

Joint Civil Society Organizations Comments on the Independent Redress Mechanism's Draft Standard Operating Procedures (SOPs) on Retaliation

Thank you for the opportunity to provide comments on the Draft Standard Operating Procedures on Retaliation of the Independent Redress Mechanism (IRM) of the Green Climate Fund (GCF). As CSOs involved in the GCF, we welcome the opportunity and look forward to working with the IRM to ensure that it has the procedures in place to best prevent and address retaliation when it occurs.

Environmental and human rights defenders are increasingly at risk and often face retaliation when they submit grievances and complaints to accountability mechanisms. Further, women and Indigenous defenders often face particularly severe and differentiated retaliation, as well as differentiated access to information, participation, and decision-making, or the ability to even report or speak with a trusted person. The IRM Standard Operating Procedures (SOPs) on retaliation need to be especially mindful of these vulnerabilities for already marginalized populations.

We also want to recognize the context in which these procedures are being promulgated: violence against human rights and environmental defenders is on the rise, as are authoritarian regimes that repress human rights—trends complicated and likely to be exacerbated by the COVID-19 pandemic. The procedures for responding to retaliation are not an intellectual exercise; rather, they outline processes that are very likely to be applied during the course of GCF's operations. Ensuring these procedures thus reflect best practice and integrate lessons from cases of human rights violations and abuse is critical.

I. Positive Aspects

These draft procedures have many positive aspects, and we appreciate the thought and considerations that have gone into their creation. We further appreciate that the IRM is taking a broad approach to addressing retaliation, considering risks, and identifying what retaliation means, particularly as experience has shown that there is a wide range of actions that amount to reprisals or retaliation.

Additionally, we appreciate that the IRM has taken an “all hands on deck” approach, including recognizing its own limitations and looking beyond what the IRM can do alone to also consider how it can cooperate with other independent units, in particular the Independent Integrity Unit (IIU) and the GCF Secretariat. Addressing retaliation and reprisals cannot be done by the IRM alone, and therefore it is critical to maintain the language recognizing this including on page 4, which states: “Preventive, mitigation or protective measures will be tailored to the circumstances and to the risks under consideration. Measures may be developed and/or implemented in consultation with GCF Secretariat and/or the IIU as appropriate, as well as with other organizations or with people who have specific expertise in protecting persons at risk.”

Further, the draft procedures acknowledge that the IRM alone may not be able to obtain all of the information needed to assess the retaliation risks. Thus it is critical that the IRM's due diligence includes working with the GCF Secretariat to prevent as well as mitigate retaliation risks. For example, as is acknowledged on page 6: “Cooperation with the GCF Secretariat: The IRM may seek information or

guidance from GCF personnel to gather information on risks of retaliation. It may also request that the GCF Secretariat interact with AEs, EEs, local or national authorities and/or others for the purposes of preventing or mitigating any specific risk of retaliation relating to an IRM process.”

Lastly, given that both the IIU and the IRM have a role to play in addressing retaliation as necessary to comport with the GCF’s Policy on Prohibited Practices, it is particularly useful that the draft procedures acknowledge the instances in which the IRM or the IIU will be able to act, as well as the fact that there will be instances where cases overlap.

II. Ways to Improve the Procedures and Elements to Better Mitigate Risks and Address Instances of Retaliation

A. Risk Identification

Forms of reprisals and experiences of retaliation vary depending on a myriad of factors (e.g. circumstance, region, gender, etc.), and how people have experienced retaliation should inform a comprehensive approach for the IRM, as well as the GCF as a whole, to take. This should include how it approaches risk identification, the scope of risk, including recognizing different forms of risk, and the differentiated and intersectional nature of risks to individuals, among other factors. The following comments highlight ways to improve the policy to minimize the risk of and better address retaliation and reprisals and draw on the experiences of people and communities around the world.

The procedures should recognize, in line with emerging literature about rising violence against environmental and human rights defenders,¹ the imperative to be gender responsive and culturally appropriate and to make a clearer differentiation between the risks of retaliation (and different types of retaliation) experienced by different groups. For many women, retaliation could come in the form of sexual harassment or abuse; thus, explicit cross-referencing with the Sexual Exploitation, Abuse and Harassment (SEAH) Policy, in addition to the Whistleblower and Witness Protection Policy and Policy on Prohibited Practices, would be warranted. These risks speak to both the necessity of the Secretariat, NDAs, and AEs to implement relevant policies (SEAH, Environmental and Social Policy, Gender Policy, Indigenous Peoples Policy, Information Disclosure Policy, and Whistleblower and Witness Protection Policy, among others), as well as the importance of ensuring that there is appropriate capacity-building undertaken on these topics in line with these policies.

