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## **Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

### **Open call for input**

#### **“Development Finance Institutions and Human Rights”**

#### **Background**

The Working Group on the issue of human rights and transnational corporations and other business enterprises (“Working Group”) will present a report to the Human Rights Council at its 53<sup>rd</sup> session in June 2023 on “Development Finance Institutions and Human Rights”, which will examine the responsibility of Development Finance Institutions (DFIs) to respect human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs).

In its stocktaking exercise of the implementation of the UNGPs over the first decade since their adoption, the Working Group recognized that ‘financial actors have an unparalleled ability to influence companies and scale up on the implementation of the Guiding Principles’.<sup>1</sup> With ‘financial actors’ understood here to include public DFIs as well as private sector finance institutions that often co-finance with other commercial banks and investors, these actors are central to pushing forward the realization of the UNGPs 10+ Roadmap for the next decade of business and human rights.

Considering the sustained attention that multilateral DFIs have received over the years, this report will primarily focus instead on national, sub-regional and regional DFIs, the nature of their financing of both public and private sector projects, as well as the breadth and depth of their impacts on human rights and the natural environment. In so doing, the report aims to provide practical guidance to States, DFIs, and other relevant actors on how to strengthen protection and respect for human rights through DFI financing, in line with the UNGPs.

The report will cover all three pillars of the UNGPs in the context of Development Finance Institutions and Human Rights: the duty of States to protect against human rights abuses by businesses, including when formally (or informally) linked to Institutions that provide support and services to businesses, in line with Guiding Principles 4 and 10; the responsibility of DFIs to ensure that their clients and the companies they invest in, as well as other business partners and entities in the value chain, respect human rights; and the role of DFIs in providing access to remedy to

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<sup>1</sup> [A/HRC/47/39](#), ‘Guiding Principles on Business and Human Rights at 10: taking stock of the first decade’, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, pp.15-16.

individuals and communities affected by DFI-funded projects that result in adverse human rights impacts.

This report will build on work previously undertaken by the Working Group and other organisations, such as the Office of the High Commissioner for Human Rights (OHCHR) on DFIs,<sup>2</sup> as well as on relevant Working Group's previous reports addressing issues such as the State as an economic actor,<sup>3</sup> the financial sector and human rights,<sup>4</sup> human rights due diligence<sup>5</sup>, policy coherence, and access to remedy.<sup>6</sup>

Against this backdrop, the Working Group seeks the input of all stakeholders (including international organisations, national human rights institutions, civil society organisations, research centres, academia, lawyers, law firms, DFIs, businesses, industry associations, trade unions, human rights defenders, and indigenous peoples) to the questions below.

### **Submission of responses**

Please send your responses to the questionnaire in Word format by email to [hrc-wg-business@un.org](mailto:hrc-wg-business@un.org), indicating "DFIs QUESTIONNAIRE" in the subject line.

We kindly request that your submission be concise and limited to a maximum of 2,500 words and welcome the inclusion of links to online documents. Due to a limited capacity for translation, we also request that your inputs be submitted in English, French, or Spanish.

The deadline for submission is **3 March 2023**.

Please feel free to respond to all or selected questions as per expertise, relevance or focus of work. A separate questionnaire has been sent to all Member States. Responses received will inform the above report of the Working Group.

Unless indicated otherwise, all the responses received will be posted on the Working Group's [website](#).

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<sup>2</sup> <https://www.ohchr.org/en/development/development-finance-institutions>;  
<https://www.ohchr.org/en/publications/policy-and-methodological-publications/remedy-development-finance>

<sup>3</sup> <https://www.ohchr.org/en/special-procedures/wg-business/state-economic-actor-and-human-rights>

<sup>4</sup> <https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights>

<sup>5</sup> <https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>

<sup>6</sup> <https://www.ohchr.org/en/special-procedures/wg-business/access-remedy>

## Questions

### State duty to protect human rights

#### 1. What should be the role of States in ensuring international Development Finance Institutions (DFIs) respect human rights and the environment? What challenges have you observed in this regard?

