**International Trade Union Confederation submission to the open call for input**

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

**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?

States have a primary role in the governance of DFIs and provide important amounts of funds for their investments. As such they have a duty in ensuring that DFIs are contributing to respect human rights and the environment in the framework of the 2030 Agenda, and need to ensure due diligence throughout investments.

States need to be taking every opportunity to fulfil their duty to protect human rights. To achieve meaningful progress, there must be greater emphasis on State responsibilities engaged through public procurement, investment agreements, and commercial relationships. There is no justification for States not including human rights protections, gender based impact assessments, just transition, fair working conditions, and other requirements in tendering processes and agreements.

The main challenges observed are the trade-offs between the profit motive and the development mandate of DFIs. While private finance will prioritise profits over development results, States need to ensure through specific regulation that the respect of human rights and the environment are ensured in every intervention. Economic growth must go hand in hand with social progress.

Also, the normative asymmetry between the legally enforceable rules that protect corporate interests and the soft law approaches to transnational corporations’ obligations to respect human rights needs to be completely realigned.

Additionally the structure of many DFI’s—with substantial managerial and staff discretion and limited oversight capacity by state-appointed Directors—can make day-to-day oversight challenging.

1. 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?

States are setting development policies and private sector development strategies, and have an important say on how funds are being spent. They can therefore include preconditions on funding to integrate human rights standards, including labour standards in line with Sustainable Development Goal 8 (SDG 8), and the application of responsible business conduct instruments.

States could therefore establish red lines that will contribute to ensure the coherence of DFI projects with their development mandate and due diligence procedures. For instance they could establish conditions to avoid DFIs supporting projects in countries where the ILO has concluded that core labour standards are severely and repeatedly violated, and where there is a lack of political willingness from the government to ensure the enforcement of rights. Exemptions could be considered for projects that contribute to improving respect for labour standards. Similarly, States could establish safeguards to ensure that DFIs only grant support to companies that respect labour standards.

To ensure that safeguards are enforceable in practice, States should advocate for transparency and early notice of potential risks in proposed investments. Once investments are approved by the Board it can be very difficult to seek and implement meaningful remedies for human rights violations, so the limited capacity of Board members must be balanced by with the importance of early Board intervention.

1. 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.

To accomplish these objectives States need to ensure the establishment of clear criteria to engage the private sector in development.

These criteria should include:

* **Explicit adherence to key responsible business conduct instruments:** UN guiding Principles on Business and human Rights; ILO Declaration of Principles concerning Multinational Enterprises and Social Policy; OECD Guidelines for Multinational Enterprises; OECD Due Diligence Guidance.
* **Alignment with the** [**principles of effective development cooperation**](https://effectivecooperation.org/landing-page/effectiveness-principles)**:** Country ownership; inclusive partnerships; focus on results; transparency and mutual accountability.
* **Contribution to decent work creation:** including decent-climate friendly job creation within the priority areas of intervention and focusing on sustainable sectors with high job creation potential.
* **Committing to respect, promote and realise fundamental principles and rights at work and ensuring decent working conditions with a labour protection floor through their interventions,** that in addition to fundamental labour rights will include minimum living wages, maximum limits on working time and occupational health and safety.
* **Ensuring an enabling and conducive environment for the free exercise of the right to freedom of association and the right to collective bargaining.**
* **Ensuring social dialogue and collective bargaining with representative trade unions.**

To meet all of these criteria, timely and deep engagement with stakeholders and social partners is crucial. It is also important that the DFI is willing to convene social partners with its clients early on to mitigate potential risks.

Some DFIs have made positive steps to include some of these criteria and some progress has been made with initiatives such as the joint [OECD-UNDP Impact Standards on Financing Sustainable Development](https://www.oecd.org/dac/oecd-undp-impact-standards-for-financing-sustainable-development-744f982e-en.htm) and their respective guidance notes. But many of these are still voluntary and difficult to implement. It is important that the above mentioned policy objectives are enshrined in the mandates and mission statements of DFIs and that these are reported on with greater levels of transparency and accountability.

1. 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?

A global regulatory architecture that guarantees a floor of rights for all workers, sustains the climate and ends corporate impunity by ensuring corporate accountability is needed. States have a general and overarching responsibility to protect the human rights of those within their jurisdiction, including to protect from harm and violations arising from business activity.

States should work towards the creation of structured processes for stakeholder engagement both in the decision making structures of the DFIs, as well as in the implementing structures in countries where investments are being made. Engagement should take place at institutional level, through public consultations to inform new institutional strategies, policies and methodologies of DFIs.

But, beyond consultation, States should promote the representation of non-shareholder stakeholders in the governance structures of DFIs. Trade union representatives should be appointed to the governing boards of DFIs to balance the different interests and perspectives, and ensure a more comprehensive view of their development mandate through a correct implementation of labour standards and working conditions, as well as tracking contributions to decent work creation.

It is manifestly impossible for adequate and effective due diligence – the assessment, prevention, mitigation and addressing of potential or actual human rights impacts - to be carried out without freedom of association, collective bargaining and social dialogue.

The rights to freedom of association and collective bargaining are rights in themselves. Meaningful stakeholder engagement on due diligence does not replace the State’s, DFIs and company’s obligation to respect the choice of workers to form trade unions and to engage in good faith collective bargaining over terms of employment and working conditions. Despite being a fundamental right, it is rarely central, adequately protected or even considered in the due diligence measures. It is either not recognised as a common risk, nor taken seriously when breaches occur.

1. 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?