We further encourage the IRM to provide more detail on its process for assessing risk by clarifying that risk assessments will include any compounding implications regarding sex, race, ethnicity, age, disability,

¹ See generally Global Witness, *Enemies of the State? How governments and businesses silence land and environmental defenders* (July 2019), <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>; Article 19 & CIEL, *A Deadly Shade of Green - Threats to Environmental Human Rights Defenders in Latin America* (Aug. 2018), <https://www.ciel.org/reports/deadly-shade-green-threats-environmental-human-rights-defenders-latin-america/>; Report of the Special Rapporteur on the situation of human rights defenders, U.N. Doc. A/72/170 (July 19, 2017), <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/N1722075.pdf>.

sexual orientation or gender identity, or other status, as well as their intersections. The specific risk and threat of gender-based violence for women environmental human rights defenders, for example, has been documented, especially among Indigenous women. Given the challenges of associating an adverse action with a complaint or grievance, a comprehensive risk identification procedure can help ensure the full suite of potential actions that are retaliatory in nature are understood within the IRM's appreciably "flexible" and broad approach to retaliation.

It is positive to see that the draft policy states that the IRM will assess risk and in doing so "will seek to inform themselves of external risks of retaliation in the relevant operating environment" including searching through credible public sources (page 5). In doing this, the IRM should not only consider the context of the country, but also look closer at the regional context of the specific place where the project/programme activities are taking place. When regional or local contexts are not considered, retaliation risks can be missed (see for example the cases of *Mareña Renovables and Hidroitango* included in the Annex to these comments). Additionally, in this current time of global health crisis, the impacts of COVID-19 on people vary depending on local, regional, and national contexts, and this crisis is likely to exacerbate existing inequalities and to have impacts far beyond the immediate ones. The new situations that emerge following this crisis (or in the midst of it) should also be considered when investigating the risks in project or programme areas.

In particular, an assessment of risks should also consider the situation of the rule of law, including the ability of the government and institutions to ensure the rule of law in a country. This is even more true when GCF projects and programmes operate in countries affected by fragility, conflict, and violence (FCV), as contexts of FCV will likely have an impact on the risk of reprisal and what those reprisals may be. Operating in FCV countries will likely require different and additional considerations (see for example the case of Condor Gold in Nicaragua contained in the Annex). Presently, the draft policy states, "When the IRM receives a communication about a belief of a risk or act/s of retaliation, it will, in consultation with the person at risk and/or the person reporting the risk, rapidly consider any risk of retaliation to people involved in its processes. It will then determine whether there are steps available to minimise any risk." Rather than waiting to receive communication about a risk of retaliation in FCV contexts, the IRM should proactively identify and conduct appropriate preventative risk assessments in FCV contexts. We encourage the IRM to do so in every case.

Being proactive in assessing and addressing risks of retaliation is critical. The IRM should model this behavior for both the AEs' grievance mechanisms and project level grievance mechanisms as well as for the GCF itself. As the GCF continues to develop new policies, including its own environmental and social safeguards, guidelines for observer participation, and information disclosure policy, among others, it should learn from other institutions (for example the IFC which issued a position on no retaliation in October 2018)² and consider what proactive steps it can put in place internally, such as screening

² IFC, IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders (Oct. 2018), https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES; see also FMO, Human Rights Defenders Approach, <https://www.fmo.nl/stakeholder-engagement> (stating that "We do not tolerate any activity by our clients that

procedures or early warning systems, to identify potential threats. Similarly, the IRM should be proactive in its screening of potential risks whenever it receives a grievance or complaint or is considering initiating an investigation in line with its Procedures and Guidelines.

The IRM could look to other accountability mechanisms for guidance on this as well, such as the IFC's Compliance Advisor Ombudsman (CAO)'s "Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations." The CAO highlights the need to pay "particular attention to risk factors such as, but not limited to, the environment for public participation, the risks people in the country or region take when they protest against a development project or promote social and environmental causes, whether complainants have previously faced reprisals or threats of reprisal, and the presence of formal or informal security forces, and seeks to identify whether there are specific groups or individuals that may be at higher risk based on their status in society."³ The IRM should take a similar approach in assessing the risk of retaliation.