**IJM:** *States should*

- (i) *hold DFIs accountable in having standards and policies that protect and promote human rights and environmental sustainability and regeneration. These should apply to DFI's employees, borrowers, contractors and clients. States should ask DFIs to require borrowers and contractors to undertake social (human rights) and environmental impact assessments which include consultations with affected communities, and ensure that grievance mechanisms are put in place during the life cycle of a funded project. This should be done in their operations as well as in their raw materials supply chains and labour supply chains.*
- (ii) *establish mechanisms that enforce environmental and social (human rights) due diligence by DFIs, contracts which safeguard detailed risk assessments/due diligence, and access to remedy which are comprehensive and tied into national criminal justice systems – which may therefore require funding and other support from the DFI and/or the corporations as a necessary response to an identified risk.*
- (iii) *collaborate with DFIs in implementing the standards and policies and identifying gaps for necessary action, e.g. conducting requisite risk assessments, due diligence, corrective action plan, grievance procedure, remediation.*
- (iv) *consult and collaborate with civil society organisations in enacting standards and policies for DFIs to implement before, during and after the life cycle of a funded project.*

*The challenge: Power usually rests with DFIs in general. States should make sure that they set clear governance and align with DFIs so human rights and environmental protection are not compromised. Human rights and environmental due diligence should be made mandatory for DFIs (just like for the business sector).*

#### 2. How do States encourage development financing activities and policies to be consistent with international human rights standards and principles and ensure that human rights risk is integrated into the due diligence processes of DFIs?

**IJM:** *As provided above (response to #1), States should establish clear expectations of DFIs to uphold robust standards and implementing guidelines to prevent, address, or remediate any arising human rights and environmental issues.*

*One concrete means for cross-border States and DFIs cooperation is for the State to require DFIs to comply with human rights standards and principles before allowing their citizens to be employees or contractors for projects. For example, countries/jurisdictions as source of manpower should withhold signing an MOU with other countries/jurisdictions until required labour protection clauses are included.*

*Financed projects should also be stopped until there is a suitable response to an identified risk or issue. Refer to the published case of serious, widespread sexual abuse and exploitation of women and girls around a major road building project in Uganda funded by the World Bank.*

**3. How can States harness the potential of DFIs to accomplish important policy objectives such as achieving gender equality, protecting human rights and the environment, mitigating climate change and realising the Sustainable Development Goals? Please provide examples if possible.**

**IJM:** *A concrete way is to ensure that standards (e.g. aligned with the Universal Declaration of Human Rights, UNGP, International Labor Organisation's Indicators of Forced Labor) are integrated into the DFI's standards and policies and translated to requirements in practice for all employees, borrowers, contractors, and clients, with compliance procedures incorporated within project monitoring and evaluation processes. This can*

- (i) help to set regional standards of excellence, and*
- (ii) influence behaviour of all parties funded by DFI which can be significant especially for regional DFIs like the Asian Development Bank. This can also help to influence policies and systems of other States.*

**4. How can/should States engage with DFIs, private businesses, investors, civil society, rights-holders, and trade unions to prevent and address adverse human rights impacts caused by irresponsible development financing practices?**

**IJM:** *The State should be holding consultations with these stakeholders prior to any approval of projects. It is important that the State requires DFIs to meet certain standards and enforces them accordingly to prevent irresponsible practices.*

*States should provide and enable justice systems (civil and criminal) to*

- (i) identify human rights risks/issues/violations*
- (ii) respond to human rights impacts*

- (iii) *facilitate accessibility of officers that are well-trained in victim-sensitive and trauma-informed care to deal with those impacted by human rights abuses and social services to support victims*

*All of which could be at least partially funded and supported by the companies getting the contracts. This support can be stipulated in the contract. DFIs should also commit to full cooperation with State justice authorities in the conduct of criminal investigations related to human rights abuses and/or unlawful environmental practices.*

*States should also address labor rights concerns in business conduct, especially concerns around strategic lawsuits against public participation (SLAPPs), often used to defame and harass human rights defenders for raising and protecting human rights, including on labor rights<sup>7</sup>.*

**5. What are the specific human rights risks posed by DFIs to groups in the most vulnerable situations, such as women and girls, indigenous communities, human rights defenders, persons with disabilities, persons with different sexual orientation or gender identity, older persons, persons living in poverty or migrant workers?**

**IJM:** *As in the case of the World Bank-funded infrastructure project in Uganda, women and girls are frequently victims of sexual abuse and exploitation and trafficking in persons around large worksites. Large projects employing huge labor workforces are difficult places in which to maintain law and order and preserve the safety of vulnerable persons who are in close proximity to the labor force.*

