

Submission to the UN SR on Freedom of Expression

The right to freedom of opinion and expression is key to achieving inclusive and sustainable development, but way too often it is curtailed or violated. In this submission, we will focus in particular on the restrictions in the context of projects or policies supported by development finance institutions (DFIs),¹ as well as the practical steps these institutions should take to protect the right to freedom of expression.

Why development cannot be sustainable if the right to freedom of expression is violated

DFIs are a key actor in the global economy: they are estimated to have [\\$23 trillions in assets](#) and in 2022 they mobilized 12% of global investments.² Many of the activities they fund, at least on paper, aim to help achieve the SDGs: from financing just energy transition projects to guiding governments in drafting new policies, DFIs play a crucial role in shaping the development agenda, identifying the priorities, and setting standards.

Way too often, however, DFI-funded projects - instead of contributing to SDGs - end up fuelling human rights violations and having negative social, economic and environmental impacts. Development projects tend to be implemented with a top-down approach, as DFIs fail to ensure meaningful consultations and to create adequate conditions for people to freely and safely express their views.

Around the world, Indigenous peoples, grassroots communities, social movements, journalists, and other human rights defenders are doing essential work protecting their lands and resources from destruction, exposing corruption and abuse of power, and advocating for investments that help achieve the SDGs. Yet, instead of being supported, they are often facing [reprisals](#) for doing so.³

Apart from intimidating those directly involved, reprisals also have a [silencing effect](#) on others. When there is such a climate of fear and intimidation, for the impacted communities there are no real and meaningful opportunities to make their voices

¹ Development Finance Institutions (DFIs) are national or international institutions that provide loans, grants and other types of financial or technical support for projects, activities and policies around the world. DFIs are owned and governed by governments and they generally have public interest missions, such as poverty alleviation and sustainable development. In this submission, we will also interchangeably use the generic word 'banks' or 'development banks'.

² Data available in the website of the Finance in Common summit: <https://financeincommon.org>

³ See for example: "Uncalculated Risks: Threats and attacks against human rights defenders and the role of development banks", Coalition for Human Rights in Development, May 2019, <https://rightsindevelopment.org/uncalculatedrisks>; "Unhealthy Silence: Development banks' inaction on retaliation during COVID-19", Coalition for Human Rights in Development, ARTICLE 19 and IFEX, July 2021, <https://rightsindevelopment.org/unhealthy-silence>; "Wearing Blinders: how development banks are ignoring reprisal risks", Coalition for Human Rights in Development, June 2022, <https://rightsindevelopment.org/wearing-blinders>.

heard.⁴ In contexts where retaliation risks are high and they are not adequately mitigated, neither formal mechanisms (such as stakeholder engagement processes, which are mandatory according to many DFIs policies) nor informal ones (such as community-level meetings and public debates) can offer a safe space for affected communities to exercise their right to freedom of expression. This, in turn, severely affects the capacity of the project to contribute to SDGs and to be truly effective, inclusive and sustainable.

Protecting the right to freedom of expression, as well as proactively creating safe spaces where people can freely and safely express their views, is crucial to ensure sustainability, because it also contributes to ensure:

- **Better project planning, implementation and monitoring:** when the right to freedom of expression is respected, Indigenous and local communities have a better chance to provide their inputs on the project proposal and monitor its implementation, thus decreasing the risk of negative impacts. On the contrary, when people cannot voice their opinion, DFIs can't adequately identify, assess and mitigate risks. This is particularly problematic when they entrust their clients with conducting consultations or social and environmental assessments, as clients have a clear conflict of interest and might avoid disclosing potential negative impacts.
- **Preventing the approval of harmful projects:** there are cases where DFIs have eventually withdrawn their financing because of human rights impacts related to the project, but - if they had ensured meaningful consultations and conducted proper [human rights due diligence](#) in the first place - they could have avoided approving and initiating such projects.
- **Preventing reprisals and social conflicts:** In contexts where people cannot freely and safely express their views, there are higher rates of social conflicts that often end up leading to reprisals and hindering the success of the project. This is particularly frequent in contexts where civic space is restricted or where there are active conflicts, territories are militarized, and there is presence of illegal and paramilitary groups.⁵
- **Improving accountability:** freedom of expression is crucial to ensure accountability, promote transparency, and mitigate the risk of corruption or misuse of public funds. If there are restrictive laws or reprisals against