This proactive approach similarly applies to steps that can be taken to prevent retaliation from occurring. For example, the CAO's Approach says: "Where risks of reprisal are present, CAO seeks to plan possible responses with the concerned person(s) [or group] prior to any potential incident, in case they may be unreachable in such an event"⁴ and then provides examples of potential steps to take, including ensuring confidentiality, having secure communications, etc. The IRM draft procedures could expand on its section on "Prevention and mitigation measures" by including a similar approach to plan possible responses early.

One way of protecting against retaliation includes the IRM, GCF, or other institutional actors using their position to speak publicly so that communities at risk are not put in a position of heightened vulnerability as the only people speaking out. Having "joint public statements" as noted on page 6 can be a critical way to ensure protections for individuals, communities, and organizations, and it is positive that the IRM has included it in these procedures. However, from the the procedures it is not clear who all is involved in making the public statements and if they only occur in the context of a problem solving process. Are the "joint public statements" referenced on page 6 made by the community/individual/CSO and the Accredited Entity or the GCF? Greater clarity on this would be helpful. Further, public statements by the institution (i.e. the GCF) or the accountability mechanism (IRM) can help to reduce the risk faced by communities by ensuring that they are not the only people who are providing information to the public or speaking out about concerns related to a specific project or situation. Experience has shown that when complainants (CSOs, communities, individuals) are alone in issuing public statements around a case or situation, they are easily targeted by displeased state authorities or other interested actors, who may engage in retaliatory acts such as smear campaigns, threats, or other reprisals against the complainants (for example see the situation in Nicaragua discussed in the Annex). Thus, in these draft procedures it would be good to specify a more proactive approach to issuing "public statements" or "joint public statements" in the context of any complaint and not just ones that go to problem-solving.

amounts to the oppression of, violence towards, or any other violation of the human rights of those who voice their opinion in relation to FMO activities and the activities of our clients.").

³ CAO, Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations, p. 7 (Apr. 2018), <http://www.cao-ombudsman.org/newsroom/documents/CAOApproachtoReprisals.htm>.

⁴ Id. at p. 8.

B. Handling Cases

In handling cases, the IRM develops a relationship with the complainants, whether they are local communities, individuals, or an NGO. Often the person from the IRM may be the only person from the GCF or the project proponents that the complainant knows. Thus, this relationship is critical for developing trust, which can help in identifying effective measures to mitigate the risk of reprisal. Trust also facilitates the sharing of critical information, including confidential information, which can help the IRM to take steps to protect the complainants from retaliation and to respond promptly and effectively if reprisals occur. However, there are times in a case when the point-person for a particular case at the accountability mechanism may change (for example, when a case moves from problem-solving to compliance), and this can undermine the relationship of trust that may have previously been built between the IRM and the complainants. To rectify this, it is crucial to consider the needs and perspectives of complainants who may be at risk of reprisals, including the importance of having the assurance that, should threats or reprisals occur, there is a known and trusted point of contact at the IRM who will be ready and willing to monitor the situation and respond appropriately. The IRM should consider adopting a process for addressing retaliation that allows for “continuity of care”, meaning that one person from the IRM could serve as a constant presence and point of contact for complainants at risk of reprisals. For example, this could be the registrar of the IRM or, ideally, a “case lead” who was with the case from the outset, developed a relationship of trust with the complainants, and remains available to the complainants throughout the lifecycle of the complaint should threats or other retaliation occur.

Additionally, the procedures are somewhat linear in approach and fail to fully consider the cyclical and overlapping nature of retaliatory action. In particular, the procedures should clarify what happens when a case is closed in terms of follow-up. On page 7, the draft procedures state: “The IRM will normally consider any threat to be active until either a) people facing or experiencing the retaliation communicate to the IRM that they no longer believe themselves to be at risk or b) the IRM decides that the threat is no longer present.” In the former case, how is such communication validated to ensure it is not the result of further retaliatory threats (see also, risk identification), and in the latter case, how is the situation monitored to ensure the threat does not arise again? There is a potential gap in coverage if complainants must restart the process with further action, and it would be concerning if a finding of no-retaliation or an inconclusive investigation provided an enforcement-free grace period to the retaliator.

