**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 53rd 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’.[[1]](#footnote-1) 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 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,[[2]](#footnote-2) as well as on relevant Working Group’s previous reports addressing issues such as the State as an economic actor,[[3]](#footnote-3) the financial sector and human rights,[[4]](#footnote-4) human rights due diligence[[5]](#footnote-5), policy coherence, and access to remedy.[[6]](#footnote-6)

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, 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](https://www.ohchr.org/en/special-procedures/wg-business#:~:text=The%20Working%20Group%20on%20the%20issue%20of%20human,of%20five%20independent%20experts%2C%20of%20balanced%20geographical%20representation.).

**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?**

From our experience as MRG in engaging directly with one specific State party *vis-à-vis* conservation in the Congo Basin as enunciated in greater detail in answer to question 8, there appears to be a lack of awareness of the *do no harm principle* and the *principle of due diligence* in responding to alarms that are raised in relation to situations where funding has directly contributed to violation of human rights. Whenever a matter of human rights is raised with regards to any development funding, especially if raised in a confidential manner with the tabling of significant evidence of violations, States must ensure that the DFIs conduct a full and impartial investigation, with a response to the whistle-blower. If the investigation is credible and confirms violations the development funding must cease immediately with steps taken to ensure accountability for the human rights violations that have occurred.

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?
2. 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.
3. **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?**

If DFI funding is dispensed through a third party such as an investment bank the same principles of due diligence and do no harm must apply since the investment bank would be acting in lieu of the State/DFI. In our experience enunciated below the separation of the activities of the investment bank from the DFI led to gaps which proved fatal to human rights and is still hampering a quest for accountability.

1. 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?
2. **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 need to either identify a dedicated complaint mechanism for the airing of specific claims that may arise in the context of human rights violations for DFI-supported projects, or to designate an existing more general channel where such complaints can be lodged. It is difficult for those at the receiving end of human rights violations, who are at a distance and may not be aware of donor countries’ systems for remedies, to be able to gain a hearing for a potential complaint. As a consequence, it is equally important that States ensure that information regarding such complaint mechanisms is disseminated by DFIs in ways that are appropriate to the context. The information should include details on how victims and/or their representatives should go about submitting their complaints.

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

MRG’s mandate focuses on the protection and advancement of minority and indigenous peoples’ rights worldwide. MRG has worked and reported extensively on grievous human rights abuses related to the implementation of projects on biodiversity conservation and sustainable management of natural resources, receiving increasing financial contributions by DFIs.

Despite the fact that it is now [well established](https://documents1.worldbank.org/curated/en/995271468177530126/pdf/443000WP0BOX321onservation01PUBLIC1.pdf) that no one has contributed more and benefited less than indigenous peoples with respect to protecting the environment and its biodiversity, conservation has become a major threat to indigenous territories and indigenous peoples rights. The creation of protected areas, supposedly part of the solution to the environmental crises facing our planet, often results in the forcible evictions and displacement of indigenous communities in violation of the international standard of protection granted, inter alia by the UN Declaration on the Rights of Indigenous Peoples. Moreover, the members of indigenous communities are frequently victims of torture, rape, killings and arbitrary arrests when they seek to return to their territories to engage in subsistence activities and cultural and religious rites.

In April 2022, MRG published two reports on the human rights abuses suffered by the Batwa of the Kahuzi-Biega National Park (PNKB) as a consequence of the implementation of conservation projects in the Democratic Republic of Congo (DRC). The first report “[To Purge the Forest by Force](https://minorityrights.org/publications/pnkb/)”, documents the highly organized, grievous and widespread human rights abuses jointly carried out by park guards and Congolese Army soldiers against Batwa between 2019 and 2021. The second report “[Fortress Conservation and International Accountability for Human Rights Violations against Batwa in Kahuzi-Biega National Park](https://minorityrights.org/publications/pnkb-methodology/)” focuses on the responsibility of international donors, including governments and DFIs in the global north, which have continued to fund these activities despite widespread evidence of severe violence suffered by Batwa community members in the name of conservation.

As found in the second report, in the PNKB case German and US development agencies have funded the fortress and militarized conservation approaches employed in the PNKB. Although these donors commit to respecting the rights of indigenous peoples under established international standards and their internal policies, they have failed to ensure a right-based approach to conservation in practice. At the same time, they continued to support PNKB in advance of the joint military operation in July-August 2019, even though they were aware of unresolved human rights grievances in the PNKB and the imminent threat of violence by park authorities against Batwa who refused to leave their ancestral lands. At present, after the publication of the MRG reports and the extensive dissemination of their findings, including through direct correspondence with the donors, the PNKB conservation project continues to be backed by international DFIs.

We are aware that the case of the PNKB is not a single isolated example, but is emblematic of the widespread, systemic violence inherent in the rigidly colonial conservation model widely used in East and Central Africa (so called “fortress conservation”) as illustrated [here](https://minorityrights.org/publications/violent-conservation/). This disproportionately affects indigenous peoples and marginalised land-dependent communities worldwide, and is often funded and facilitated by a network of international entities under the [guise of the 30x30](https://minorityrights.org/2021/09/13/30x30-solution/) initiative without recourse to seeking the free, prior and informed consent of the resident communities.