⁴ See for example the blog "Uzbekistan: the anatomy of fear", Mark Fodor (Coalition for Human Rights in Development), November 2022: <https://rightsindevelopment.org/uzbekistan-the-anatomy-of-fear>.

⁵ See for example: "Wearing Blinders: how development banks are ignoring reprisal risks", Coalition for Human Rights in Development, June 2022, <https://rightsindevelopment.org/wearing-binders>.

journalists, rights defenders, whistleblowers or others monitoring how resources are spent, then corruption can take place with more impunity and resources allocated for development projects might not reach the intended beneficiaries.

- **Preventing discrimination:** conducting meaningful due diligence is particularly key for groups in vulnerable situations and at risk of discrimination. For instance, women and LGBTQI+ people might face additional challenges (such as stigma and social pressure) in exercising their right to freedom of expression and opinion. Intentionally creating safe spaces where these groups can freely express their views, without fearing reprisals, is crucial to ensure development projects do not end up reinforcing discriminatory practices.
- **Leveraging local expertise:** many development projects affect territories where there are groups in vulnerable or marginalized situations, such as Indigenous Peoples, afro-descendants or rural communities, whose livelihoods heavily depends on the natural resources in their territory and who are experts on how to sustainably protect those resources; failing to ensure their consent and their participation also means failing to learn best practices on community-led, truly sustainable development.

Violations to the right to freedom of expression in the context of development projects: a systemic issue

The report "[Uncalculated Risks](#)", through 25 case studies, analyzes the reprisals faced by defenders criticizing or expressing their views in the context of development projects.⁶ These 25 cases, however, are only the tip of the iceberg. According to [Global Witness](#), from 2012 to 2022 at least 1733 defenders have been killed trying to protect their land and resources: they were targeted simply because they were exercising their right to freedom of expression, and many of them were doing so in the context of projects imposed in the name of development.⁷

Attacks against defenders escalated during the pandemic. The report "[Unhealthy Silence](#)" documents how at least 335 people (including journalists, defenders, health workers, and ordinary citizens) suffered reprisals, in a total of 35 countries, for speaking out about aspects of the COVID-19 response directly financed by DFIs.⁸ They have faced

⁶ "Uncalculated Risks: Threats and attacks against human rights defenders and the role of development banks", Coalition for Human Rights in Development, May 2019, <https://rightsindevelopment.org/uncalculatedrisks>.

⁷ "Decade of defiance", Global Witness, September 2022, www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance.

⁸ "Unhealthy Silence: Development banks' inaction on retaliation during COVID-19", Coalition for Human Rights in Development, ARTICLE 19 and IFEX, July 2021, <https://rightsindevelopment.org/unhealthy-silence/>

threats, imprisonment, torture and even killings, for the mere fact of having published information on death rates from COVID-19, warned about the lack of Personal Protective Equipment, reported on corruption risks, spoken out against restrictions to civic freedoms imposed with the pretext of controlling the spread of the virus, or raised any other issues related to COVID-19 projects supported by DFIs.

Most reprisals have occurred in a general context of strong restrictions on civic freedoms, including declaration of states of emergency, special laws on fake news and disinformation that restrict freedom of expression with vague and broad formulations, and the active persecution of dissenting voices.

“Unhealthy Silence” shows how DFIs did not fulfill their commitments to ensure people could exercise their rights to freedom of expression in the context of their projects. Project documents show that development banks did not carry out a prior assessment of the human rights situation with regard to freedom of expression, that would have easily revealed the difficulties and obstacles to participation in those countries. It would have also clearly exposed the need to adopt preventive measures to protect people from eventual reprisals for criticizing the projects financed by the banks.