Relatedly, there may be instances in which retaliation occurs after the IRM has closed a case. For instance, complainants who obtain a favorable outcome may be at particular risk of retaliation by interested parties who may be displeased with such an outcome. The draft procedures should thus identify what actions should be taken in such situations, which entity(ies) within the GCF would be responsible for taking such actions, and how and when this information would be communicated to complainants (see, for example, the case of *Condor Gold* in Nicaragua included in included in the Annex).

Further, the IRM should look to other institutions, for example the development finance institutions, for lessons related to how they have or have not adequately addressed retaliation. For example, the IFC recognizes the importance of distinguishing whether a threat comes from a company or a state actor, because follow-up actions might require different approaches. This has particular relevance for the IRM

as it considers the constellation of actors that may be involved in a project, from the NDA to AE to EE, where AEs and EEs can be public or private, and domestic, regional, or global.

Furthermore, the draft IRM guidance states that: “Preventive, mitigation or protective measures will be tailored to the circumstances and to the risks under consideration. Measures may be developed and/or implemented in consultation with GCF Secretariat and/or the IIU as appropriate, as well as with other organizations or with people who have specific expertise in protecting persons at risk.” In developing these measures, the IRM should consult communities, leaders and/or traditional representatives if the nature of threat is collective and not only directed to an individual or a few individuals.

Further, better differentiation between individuals and groups of people (such as civil society or community groups) could strengthen the procedures. The IRM can help maintain groups’ rights to organize against perceived harmful impacts of projects by clarifying which procedures and protections apply to individuals vs. groups, if there is any differentiation, and asserting the protections that do apply to groups. While the draft procedures state that the IRM may proactively apply this module to “organizations” and/or groups, such coverage should be required. There is also a question of representation for groups, and we urge the IRM to make decisions on how to interface with groups through participatory, flexible, and transparent approaches that do not risk shifting power to one individual or require hierarchical modes of communication.

Further, it would be helpful to more clearly specify under what circumstances recommendations would be made to the Executive Director and/or the Board as noted in the “Prevention, mitigation and protection measures” on page 4. In addition, would this take the form of a special communication to the full Board or to the Ethics and Audit Committee, or would it be part of the general report at each Board Meeting? It would be helpful if the draft procedures provided a bit more clarity on the precise timing and extent of such reporting. Similarly, the IRM should articulate a vision for emergency response procedures.

C. Roles and Responsibilities of IRM’s Other Partners Related to Retaliation

While it is good that the current draft procedures include reference to the role that the IIU plays and to the complementary roles of the IRM and the IIU, it would be useful for the procedures to include more details on the links between the IIU and IRM and in which instances one or the other (or both) has jurisdiction. The language in the draft presently reads: “Heads of the IRM and the Independent Integrity Unit (IIU) respectively will consult with each other and decide how best to provide protection to the person concerned, either under the WWPP or the guidance in this Module, if the mandate and jurisdiction of the two independent units are overlapping. If an assessment made by the IRM indicates that sanctions or remedies not available to the IRM would be required, the IRM may refer the matter to the IIU to address the retaliation under its authority.” Beyond referring certain matters to the IIU to address instances of retaliation, the procedures should expressly state that the IRM may *recommend* specific and general actions that the IIU undertake to address retaliation brought to the attention of the IRM and to correct institutional shortcomings that may have enabled the retaliation. We also strongly encourage the IRM and IIU to maintain a unified list of all allegations of retaliation to better ascertain persistent bad actors

and systemic problems (e.g. specific sectors, country and regional contexts, etc.) leading to instances of retaliation.

Additionally, it would be useful for the procedures to provide more clarity about the role of the IIU in instances where the IRM does not have explicit jurisdiction. While the IRM can receive complaints/grievances if there is *any* GCF money involved, if the IRM has not received a complaint/grievance then it will not have jurisdiction to address risks of or actual retaliation or reprisals faced by a person or community. Thus, there may be instances in which a person or persons face risk of reprisals related to their opposition to a GCF project or programme or related to a complaint they have filed with an AE's grievance redress mechanism or a project-level grievance mechanism. There should be more clarity in how that will be handled by the GCF's independent units. For example, would that be an instance in which the IIU may be able to provide some recourse or protection given their role in overseeing the implementation of the Whistleblower and Witness Protection Policy and the Prohibited Practices Policy? Is there a role for the IRM to act as a contact point or to receive information about risks of or actual retaliation that they can then communicate to the IIU (provided those at risk give consent for them to do so)? This should be identified in the procedures and clarified with the IIU.

