

March 6, 2023

Working Group on Business and Human Rights
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10, Switzerland

Re: Report on Development Finance and Human Rights

Dear Working Group Members,

Thank you for the opportunity to provide feedback for your forthcoming report on development finance institutions (DFIs) and human rights. As organizations that work with communities impacted by DFI projects, our reflections are based on our experience in supporting communities to protect their environmental and human rights as they relate to these projects. Our comments focus primarily on ensuring accountability and remedy for harms caused by DFI projects.

Accountability and Remedy are Key Elements of a Human Rights-Based Approach to Development

Decades of experience has demonstrated that DFI-financed projects can harm the very communities that are meant to benefit from development efforts.¹ Access to accountability and remedy for these harms are key tenets of a human-rights compatible approach to development.

When communities face harm from projects, they must have a trustworthy avenue to raise concerns and have them effectively addressed. Independent Accountability Mechanisms (IAMs) are crucial governance tools at DFIs that give communities an opportunity to raise grievances about potential or actual environmental, social, and human rights harm stemming from DFI projects. IAMs address these grievances through two primary functions: dispute resolution and compliance review. Dispute resolution facilitates a mediation process between the complainants and the project implementers to reach a mutually agreeable solution to the grievances, and compliance review investigates whether an institution's own due diligence standards were properly implemented during a project. Additionally, IAMs typically have an advisory function that distills and conveys lessons from complaints to ensure that future projects avoid harm and are more sustainable.

¹ See Multiple Authors, *Glass Half Full: The State of Accountability in Development Finance* (2016), <https://www.somo.nl/glass-half-full-2/>.

Since the creation of the first IAM 30 years ago at the World Bank, IAMs have become standard features at the major multilateral development banks (MDBs) and some national DFIs and development agencies.² With over 1,600³ complaints filed to IAMs during this period, communities have come to see them as one of the only channels to hold DFIs and their clients accountable for negative impacts. However, there have been significant challenges for communities in receiving effective remedy through these mechanisms. Some of these challenges are process-related, including barriers to accessing the IAM and inequitable treatment of parties. Substantively, there have also been challenges in the outcomes of these processes. Too often, DFIs ignore the findings of IAM compliance investigations or propose remedial actions that do not fully address the underlying harm. Additionally, dispute resolution processes can fail or result in incomplete remediation due to a lack of resources.

DFIs Should Strengthen Existing IAMs and Create Remedy Frameworks

To better enable accountability and remedy for project-related harms, DFIs that currently have IAMs should strengthen them to ensure that they operate according to best practices and address fundamental shortcomings in IAMs that undermine their ability to deliver justice.⁴ This includes expanding their scope to also investigate clients' compliance with project requirements and giving IAMs the ability to make binding recommendations for remedy.

Additionally, DFIs must commit to engaging constructively in IAM complaint processes. This includes supporting clients' good faith engagement in dispute resolution processes and working with complainants to develop remedial action plans to fix areas of non-compliance with environmental and social requirements. DFIs should also create remedy frameworks to ensure that resources are available throughout the project cycle to fully remedy harms. Such frameworks should be created through a public consultation.

The International Finance Corporation (IFC) is currently holding a consultation on a draft approach to remedy.⁵ Unfortunately, the draft falls short of what is required for the IFC to fulfill a true commitment to remedy. The draft needs to improve in several areas and must:

- Detail the types of remedies that could be provided under the approach
- Include a commitment from the IFC to directly finance remedial measures

² See "Independent Accountability Mechanisms Network," <https://lnadbg5.adb.org/ocrp002p.nsf> (last visited 21 Feb. 2023).

³ Accountability Console, <https://accountabilityconsole.com/complaints/>.

⁴ *UN Guiding Principles on Business and Human Rights' Effectiveness Criteria (Principle 31)*, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf#page=38; Multiple Authors, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms* (2021), <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>.

⁵ IFC, "Consultation on the proposed IFC/MIGA Approach to Remedial Action," https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/accountability/consultation-on-the-proposed-ifc-miga-approach-to-remedial-action (last visited 21 Feb. 2023).

- Extend the pilot of the remedial approach to cover existing projects

The IFC should make these necessary changes to the draft approach, and other DFIs should immediately endeavor to create their own remedial approaches through public consultation.

DFIs that Do Not Currently Have an IAM Should Create One, Along With A Remedy Framework

Although many DFIs already have IAMs, several do not. This creates an accountability gap whereby communities are not always able to raise project concerns to institutions financing projects. DFIs that do not have IAMs should immediately take steps to create IAMs that incorporate best existing practices and address the IAM shortcomings mentioned above. To ensure that IAMs are community centered and are designed with the input of those who could potentially use them, DFIs should create their IAMs through public consultation. In addition to an IAM, each DFI needs a concomitant remedy framework as described above.

DFI Associations and Networks Should Encourage Members to Develop IAMs

As DFIs seek to tackle global challenges, networks and partnerships have emerged to promote cooperation and development effectiveness. While these networks purport to promote responsible development, little is mentioned about a commitment to accountability to project-affected communities. For example, few of the 15 members of the EDFI Association have a full-fledged IAM.⁶ Likewise, the vast majority of the Finance in Common members - which comprise over 500 public development banks - lack IAMs, which undermines the association's aim to ensure convergence of these banks to best practices and standards and sustainability.⁷ All DFI networks and associations should require DFIs to have IAMs to be members and should provide assistance in building the capacity of members to ensure that their IAMs operate effectively and facilitate remedy.

States Have a Duty to Facilitate Access to Remedy

Under several international instruments, States have a duty to protect against human rights abuses and must facilitate accountability and remedy when harm occurs.⁸ In the DFI space, this means that States should ensure that their own national DFIs facilitate accountability and remedy. This includes operating an effective IAM. States also participate in regional and multilateral development banks as shareholders and/or beneficiaries and should encourage accountability and remedy for harms. Where DFIs provide private sector investments within a State's jurisdiction, the State should create avenues and support efforts to hold corporations accountable through judicial and non-judicial processes.

⁶ EDFI, "Meet Our Members," <https://www.edfi.eu/members/meet-our-members/> (last visited 22 Feb. 2023).

⁷ "Finance in Common," <https://financeincommon.org/> (last visited 22 Feb. 2023).

⁸ See eg, UN Guiding Principles on Business and Human Rights, Principles 1, 25.

Thank you for the opportunity to submit recommendations for your forthcoming report. Accountability Counsel is here as a resource and welcomes an opportunity for further discussion, and we wish you the best as you advance this important report.

Sincerely,

Accountability Counsel

Endorsing Organizations

Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)



Asian Forum for Human Rights and Development (FORUM-ASIA)

FORUM-ASIA

Center for Environmental Concerns – Philippines

Center for Protection and Revival of Local Community Rights (CPCR)



Community Empowerment and Social Justice Network (CEMSOJ), Nepal



Community Resource Centre (CRC)



Extra Territorial Obligations Watch Coalition (ETOs Watch)



Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)



Trend Asia

