest's approach to preventing and protecting human rights defenders is based on the following.

- Pro-actively communicating zero tolerance for retaliation to clients is one of the most, if not the most, important measure to prevent retaliation as it sets the foundation for working with clients, in a proactive and supportive manner, to address risks throughout project design, implementation, and monitoring.

- Those that may be at risk of retaliation should be a part of prevention, response, and monitoring. Existing local knowledge should feed into any risk assessments, design of mitigation measures, and responses to allegations of retaliation. Community-based partners, in particular local community leaders and CSOs with local presence or expertise, are an important resource for knowledge.

In addition, IDB Invest assigns an officer from its Social, Environmental, and Governance (SEG) division to every project and operation that it finances. The SEG Officer, who is responsible for conducting environmental and social due diligence prior to financing and monitoring the project during execution, is positioned to recommend remedies or withdrawal from a project in cases where there are persistent delays or serious non-compliance issues.

5. Has your institution ever publicly condemned an act or threat of violence, criminalization, or death to a human rights defender speaking out about a client’s activities and/or impacts? (Please share examples).

ICIM has received a very small number of requests that include allegations of violence, criminalization, and/or death to human rights defenders speaking out about an IDB Invest client’s activities. Per the Policy of the Independent Consultation and Investigation Mechanism of the IIC (2015), each eligible request is thoroughly investigated, the results of which are made public.

In regard to publicly condemning acts or threat of violence to human rights defenders, in 2018, IDB Invest made a public statement reaffirming its commitment to human rights in which it states: “IDB Invest does not tolerate retaliation, such as threats, intimidation, harassment, or violence, against those who voice their opinion or opposition to IDB Invest financed projects. IDB Invest takes seriously any credible allegations of reprisals. When complaints of this nature are raised, IDB Invest aims to address them within the scope of its mandate. In such instances, concerns are raised directly with the client and/or other relevant party and follow up action is taken, if necessary”

(<https://www.idbinvest.org/en/sustainability/environmental-social-management>). More recently, this position statement was incorporated in the new E&S Sustainability Policy approved in 2020.

6. Could you please share good practice (evidence-based) that have proved effective to respond to death threats against defenders promoting and defending human rights from the adverse impact of your clients’ Business operations? Please provide examples of your work with clients to ensure proactive actions to support and protect civic space and defenders?

IDB Invest is currently developing a Good Practice Note (GPN) entitled “Addressing Risks of Retaliation against Project Stakeholders.” The GPN provides practical guidance to companies on how to address the risks of retaliation against project stakeholders, reflecting the safeguard standards of IDB Invest. The level of effort should be based on risk. As such, the GPN differentiates between baseline measures that all companies can consider taking to address the general risks of retaliation and additional, targeted measures to manage the risks of retaliation in high-risk contexts.

In addition, IDB Invest provides internal training on human rights and contextual risks. This includes the training of IDB Invest SEG Officers on the “Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management,” which was published in January 2019 by ICIM and the Independent Accountability Mechanisms Network.

IDB Invest also engages with multilateral human rights entities and CSOs on human rights in the context of discussing policies, fostering collaboration, and exchanging information. Examples include members of the UN Working Group on Business and Human Rights, the Office of the UN High Commissioner for Human Rights, and the Organization of American States Special Rapporteur on Economic, Social, Cultural, and Environmental Rights.