III. Next Steps

As questions of capacity and capacity-building have emerged in recent GCF conversations regarding some policies that are relevant to these procedures, such as the Gender Policy and the SEAH policy, and as questions of capacity and capacity-building remain pivotal for the GCF to be best in class in terms of project implementation, outlining how such procedures may inform training and capacity-building initiatives for AEs' grievance response mechanisms, particularly those of DAEs, would be a key next step.

Given the GCF's model of operations and working with AEs and NDAs, it is critical that there is alignment and coherence among these actors on how to prevent, mitigate, and address retaliation. Once this set of procedures is finalized, NDAs and AEs should be required to update their policies and procedures to align with it. Further, these organizations should already be taking steps to ensure that there is no risk of or actual retaliation in any of their GCF-funded projects or programmes, as retaliation is a GCF Prohibited Practice. Such reporting of these updates could be a one-time measure at a set point after adoption, or integrated into existing reporting mechanisms.

As the world continues to suffer from the COVID-19 pandemic, it will be critical to continually assess the implications and potential impacts, particularly as marginalized and vulnerable communities will be disproportionately negatively impacted. One potential risk in regard to retaliation would be inappropriate restrictions being placed on meetings, demonstrations, and other gatherings as communities organize in relation to a GCF project. To help protect against public health measures being distorted and applied to silence complainants or potential complainants, the IRM, as well as the GCF, should consider issuing advisory guidance or providing resources on ways AEs can continue to work with communities in a transparent manner when traditional community meeting structures may be required to adjust and

innovate. It should further ensure that communities also have access to these resources and ideas on how to connect and organize in ways that are both safe and effective.

Furthermore, the environment to question and hold accountable entities that are bringing in economic opportunities in a post-COVID-19 world, which will be suffering varying degrees of economic depression and devastation, may be very changed, further endangering environmental and human rights defenders who speak out against some aspect of a GCF project. As the IRM and associated partners strive to protect defenders from retaliation, understanding and recognizing the potentially reactionary forces of state and corporate power, as well as other community members, will be key.

We also predict that this pandemic may impact the IRM's ability to reach out to communities about the redress mechanism and grievance process and therefore encourage the IRM to continue to seek to cooperate and collaborate with CSOs to help ensure the broadest outreach to GCF-affected communities regarding the IRM.

Thank you for the opportunity to comment on these draft procedures! If you have any questions or would like further input or clarifications, please do not hesitate to reach out to us.

Submitted by:

CSO Contacts for this submission:

Center for International Environmental Law (CIEL)

Erika Lennon

Senior Attorney, Climate & Energy Program

GCF CSO Active Observer for Developed Countries

+1-202-742-5856

elennon@ciel.org

Women's Environment and Development Organization (WEDO)

Tara Daniel

Program Manager

GCF CSO Alternate Active Observer for Developed Countries

tara@wedo.org

This submission was compiled and written by Erika Lennon (CIEL) and Tara Daniel (WEDO) based on input and contributions provided by the following civil society organizations (CSOs) in support of this submission (in alphabetical order):

- Accountability Counsel, USA
- Heinrich Böll Stiftung Washington, DC , Germany/USA
- Tebtebba Foundation, Philippines

In addition to those organizations listed above, the following CSOs have signed on to this submission (in alphabetical order):

- Actions Vitales pour le Développement durable (AVD), Cameroon
- Asian Peoples Movement on Debt and Development (APMDD), Regional - Asia
- CLEAN (Coastal Livelihood and Environmental Action Network), Bangladesh
- FECOFUN (Federation of Community Forestry Users Nepal), Nepal
- Indigenous Environmental Network, North America
- International Work Group for Indigenous Affairs (IWGIA)

ANNEX: Resources and guidance on retaliation and reprisals created by partner organizations and Case Studies

The following are examples of instances of retaliation that are illustrative of what people experience and demonstrate why above suggestions are made.