*(Refer to this [published case](#)).*

*From a forced labour perspective, migrant workers are specifically vulnerable and need increased protection from both States (source and host countries) and DFIs. Some of the risks they may face include debt bondage and labour trafficking, which warrant the attention of States and DFIs so that protection measures are in place to prevent DFI-funded projects being connected with labour exploitation.*

*Child labour is another potential issue which requires additional checks and balances so that children are neither trafficked nor found in forced labour situations.*

*States and DFIs should agree on measures to prevent and quickly remediate issues. These may include DFIs and its borrowers and contractors establishing standards and policies that require ethical recruitment of workers and prohibition of child labour and*

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<sup>7</sup> [https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-02/Formatted-version-of-the-guidance-EN_0.pdf)

*forced labour, providing human resources dedicated to manage risk prevention and due diligence processes, facilitating access to helpline and worker voice mechanisms, setting up a remediation protocol including both judicial and non-judicial systems from the onset of any project, supporting survivor care, and hiring an independent party to evaluate the DFI's project's overall human rights and environmental management systems at least before it starts and while the project is going on and at the end of its term. DFIs should transparently share through their public reports their human rights and environmental protection approaches, challenges, and redress of grievances.*

6. What measures should States take to ensure access to an effective remedy when DFI-supported projects are associated with adverse impacts on individuals, communities, and the environment?

**IJM:** *From a labour recruitment standpoint, States should be aligned with the SDGs and the UNGPs. There should be clear and adequate laws that protect the vulnerable from illegal and unethical recruitment practices, and commit to enforcement. States must operationalise the standards set in the SDGs and UNGPs to ensure that domestic laws and policies, implementing rules and regulations as well as procedures are brought in line with these international standards. DFIs can play a crucial role in ensuring that they will only allow funding for projects that meet these international standards, while introducing safeguards such as internal complaints procedures for migrant workers to accompany any funded project.*

*(Refer to # 4 responses as they are related to #6).*

### **DFIs' responsibility to respect human rights**

1. Are you aware of any DFIs that have existing human rights, sustainability, or environmental and social (E&S) policies? If so, how effectively do they integrate a commitment to respect human rights, as per the UNGPs?

**IJM:** *ADB has some due diligence components as part of its safeguards for proposed projects for financing, assessing potential environmental and social impacts and risks, and in other areas where due diligence processes have been introduced. However, these are limited. It should be noted, however, that ADB is embarking on a stakeholder consultation to improve its safeguarding policy.*

*The World Bank has an Environmental and Social Framework (ESF).*

2. Can you provide examples of any DFIs that integrate human rights due diligence (HRDD) policies and processes into their risk management system for projects?

**IJM:** *ADB has mechanisms in place, but they do not capture the full scope of due diligence as defined by the UNGPs. This existing mechanism, however, could be*

expanded to go beyond corruption/tax integrity concerns and to capture fair labour practices and the full scope of human rights protections. <https://www.adb.org/who-we-are/integrity/due-diligence>. And here are some examples of ADB's "Proactive Integrity Review:" <https://www.adb.org/who-we-are/integrity/proactive-integrity-review>. For World Bank, you can refer to its [Environmental and Social Framework](#).

**3. In your view, what are the main challenges and opportunities for DFIs to ensure the inclusion of human rights requirements in projects and to enforce the responsibility to respect human rights among clients?**

**IJM:** Please refer to our response above (#3 question under State duty). Furthermore, DFIs can contribute to the building of national institutions through systems change (e.g. criminal justice, environmental protection) and not simply to build a project-by-project risk management system which, at best, provides limited remedy to victims/impacted sector and no sustainable system of protection.

DFIs like ADB can also introduce or support an existing non-State-based grievance mechanism (singly or with stakeholders) which is dialogue-based, culturally appropriate and rights-compatible, to promote access to justice and remediation through judicial and non-judicial avenues, while ensuring that affected communities are a part of the designing process.

DFIs should also require supply chain mapping which, both for raw materials/products and labour supply chain. This will provide a foundation for risk management and due diligence, and assist in identifying whether its borrowers, contractors, suppliers are sourcing products and services responsibly while also raising any red flags on possible occurrences of forced labor, child labor or other abuses.