Another report, “Missing Receipts”,⁹ shows how during the pandemic - in an atmosphere where many governments were actively suppressing information about the pandemic and restricting freedom of the press and civic watchdog groups - DFIs failed to ensure a basic degree of transparency, access to information and participation. The pandemic ended up exacerbating structural issues, as also prior to the pandemic many civil society groups have been pressuring DFIs to better ensure transparency and access to information. Often project documents are not easily accessible, they are not available in local languages, and they are not openly disclosed.

Finally, the report “[Wearing Blinders](#)” shows how DFIs are often failing at conducting comprehensive human rights due diligence, as they are not assessing the risks of reprisals against people opposing or raising concerns about the projects they fund.¹⁰ Even when they approve projects in sensitive contexts, where there are widespread and severe challenges to stakeholder engagement and participation, DFIs are not putting in place measures to ensure that people can freely and safely express their opinion, or to prevent and discourage reprisals.

⁹ “Missing Receipts: where did international finance institutions funding go?”, Coalition for Human Rights in Development, January 2022, <https://rightsindevelopment.org/missing-receipts>.

¹⁰ “Wearing Blinders: how development banks are ignoring reprisal risks”, Coalition for Human Rights in Development, June 2022, <https://rightsindevelopment.org/wearing-blinders>

International human rights obligations of DFIs

As state-owned entities, DFIs have the same obligation to respect human rights as the states themselves – such as the right to freedom of expression and the right to access to information – and to prevent and mitigate reprisals against people voicing their opinion in the context of their investments. The Committee on Economic, Social and Cultural Rights has specified that DFIs are “obligated to comply with human rights as listed, in particular in the Universal Declaration of Human Rights, that are part of customary international law or of the general principles of law, both of which are sources of international law.”¹¹ UN Special Procedures have also reaffirmed DFIs human rights obligations and pointed out the need for them to adopt a human rights policy.¹² The UN Guiding Principles on Business and Human Rights also apply to DFIs.¹³

The government shareholders of DFIs also have obligations to respect, protect, and fulfill human rights, which they carry with them in their actions and decisions as members and owners of DFIs. Governments cannot simply abandon their obligations in their capacity as governing members of DFIs.¹⁴ Many DFIs also have additional human rights obligations depending on the nature of the institution.¹⁵ For example, national DFIs share state obligations to respect, protect and fulfill human rights and to prevent, investigate, punish, and provide redress for abuses.¹⁶

In their Environmental and Social Policy Frameworks, most DFIs recognize the principle of participation and require in their policies the implementation of plans for involving and engaging different stakeholders. Through their respective access to information

¹¹ See e.g.: Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15, U.N. Doc. E/C.12/2002/11, para. 36 (2003) and General Comment No. 14, UN Doc. E/C.12/2000/4 (2000); Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights 2011, https://www.ciel.org/wp-content/uploads/2015/05/Maastricht_ETO_Principles_21Oct11.pdf; “Guiding principles on foreign debt and human rights”, Cephas Lumina [former UN Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights], UN Doc.A/HRC/20/23, April 10, 2011, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/AHRC-20-23_en.pdf; “Final Report of the International Law Association Committee on Accountability of International Organizations”, International Law Association, 2004; See “Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights”, CESCR, July 22, 2016, UN Doc E/C.12/2016/1: <https://www.undocs.org/pdf?symbol=en/E.C.12/2016/1>.

¹² See e.g. the report “Extreme poverty and human rights” on the human rights policy of the World Bank, Philip Alston [former UN Special Rapporteur on extreme poverty and human rights], August 4, 2015: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274, and his report on the IMF and its impact on social protection (2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/127/23/PDF/G1812723.pdf?OpenElement>.