For an overview of different threats and attacks against environment and human rights defenders in the context of development projects, please see *Uncalculated Risks: Threats and Attacks Against Human Rights Defenders and the Role of Development Financiers*. It contains 25 case studies that explore the nature of threats and attacks against defenders in development projects as well as the role of the development finance institutions in mitigating or exacerbating these risks. Additionally, it provides policy recommendations. *Uncalculated Risks* is available at <https://rightsindevelopment.org/uncalculatedrisks/>.

Another resource is *Enough! Pledging Zero Tolerance to Attacks Against Environmental and Human Rights Defenders*, which surveys various initiatives aimed at protecting environmental defenders. It can be found here:

https://www.forestpeoples.org/sites/default/files/documents/Enough_Pledging%20zero%20tolerance%20to%20attacks%20against%20environmental%20and%20human%20rights%20defenders_0.pdf.

Specific insight into the gendered aspects of violence toward women environmental human rights defenders is detailed in Chapter 6, “Gender-based violence in defending land, territories and the environment – The situation of women environmental human rights defenders,” of the IUCN publication *Gender-based violence and environment linkages: The violence of inequality*: <https://portals.iucn.org/library/sites/library/files/documents/2020-002-En.pdf>

Additionally, the following case studies provide illustrative examples to better highlight some of the recommendations above.

Case Study: Condor Gold mine project in Nicaragua

In countries such as Nicaragua, where the government and state-level institutions have a diminished capacity to ensure rule of law, the fragile social and political contexts increase the vulnerabilities of

human rights defenders to reprisals such as threats, harassment, and criminalization. When investors fail to properly evaluate these contexts, human rights defenders bear the consequences.

For many years, affected community members have spoken out against the detrimental impacts of a gold mining project proposed by UK-based Condor Gold, Plc in Santa Cruz de la India, Nicaragua. Since exploration began in 2011, community leaders critical of the project have faced threats, harassment, surveillance, and criminalization. Because of these reprisals, many of these leaders have been forced into exile or gone into hiding for their own security and for the safety of their families.

In light of the IFC's equity investment in Condor Gold, eleven community members filed a complaint with the Office of the Compliance Advisor/Ombudsman (CAO) in mid-2018. They alleged that the Condor Gold project was in violation of national and international laws, as well as the IFC's Performance Standards and Access to Information Policy. In addition to the potential environmental and social impacts, such as depletion of groundwater resources, reduced access to water for the community, and risk of seismic activity, the complaint raised concerns about the lack of consultation and information shared with the community regarding the project.

By the end of the year, community members were experiencing intense surveillance, intimidation, and death threats. During the CAO's official visit to Santa Cruz de la India in November 2018, national police, armed and in full riot gear, descended upon the communities opposing the project. Then in June 2019, the IFC divested from Condor Gold. Notably, the IFC issued no public statement regarding this decision, nor about the reasons for divesting. Several months later, in October 2019, the CAO closed the case without an investigation.

Given the lack of any public statement about the IFC's decision to exit the Condor Gold project, community members debated saying anything public about the matter for many months. Finally, in December 2019, a press conference was organized at which one of the community leaders who had brought the CAO complaint, Mr. Olman Salazar, presented a public statement regarding the IFC's decision to divest from Condor Gold. To our knowledge, this was the first public announcement of the divestment made in Nicaragua. Just six days later, Mr. Salazar's home was raided by a group of some 15 riot police. They verbally and physically assaulted Mr. Salazar and his family. Each member of his family was handcuffed and interrogated, and personal belongings of the family, including computers, were confiscated. Fearing criminalization and escalating violence, Mr. Salazar and his family fled their home. They do not believe it is safe for them to return to Santa Cruz de la India.

In the days and weeks that followed, Mr. Salazar's parents and siblings, who remained in Santa Cruz de la India, continued to face harassment by police. Then, in late January 2020, Condor Gold appropriated a tract of land owned by Mr. Salazar's father in the area where the gold mine is set to be constructed. The family fears that if they report this to the authorities, further reprisals may result.

This case demonstrates the need both to have relevant policies in place and also to continually act with an awareness of the potential and actual reprisals that communities and community leaders face. A **zero tolerance for retaliation policy**—such as that adopted by the IFC in 2018—is a critical first step. Such a

policy must be communicated from the outset of a project with the client/borrower and reiterated periodically as needed. It must also be backed up with guidelines for concrete actions that should be taken in response to reprisals, if and when they materialize.

