

Submission in response to the Call for inputs for the Working Group's report on development finance institutions and human rights

JOINT NHRI STATEMENT

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The National Human Rights Institutions that form part of the GANHRI Working Group on Business and Human Rights (GANHRI WG) congratulate the Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) for undertaking this public consultation on the responsibility of Development Finance Institutions (DFIs) to respect human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs).

Eleven years after the UNGPs' adoption, we consider this new report to be of utmost importance. DFIs are unique investors: state-owned or -supported institutions working to realize the Sustainable Development Goals (SDGs). This developmental purpose is reflected in DFIs' mandates and their operational policies, many of which refer to both human rights and SDG norms and principles. However, DFIs often engage with the human rights and SDG agendas separately, despite their interdependencies: many SDGs are grounded in human rights standards, and the 2030 Agenda for Sustainable Development explicitly calls for the realization of human rights for all.¹ With seven years to realize the ambitions of the 2030 Agenda we agree with the UNWG that DFIs are central to pushing forward the realization of the UNGPs 10+ Roadmap for the next decade of business and human rights.

As state-mandated, independent, effective, and pluralist bodies with a broad human rights mandate, National Human Rights Institutions (NHRIs) are among the pillars of protection of and respect for human rights. NHRIs play vital roles in complementing, supporting, or drawing attention to States' actions or policies affecting human rights, as well as monitoring the activities and operations of businesses.

The NHRIs that form part of the GANHRI WG call your attention to: the duty of States to protect against human rights abuses by businesses, including DFIs, as a matter of policy coherence; examples of DFIs and human rights in practice, including negative impacts and the role of DFIs in engaging with NHRIs; and the role of DFIs in providing access to remedy.

Policy coherence

The UNWG's report should emphasize the need for State governments to ensure DFIs act in a manner consistent with the State's human rights obligations, as per Principles 4 and 8 of the UNGPs.

The responsibility of business to respect human rights under the UNGPs applies to all enterprises regardless of ownership. The UNWG has confirmed that this includes investment entities such as DFIs.² The public nature of DFIs means that governments may bear additional duties under Pillar I of the UNGPs to ensure DFIs respect human rights in their operations. As the commentary to Guiding Principle 4 recalls, "the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy

¹ Danish Institute for Human Rights, [Human Rights at Development Finance Institutions](#) (2021).

² United Nations, General Assembly, [Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/47/39/Add.1](#) (2021).

rationale becomes for ensuring that the enterprise respects human rights. Where States own or control business enterprises, they have greatest means within their power to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented.”³ The UNWG concluded that, in some circumstances, “an abuse of human rights by such enterprises may entail a violation of the State’s own international law obligations,”⁴ making it a matter of policy coherence for States to ensure DFIs’ alignment with their human rights obligations.

Many national DFIs are structured similarly to state-owned enterprises (SOEs). When so, the analysis and recommendations of the UNWG’s report on SOEs apply. For instance, FMO is a public-private development bank whose major shareholder is the Dutch government. KfW, the German DFI, is majority-owned by the German government (80%) and Länder (20%). British International Investment is fully owned by the UK government. BNDES, Brazilian Development Bank, is a public company controlled by its Fiscal Council, comprising external agency representatives, and Advisory Board, comprising government and civil society. The Korea Development Bank is fully State-owned.

The NHRIs that form part of the GANHRI WG echo the UNWG’s call for governmental departments or agencies that oversee DFIs to do so in a manner compatible with the State’s overall human rights obligations,⁵ aligning with Guiding Principle 8, which calls on Governments to ensure that departments and agencies that shape business practices are aware of and aligned with these obligations.⁶

These NHRIs further note Guiding Principle 10, which calls for greater policy coherence at the international level, including where States participate in multilateral institutions dealing with business-related issues, such as financial institutions. The Commentary underlines that States retain their international human rights law obligations when they participate in such institutions. In this regard, the UNWG’s report should examine the role and responsibility of Executive Boards to multilateral and regional DFIs in overseeing respect for human rights.

In calling for policy coherence, the UNWG’s report should also address DFIs’ potential influence over public policy in investee countries. The UNWG has noted that State finance services are a form of “economic diplomacy,” through which States can use their leverage to promote alignment among legal frameworks and drive a “race to the top” by setting expectations for business respect for human rights.⁷ It is well known that DFIs can, to varying degrees, influence the planning and execution of fiscal policies in debtor countries. In theory, two purposes of such influence are to achieve the objectives of the loan (e.g. to stabilize macroeconomic conditions in the borrowing country) and ensure that the loan can be repaid. Economic growth can also strengthen human rights and progress towards the SDGs, by an “opportunity approach” that

³ United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011), Guiding Principle 4, Commentary.

⁴ United Nations, General Assembly, [Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/32/45](#) (2016).

⁵ Id.

⁶ United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011), Guiding Principle 8, Commentary.