The risk of deadly consequences entailed in this model of conservation not only concerns indigenous peoples and land-dependent communities living in the vicinity of protected areas, but can also affect the activity and safety of human rights defenders working to protect such communities as documented by *Global Witness* in [this](https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/) report.

In the PNKB the lack of censure by DFIs for the activities we have brought to light, which have been independently [verified by an investigation by Al Jazeera](https://www.aljazeera.com/news/2022/4/6/investigation-documents-murder-rape-by-drc-national-park-guards), have resulted in threats to the lives of the researchers and facilitators who have collaborated with MRG to document the abuses. The consequences of this continuing in the form of harassment and arbitrary arrests, forcing the relocation or suspension of activities of the human rights defenders involved in the case.

Forcible evictions without adequate resettlement options have large-scale consequences with respect to a range of rights, including right to health and sanitation. Displaced communities often live in temporary resettlement with no access to drinking water, sanitation and health facilities. This has a disproportionate impact on the needs of vulnerable persons, in particular women and children, persons with disabilities and elderly persons. Situations of displacement also generally put women and girls at increased risk of violence. Where such displacement is the direct consequence of a DFI funded activity the burden of resettlement must be accommodated within the envisaged funding, assuming that no human rights abuses have been enacted in the act of displacement.

As the international community stands poised to sequester even more land for protected areas under Target 3 (the so called “30x30” target) of the newly adopted Global Biodiversity Framework, there is an urgent need to strengthen human rights monitoring and enforcement mechanisms in relation to biodiversity conservation projects.

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

**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?**

MRG’s legal work has focused on strategically litigating cases concerning human rights abuses related to fortress conservation projects in East Africa. As mentioned above, DFIs often are major contributors to such projects.

With reference to the PNKB mentioned above, MRG is supporting litigation at the national and regional levels (case pending before the African Human Rights Commission) to seek justice for the Batwa communities affected by rights violations.

None of the pending cases seek to establish the responsibility of DFIs in the abuses, due to the legal and practical barriers mentioned in our answer to question 5 below.

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?
2. 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?**

As indicated above in relation to State responsibilities (question 6 above) it is imperative that DFI funded activity is open to scrutiny and challenge. A World Bank Inspection Panel type mechanism that is accessible within the State could be one option, a dedicated complaints procedure that is clearly articulated within the community could be another, or the direction towards the use of the standard judicial system could be a third avenue.

In any case, it is important that affected communities are involved as much as possible in the design of the complaints procedure to be used by them. Information regarding the complaints procedure should be disseminated widely among affected communities, in ways that are relevant to the local context. If, for instance, literacy rates are low, alternatives to written materials should be explored, such as community radio programmes.

1. 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?
2. **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?**

Cases of human rights abuses in the context of biodiversity conservation projects present many challenges for victims seeking justice and redress for the wrongdoings suffered. In the first place, these projects usually involve multiple actors such as governments, park authorities, military forces, conservation NGOs and international donors, the latter consisting in turn of a multiplicity of institutions which may vary over time.

This configuration represents a challenge for the victims as it is not possible to bring all the alleged responsible parties to court in a single jurisdiction, much less in a single suit, due to the different degrees of responsibility and involvement in the project. In the design of the litigation strategy, it is usually considered more efficient to act domestically against the state and/or the park authorities, as it is easier and more sustainable for victims to approach local legal counsels and judicial bodies. When it comes to DFIs, the legal basis of their engagement in the project is usually within the legal framework of the countries where the legal seat is located, normally on a different continent: this requires embarking in international litigation which is hardly accessible for the victims and presents many legal and practical barriers.

The detachment of DFI from activities on the ground, facilitates the hiding behind States’ responsibility with respect to the implementation of the projects. Claims toward the establishment of monitoring mechanisms in-country using internal standards may prove inadequate, not least due to a dismissive attitude towards indigenous communities. As a consequence these are often poorly supported, have little effect in practice and their use may lead to recriminations and further violations. The standard of proof to establish complicity or shared responsibility of DFIs in such violations is also generally not favourable to the victims.

Finally, it must be noted that these kinds of projects involve massive funding flowing to developing countries: the economic interests of a variety of national and international actors exert an enormous pressure towards their prompt implementations - where respect for human rights seems to be perceived just as an annoying slowdown.

**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.

\*\*\*\*

1. [A/HRC/47/39](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/093/82/PDF/G2109382.pdf?OpenElement), ‘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. [↑](#footnote-ref-1)
2. <https://www.ohchr.org/en/development/development-finance-institutions>; <https://www.ohchr.org/en/publications/policy-and-methodological-publications/remedy-development-finance> [↑](#footnote-ref-2)
3. https://www.ohchr.org/en/special-procedures/wg-business/state-economic-actor-and-human-rights [↑](#footnote-ref-3)
4. https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights [↑](#footnote-ref-4)
5. https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices [↑](#footnote-ref-5)
6. https://www.ohchr.org/en/special-procedures/wg-business/access-remedy [↑](#footnote-ref-6)