Further, **divestment from problematic projects must be done responsibly and transparently**, lest communities and defenders end up in an even more precarious position because of these projects, with nowhere to turn. In this instance, IFC's lack of public acknowledgement of its withdrawal from the project directly contributed to putting community leaders at risk when they published a statement referring to the divestment. This demonstrates the potential of **public statements or joint public statements to protect complainants and communities at risk of reprisals**. Whether such statements come from the financing institution itself or from the relevant accountability mechanism, they can serve to legitimize the concerns expressed by communities. These public statements from financing institutions create support for complainants who would otherwise become the messengers, resulting in undue attention or possible retaliation for merely providing information. Public statements can also put potential retaliators on alert that relevant bodies at the international level are aware and monitoring situations on the ground that go against established policies.

Further, this case illustrates the **importance of continued oversight and monitoring** of threats against at-risk community leaders and environmental and human rights defenders, even after divestment and/or closure of a case at the relevant accountability mechanism. The consequences of financing may continue long after investment itself occurs, and retaliation may follow in part or in whole as the result of a complaint with an accountability mechanism, even after that mechanism has finished its direct work on a complaint. In this case in particular, the closure of the CAO case left community leaders in a position of increased vulnerability. After the CAO closed the case, the community leaders could no longer rely on any part of the World Bank Group to scrutinize aspects of the project or to follow up on the acts of retaliation that continued to be committed against them as a direct result of their opposition to the project.

Case Study: Hidroituango dam in Colombia

In areas impacted by historic or ongoing conflict, the risk of reprisals is often markedly greater. This is illustrated by the situation surrounding Colombia's Ituango Hydroelectric Project (Hidroituango), an IDB-financed project slated to be the largest hydroelectric dam in Colombia. Worryingly, the project is being implemented in an area that saw dozens of massacres and hundreds of forced disappearances during Colombia's armed conflict and that continues to experience widespread violence to this day. In addition, the dam has already flooded areas where mass graves are located, despite repeated calls to exhume these sites by affected communities seeking to identify loved ones who disappeared during the conflict. The dam is thus exacerbating a situation already rife with human rights violations and primed for the most serious forms of retaliation and reprisals to occur.

Hidroituango has faced significant public opposition from community groups mobilizing against the severe environmental degradation caused by the dam and demanding respect for community members' rights. This opposition coalesced in 2011 with the creation of *Movimiento Ríos Vivos* (MRV), which formalized the existing network of local groups opposed to the project. In addition to numerous domestic

and international initiatives to oppose Hidroituango and raise awareness about its negative impacts, the MRV—under the leadership of environmental defender Isabel Zuleta—played a crucial role in the filing of a complaint with the Independent Consultation and Investigation Mechanism (MICI), the IDB’s accountability mechanism, in mid-2018. More than 400 people, representing dozens of affected communities, signed on.

As a result of their opposition to Hidroituango, community leaders and members of the MRV have faced discrimination, harassment, surveillance, stigmatization, public defamation, criminalization, and violent attacks and assassinations. Such reprisals have been carried out by multiple actors, including the private security forces of EPM—the company developing Hidroituango—as well as illegal armed groups that have continued to operate in the area. Between 2013-2018 MRV documented more than 150 threats and attacks, including three assassinations, two assassination attempts, two attacks with explosives, two cases of torture, 26 cases of trumped-up criminal charges against activists, and two incidents of mass detentions carried out during protests against the project.

The serious and often tragic instances of retaliation experienced by affected community members in this case illustrate the **critical need to include a thorough analysis of contextual risk**—including complex histories of armed conflict, war, and persistent instability and how these situations affect not only the country in question but also communities at the local and regional levels—in any assessment of the risks of reprisals. Such assessments should be frequently updated and plans put in place to ensure continually open lines of communication with at-risk complainants and communities.

Similarly, this situation highlights that at-risk **complainants are often the best sources of information about what measures would be most effective to mitigate risk of retaliation** and what plans should be put in place to respond if and when reprisals occur. In this case, MRV and affected communities have maintained their opposition to Hidroituango for years, despite ongoing threats and retaliation, and they have worked closely with other civil society organizations and authorities at the national level to develop protection plans and implement strategies in response to reprisals.