Due diligence processes must be expanded to all tiers of supply chains (i.e. include supply chains of secondary suppliers: primary suppliers who source materials or products from other secondary sources in order to produce goods or materials.)

Further, contractual agreements with borrowers and clients including businesses and governments should attach a requirement for conducting supply chain mapping/traceability to identify and prevent incidences of forced labor in the production of materials or goods or/and in the recruitment of labor. These steps would help screen the entire supply chain process from back-end to front-end of any forced labor risks and inform necessary State and DFI action.

4. What do you perceive to be the key similarities and differences, if any, in the human rights-related conduct of multilateral, regional, sub-regional, and national DFIs?

*(IJM: No answer)*

5. Can you provide insight into how and to what extent DFIs practice human rights due diligence (HRDD) or environmental and human rights impact assessment prior to, as well as during and after, their investments?

**IJM:** Refer to this published information:

- (i) <https://www.adb.org/documents/integrity-principles-and-guidelines>
- (ii) <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>

6. How can the above-mentioned processes ensure meaningful participation of impacted communities, particularly marginalised groups and individuals in the most vulnerable situations?

**IJM:** Genuine dialogue at the outset of risk assessments with migrant workers community/vulnerable communities themselves, incorporation of local input, engagement of survivors of human rights abuses (e.g. Global Survivor Network and others).

7. In your view, to what extent do DFIs impose human rights requirements on clients as a condition of financing? And are you aware of any DFI that provides technical assistance or other support to help clients become more sustainable and compliant with the UNGPs?

**IJM:** Very limited in relation to Human Rights.

8. What are the specific human rights risks posed by DFI-related financing practices to groups in the most vulnerable situations, such as women and girls, indigenous communities, human rights defenders, persons with disabilities, persons with different sexual orientation or gender identity, older persons, persons living in poverty or migrant workers?

**IJM:** Lack of access to reporting and remedy

9. To what extent do DFI associations that you are aware of address human rights and sustainability issues?

**IJM:** Refer to these published information:

- (i) <https://www.adb.org/documents/integrity-principles-and-guidelines>
- (ii) <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>



## Access to remedy

1. **Are you aware of any cases submitted to judicial and/or non-judicial mechanisms (e.g., NHRIs, NCPs, etc.) regarding human rights abuses involving DFIs?**

**IJM:** *ADB has a non-judicial mechanism for reporting allegations, but the focus is on anti-corruption and tax integrity rather than human rights abuses and misconduct: <https://www.adb.org/integrity/report-violations#complaint>*

*DFIs and all private actors must be incentivized to refer serious cases to judicial mechanisms, and equipped with pathways to do so that allow private sector actors to make such referrals in a way that is consistent with their business standards and risk mitigation strategies.*

2. **What is your experience engaging with avenues available to victims to bring complaints, including through grievance mechanisms, to hold DFIs accountable for human rights abuses linked to investment-related projects?**

*(IJM: No answer)*

3. **What measures and/or mechanisms exist to ensure access to effective remedy when DFI-supported projects are associated with adverse impacts on communities and the environment? What measures and/or mechanisms *should* be in place?**

*(IJM: No answer)*

4. **Are you aware of any operational-level grievance mechanisms established by DFIs to address human rights concerns related to their investment? If so, are these mechanisms effective in terms of process and remedial outcomes?**

*(IJM: No answer)*

5. **What are the most significant challenges observed with regard to ensuring access to effective remedy for victims of human rights abuses affected by DFI-funded projects?**

**IJM:** *Effective remedy is a multi-faceted issue but for criminal accountability or even civil remedy (compensation for a victim of a human rights abuse) these are provided by the State, yet DFI-funded projects do not require companies to invest in/support criminal justice systems – rather they see that as a system to be worked around. That means victims do not know what remedy they can access and that element of remedy (critical for deterrence) is not forthcoming. DFI contracts largely focus (if at all) on remedies such as immediate removal from harm, medical care, small compensation from the company (if at all).*

## Good practices and other comments

1. Are there any good practice examples regarding the integration of human rights issues in the activities, operations and policies of DFIs that you would like to share with the Working Group? Any other comments or suggestions about the forthcoming report are also welcome.

*(IJM: No answer)*