⁷ United Nations, General Assembly, [Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/38/48](#) (2018).

enhances the quality and equity of economic growth, including through equitable promotion of the right to education, health, food, water, housing and social protection.⁸

When DFIs influence public policies, they must ensure that they do so in a manner consistent with their State's and the debtor country's human rights obligations. In this regard, the Ecuadorian Ombudsman's Office has urged the government to make the agreements reached by the executive with DFIs transparent to the public in order to safeguard the impact that the conditions of these agreements could have on the Ecuadorian population.⁹

GANHRI urges the UNWG to address the need for policy coherence to ensure that respect for human rights sits at the center of State-financed development projects.

DFIs and Human Rights in Practice

GANHRI reminds the UNWG that NHRIs are well-positioned to monitor and address the human rights impacts of enterprises, including DFIs, operating in their countries. GANHRI members have shared the following examples of good practices as well as adverse impacts they have encountered in connection with DFIs.

Good practice: Positive experiences with DFIs

The **German Institute for Human Rights (GIHR)** has worked with KfW, whose investments in the protection of national parks in Central Africa have come under scrutiny. International NGOs, such as Rainforest UK, drew attention to allegations that park staff have committed serious human rights violations. These allegations have also been the subject of inquiries by members of the German parliament.

In autumn 2019, KfW commissioned a consulting company specializing in security and community participation to assess the security and environmental and social management (ESM) systems at La Salonga in DR Congo. The KfW requested GIHR's advice on the inclusion and evaluation of human rights aspects in this assessment. In a position paper, GIHR summarized the points covered in its human rights advice to KfW and recommended KfW to take action with respect to its overall ESM and its complaint mechanism.¹⁰ As a result, KfW initiated a one-year internal process reviewing these mechanisms.

Chile's **Instituto Nacional de Derechos Humanos (INDH)** has also engaged with the World Bank and the Chilean Undersecretariat for Human Rights to establish a monitoring index aligned with international human rights obligations. Though the UNWG's report focuses on regional- and national-level DFIs, the collaboration exemplifies how DFIs can work with NHRIs to ensure alignment with human rights.

Following a consultancy carried out in the framework of the second National Human Rights Plan, interviews were held with INDH's area of studies and monitoring (UESTM) and follow-up of the State's obligations. The UESTM presented a monitoring index that the World Bank used

⁸ Danish Institute for Human Rights, [Human Rights and Economic Growth. An Econometric Analysis](#) (2017).

⁹ Defensorio del Pueblo Ecuador, [Defensoría del Pueblo Insta a Gobierno Nacional a Transparentar Información Sobre Acuerdo con el Fondo Monetario Internacional](#) (27 February 2019).

¹⁰ German Institute for Human Rights, [KfW's Human Rights Obligations in Conservation Work: The example of La Salonga National Park](#) (November 2020).

for the construction of its own proposal, in the framework of the consultancy to the Undersecretariat for Human Rights.

This mechanism is based on UN guidelines on indicators and measurements of compliance with international obligations assumed by countries, including Chile, and the methodological suggestions established by the Inter-American Commission on Human Rights. It was first used by INDH in the follow-up to the annual report on the social crisis.

In this context, and once the consultancy was completed, the World Bank invited the NHRI to participate in a programme on inclusion, empowerment and rights in Washington DC, to present it as a good practice, and with the intention of implementing it in other countries. Within this framework, specific lines of work were explored with the NHDR in relation to analysis of human rights budgets, governance of national plans, and deepening the lessons learned in monitoring.

The **Philippines Commission on Human Rights (CHR)** has worked with national financial institutions to embed human rights in their operations. For example, Banco De Oro has engaged CHR to capacitate its management team and personnel and is now reviewing its policies to integrate human rights standards. CHR also contributed to the National Inquiry on Climate Change, testifying about "financial policies and climate change as risk multipliers for agricultural livelihoods" and offering recommendations for financial institutions.¹¹

CHR also shares the following examples of good practice among national financial institutions to better align with their human rights obligations:

- In 2020, Bangko Sentral ng Pilipinas issued Circular No. 1085 (the Sustainable Finance Framework)¹², which requires all banks to embed sustainability principles, including those covering environmental and social risk areas, in their corporate governance framework, risk management systems, and strategic objectives. The BSP recognized the critical role of the financial industry in pursuing sustainable, resilient growth by enabling environmentally and socially responsible business decisions consistent with the aspirations set out under the Philippine Development Plan.¹³
- The Bank of the Philippine Islands (BPI) has put in place gendered lenses indicating specific grievance mechanisms for addressing sexual harassment and discrimination.¹⁴

Adverse impacts of DFI investments

Chile's **INDH** has filed two appeals for protection against harmful impacts of DFI projects:

- IFU, the Danish DFI, manages the Danish Agribusiness Fund I K/S. The Danish Agribusiness Fund is a 25% owner of Coexca S.A., a pork company with operations throughout Chile. Coexca S.A.'s activities caused a proliferation of flies and bad smells affecting residents of the San Javier and Cauquenes communes. In 2019, INDH filed an appeal for protection before the Court of Appeals of Talca to vindicate the constitutional rights that would have been violated by Coexca S.A.'s operation of a pig plant. The Court of Appeals and the Supreme Court confirmed that the company had violated the

¹¹ Commission on Human Rights, [National Inquiry on Climate Change Report](#) (2022) at 21, 85, 87, 107, and 121.