In addition, this case underscores that contexts ripe for retaliation create serious **barriers that can prevent affected communities and other civil society actors from participating effectively in development decisions, let alone filing complaints safely with accountability mechanisms**. In addition, patterns of violence and indicators of closing civic space, such as *de jure* and *de facto* restrictions on the freedoms of expression, association, and assembly, raise significant red flags that there is heightened risk of reprisals. Such contexts require additional measures to guard against reprisals, particularly but not exclusively if a complaint is filed with the relevant accountability mechanism.

Case Study: Mareña Renovables Wind Farm in Mexico

The historical context in a specific project area is a key element to assess in looking at the potential risks of retaliation. The Mareña Renovables project began in 2003 under the Spanish company, Preneal, with investment from the Inter American Development Bank (IDB) and, later, from IDB Invest. The project would be the largest wind farm in Latin America and would consist of 132 turbines, associated

substations, docking stations, and associated roads and transmission lines. The project area consisted of two narrow strips of land - San Dionisio del Mar and Santa Maria del Mar - located in the Isthmus of Tehuantepec, Oaxaca, Mexico. The Isthmus is the traditional home of the indigenous Ikojt and Binnizá people.

The potential wind energy project has exacerbated the area's history of intense territorial, ethnic and political conflict. As Perneal moved to acquire the land, they ignored Mexican law requiring a participatory process with free, prior, and informed consultation with indigenous peoples. Instead, Perneal withheld information, negotiated directly with individual land owners, and divided the communities, sparking anger and resentment.

As the indigenous communities vocalized their opposition to Mareña Renovables, they began experiencing reprisal actions and pushback from government agencies, local commissions, and project organizers. In 2011, following protests outside of the Federal Electricity Commission (CFE) in Juchitán, CFE requested that the state launch a formal complaint and arrest warrant against Bettina Cruz. Despite never attending the protest, Bettina, a leader with the Assembly of Indigenous Peoples of the Isthmus of Tehuantepec in Defense of Land and Territory (APIITDTT), was charged with "opposition to the execution of a public work," "crimes against the national consumption and wealth," and "wrongfully detaining CFE office personnel." In September of that year, Bettina and her husband received a series of death threats, forcing them to flee their home with their daughters for nine months.

As community opposition grew and became intertwined with existing political divisions, so did the surveillance, repression, threats, beatings, detentions, and criminalization. Community members reported aggressions from supporters of the project, local authorities and party leaders, company employees, hitmen, police forces, investors, and representatives of the company union. 232 indigenous members of seven communities filed a complaint with the the IDB's independent accountability mechanism, the Independent Consultation and Investigation Mechanism (MICI), highlighting "[t]he Project's increasing pressure on the communities, ignorance of community decision-making..., and constant intimidation and unceasing persecution of leaders who question the Project..." According to the complaint, more than 40 indigenous people who spoke out were subjected to criminal proceedings; others had their basic services like electricity and health care cut off; others were subjected to physical attacks; and reports state there were known hitmen looking for prominent community organizers. Every time the communities presented a legal action at the national or international level, the risk to their lives and to community safety increased. Despite these complaints and community engagement with IDB, as well as IDB's designation of the project as "high risk," the bank approved the loan.

Similarly to the Hidroituango project in Antioquia, Colombia, the Mareña Renovables project proponents failed to address the contextual risks of the region. By failing to account for the historic political and cultural divides in Tehuantepec, IDB and its partners exacerbated those tensions. Although the IDB's environmental and social management plan noted the risks associated with use of private security forces to manage conflict at the site, it failed to adequately mitigate those risks resulting in indigenous communities facing threats from private security forces, being silenced, being labeled as anti-development, and being directly punished for opposing the project.

Subsequently, the project sponsor reportedly decided to stop construction and began a debt restructuring process with IDB and other creditors. Though IDB did not disburse the final payments to Mareña, communities were not informed of the status of the project nor IDB's involvement. Thus, tensions continued in the midst of a severe lack of information for the indigenous communities about the project's status, ultimately the IDB allowed violence and tensions to escalate past the life of the project.

This coincides with the MICI findings that the IDB failed to comply with requirements to ensure good faith consultation with indigenous peoples, and that the IDB failed to identify the conflict in the area and how that could impact the project. Further, it found that the IDB lacked adequate guidance for situations of social conflict, stating that “[r]emaining on the sidelines as an observer of violent events is not the best alternative, and inaction could even exacerbate the social conflict.”