¹³ “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”, UN Doc A/HRC/17/31, March 21, 2011, https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

¹⁴ For example, Principle 15 (Obligations of States as members of international organizations) of the Maastricht Principles on the extra-territorial obligations of States in the area of economic, social and cultural rights provide that “[a]s a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.”

¹⁵ For instance, the World Bank has a legal obligation to respect, protect, promote, and fulfill human rights, as an international organization, a UN specialized agency, and through member countries that have those obligations.

¹⁶ UN Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 8, CCPR/C/21/Rev.1/Add. 1326 (May 2004).

policies they also commit to ensuring transparency and accountability. However, civil society and community groups have raised concerns about the adequacy of these policies in practice and their failure to center communities in the development process.¹⁷

Some DFIs have also established specific policies or statements in which they commit to adopting measures to help address retaliations against those who express critical opinions about their projects. However, as explained in the section above, DFIs are often failing to uphold their obligations and their commitments.¹⁸

What should DFIs do

To fulfill their obligations and commitments to freedom of expression, DFIs should make structural changes to their policies and practices and take some key steps to identify and assess risks of reprisals against people expressing their views around DFI-funded projects (including civic space restrictions), to mitigate these risks, and to effectively address reprisals and provide access to remedy when these occurs.

These key steps could include:

- To carry out a more comprehensive **human rights due diligence** and conduct contextual, country-specific and project-specific retaliation **risk assessments**, including an analysis of the civic space restrictions that might affect the ability for the affected communities to freely, safely and actively participate in all the phases of the project cycle (from the assessments prior to approval to the monitoring of its implementation).
- **Do not approve projects** when it cannot be reasonably ensured that the right to freedom of expression and opinion will be respected.
- Ensure full **transparency**, accountability and participation at all levels, as well as the right to **access to information**.
- Ensure there are **adequate conditions for participation and mitigate reprisal risks**, ensuring safe and inclusive spaces where also groups in vulnerable or marginalized situations can effectively participate without fearing reprisals.

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¹⁸ See for example the WB Environmental and Social Standards: <https://projects.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards>; IDB Environmental and Social Policy Framework: <https://www.iadb.org/en/mpas>; AIIB Environmental and Social Framework: <https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html>; ADB Access to Information policy: <https://www.adb.org/who-we-are/access-information/main>; EIB Transparency and Access to Information policy: <https://www.eib.org/en/about/partners/cso/access-information/index.htm#> EIB's commitments on human rights, available at <https://www.eib.org/en/about/cr/human-rights> and "IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders", International Finance Corporation, October 2018, https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES.

- Develop **internal institutional expertise** on human rights and protection of defenders, and provide capacity building and technical assistance to clients on retaliation risk assessment, prevention, and response.
- Ensure policies expressing **non-tolerance for retaliations**, and set up and publicize a clear and effective reprisal response protocol.
- **Use their leverage** to actively address reprisals against people exercising their right to freedom of expression.
- **Publicly condemn** reprisals, publicly express support for human rights defenders and actively promote the protection of the right to freedom of expression.
- Provide **access to remedy** when reprisals occur.

A full list of recommendations can be found in the following reports:

- "Uncalculated Risks: Threats and attacks against human rights defenders and the role of development banks", Coalition for Human Rights in Development, May 2019, <https://rightsindevelopment.org/uncalculatedrisks>;
- "Unhealthy Silence: Development banks' inaction on retaliation during COVID-19", Coalition for Human Rights in Development, ARTICLE 19 and IFEX, July 2021, <https://rightsindevelopment.org/unhealthy-silence>;
- "Wearing Blinders: how development banks are ignoring reprisal risks", Coalition for Human Rights in Development, June 2022, <https://rightsindevelopment.org/wearing-blinders>
- "Missing Receipts: where did international finance institutions funding go?", Coalition for Human Rights in Development, January 2022, <https://rightsindevelopment.org/missing-receipts>.

Signatories

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