¹² Bangko Sentral ng Pilipinas, [Circular No. 1085](#) (2020).

¹³ [Philippine Development Plan 2023-2028](#).

¹⁴ <https://www.bpi.com.ph/governance/conflict-of-interest-and-other-policies/raising-integrity-concerns>

human right to live in a pollution-free environment, requesting state agencies and the company to modify its waste treatment.

- In July 2022, INDH filed another appeal for protection against various public and private actors that receive support from national and regional DFIs regarding pollution in the so-called sacrifice zone of the Quintero and Puchuncaví Bay. This appeal for protection is still pending.

These examples demonstrate the need for DFIs - which have investments in such projects - to conduct ongoing due diligence to identify potential human rights risks and prevent future abuses, linking to the following comments on access to remedy as a key component of DFIs' respect for human rights. GANHRI urges the UNWG to emphasize the importance of DFIs engaging with local stakeholders such as NHRIs to avoid inadvertently undermining the positive development outcomes they hope to achieve.

DFIs and access to remedy

Access to remedy is a core principle of international law and respect for human rights. DFI investments, like other business activities, may have adverse impacts on human rights, and the UNGPs note that businesses should engage in remedying such harms to the extent they are involved.¹⁵ Doing so can ensure that the most vulnerable do not bear the burden of adverse impacts, in accordance with the SDGs' central tenet of leaving no one behind, and that affected stakeholders can be made whole again when harms arise.

The UNWG has previously noted that “[r]ights holders affected by business-related human rights abuses should be able to seek, obtain and enforce a bouquet of remedies.”¹⁶ Effective remedy may take many forms, including apologies, restitution, rehabilitation, compensation, and guarantees of non-repetition.¹⁷ depending on the nature of the harms and the needs of affected stakeholders. However, GANHRI notes that remedy is often not available or accessible to rights holders in practice.

The NHRIs that form part of the GANHRI WG recommend that the UNWG's report address the role of DFIs in enabling access to remedy, with attention to the following points:

- **Remedy as central to DFI operations:** Remedy should be embedded throughout the investment lifecycle, including within human rights due diligence processes (HRDD). HRDD enables DFIs to better identify, plan for, and mitigate harms, as well as to prepare to enable access to effective remedy where appropriate. The adequacy of HRDD may also influence a DFI's level of involvement in harms under the UNGPs, and thus its responsibility for enabling remedy.¹⁸ The UNWG's report should address how remedy

¹⁵ United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011), Pillar III.

¹⁶ United Nations, General Assembly, [Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises](#), A/72/162 (2017), para 38.

¹⁷ United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011), Guiding Principle 25 commentary.

¹⁸ United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#) (2011), Guiding Principles 13, 22.

interacts with other aspects of environmental and social risk management throughout DFIs' investments.

- **Alignment with DFIs' missions and State human rights obligations:** When a DFI is involved with human rights harms, ensuring access to effective remedy – whether through its own mechanisms or external mechanisms – can benefit affected stakeholders, DFI clients and partners, and DFIs themselves. Engaging in remediation of harms helps DFIs ensure the operating State meets its obligations under human rights law and supports DFIs' missions of promoting sustainable development leaving no one behind.
- **The role of DFI mechanisms in the remedy ecosystem:** GANHRI members note that stakeholders may be able to address cross-border issues by utilizing remedy avenues that are not territorially constrained, such as DFI mechanisms.¹⁹ Such mechanisms may support provision of remedy where other mechanisms pose challenges of accessibility. NHRIs may help stakeholders access such avenues to seek remedies for business-related human rights abuse, such as by lodging complaints with DFIs' dispute resolution mechanisms.²⁰
- **The role of DFIs' Executive Boards:** The OHCHR has noted that Boards can play important roles in improving access to remedy within the DFI system and in monitoring actual delivery of remedy for harms.²¹ DFIs' independent accountability mechanisms (IAMs) increasingly report to Boards, providing opportunities for Boards to support accountability. OHCHR noted that DFI Boards rarely exercise sufficiently robust oversight to ensure that the management action plans proposed by DFIs to address non-compliance findings or harm identified by IAMs are fully responsive and appropriate. The UNWG could explore what type of oversight may be needed by Boards and how else they may encourage DFIs to respect human rights and improve delivery of remedy for adverse impacts.
- **Effectiveness criteria:** The UNWG should emphasize the effectiveness criteria for non-judicial grievance mechanisms outlined in the UNGPs: accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue with stakeholders.²²

The UNWG's report should reiterate the role of DFIs in enabling access to remedy for affected stakeholders as central to their development missions and their human rights obligations.

¹⁹ Danish Institute for Human Rights, [National Human Rights Institutions And Access To Remedy In Business And Human Rights](#) (2020).

²⁰ Chatham House, [Access to Remedy in Business and Human Rights: The Role of National Human Rights Institutions](#), 30 April 2018, p. 4.

²¹ United Nations, Office of the High Commissioner for Human Rights, [Remedy in Development Finance](#) (2022), Annex III.

²² United Nations, Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework](#) (2011), Guiding Principle 31.