States should review DFIs’ procedures to ensure full implementation of due diligence by investors and include effective monitoring and complaints procedures with the engagement of stakeholders. Such measures may include injunctive relief, precautionary or protective measures, and strict liability for human right abuses.

Trade unions can contribute to identifying, mitigating and avoiding adverse impacts in DFI-supported projects, and ensure that grievance mechanisms are in place and effective remediation is provided. Above all, this due diligence and consultation must take place in a timely fashion—with time for meaningful consultation before an investment is approved.

For that reason, States should ensure the full involvement of trade unions and workers’ representatives throughout the whole process of identification, prevention, remedying and enforcing of human rights violations and in the design, monitoring and enforcing of the envisaged due diligence tools and instruments. Trade unionists are not just whistle blowers. There can be no effective human rights due diligence plan without meaningful trade union engagement.

**DFIs’ responsibility to respect human rights**

1. 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?

Ensuring the right to an effective remedy[[1]](#footnote-2) for all who may be affected by harmful business remains a major challenge and one that needs to be addressed urgently; The lack of universal social protection for workers in the informal economy, non-standard forms of employment, and global supply chains continue to be human rights blind spots. DFIs must mitigate freedom of association risks and ensure respect for this right throughout its own operations and at every stage of its supply chain. As such, in addition to ensuring respect for freedom of association in its own direct operations, it should be a priority issue in business relationships. These include with subcontractors, labour hire firms, contract workers, franchise holders, and otherwise along the supply chain. All relevant human rights must be included in the DFIs development impact frameworks, assessments and due diligences process.

DFIs should take into account the need to consider human rights implications of climate finance, including workers enjoying a just transition. Additionally, DFIs need to take a human rights based approach to social protection in line with ILO standards.

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

Engagement with stakeholders should happen at all stages: during the early stages of project development, during the implementation of the project and after the project is over. Before an investment is made, DFIs should actively involve the social partners to help identify impacted communities, particularly marginalised groups and individuals in the most vulnerable situation that could be affected by a project and jointly discuss with them how to mitigate unwanted impacts.

During the implementation of the project trade unions (through their presence at the workplace) can ensure that companies respect international labour and environmental standards, and through social dialogue jointly discuss workers needs with employers, for example in terms of working conditions, training and upskilling of local workers and other issues that will contribute to more wellbeing and productivity in workplaces.

Little consideration is given in development finance to employment conditions after a project ends. At the end of the project, trade unions could contribute to assess the development impact it had in terms of ensuring decent work creation and respecting labour rights, and can help evaluate unwanted consequences and how these were dealt with.

1. 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?

Though many DFIs may impose human rights requirements as a condition of financing, and numerous DFIs have adopted environmental and social standards (or safeguards), not all of them have binding requirements attached to lending that prevent no harm is made and ensure an improvement of conditions for workers and communities.

Even where such safeguards do exist, inconsistencies with international labour standards and failures in implementation contribute to violations of workers’ rights. This is frequently the case with freedom of association and collective bargaining, due to safeguards that are mismatched with the ILO core labour standards and an unwillingness to hold clients accountable. For workers, this has meant retaliation and harassment when they exercise their right to form a trade union, and a lack of remediation as DFIs refuse to act.

Monitoring systems are overly reliant on the self-reporting of clients, and when serious violations are identified and communicated by trade unions the response is too often inaction. Under-staffing of environmental and social responsibility teams and a lack of expertise can exacerbate these problems.

This is particularly an issue for occupational health and safety. All DFIs should have occupational health and safety experts capable of working with clients to improve practices that prevent incidents and fatalities. In the spirit of accountability and addressing problem areas, key metrics of safety should be aggregated across the portfolio and publicly disclosed as conducted by EBRD.

**Access to remedy**

1. 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?

The requirement to practice human rights due diligence and the requirement to remedy any harm resulting from human rights violations should be treated as separate and complementary obligations. Liability must be introduced for cases where DFIs or companies fail to respect their due diligence obligations, without prejudice to joint and several liability frameworks.

States should ensure effective and easy access to justice for affected people and victims (including representation by trade unions), broader liability, proper remedies and dissuasive sanctions.

It is necessary to introduce mandatory measures to ensure the full respect and enforcement of human rights, including workers and trade union rights, in investment relationship, in companies’ activities as well as throughout their subcontracting and supply chains, at national and cross borders level, and to provide for better enforcement. Measures to facilitate access to justice for victims should include appropriate support schemes.

There are numerous challenges with complaint mechanisms of DFIs, including awareness of the existence of a complaint mechanism, availability of complaints forms, language barriers, lack of technical knowledge on how to file a complaint.

Complaint and grievance mechanisms should be free and easily accessible for all pertinent stakeholders. These should provide online and offline complaint forms, make a local address available for information and complaint purposes, explain evaluation criteria for complaints, accept complaints made in local languages and ensure support to those who want to file a complaint.

Transparency on grievances is also a challenge. DFIs should ensure that information is readily available on complaints received and remedies addressed on workforce claims on injuries, serious accidents and fatalities; as well as discriminatory hiring, unpaid wages and unfair wages, amongst others.

1. 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?

Once funding is disbursed, it becomes significantly harder for DFI’s to meaningfully enforce performance standards and impose remedies on their clients—who may no longer be in a contract with the DFI or endeavor to get out of an existing contract. This makes risk identification and standards-enforcement particularly important before the project is approved or the funding is disbursed, which makes it hard to identify and mitigate risks in a timely manner.

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1. Taking the relevant UNGP on access to remedy as a reference: <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project> [↑](#footnote-ref-2)