

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL

16 February 2016

Dear Mr. Rahman,

We have the honour to address you in our capacities as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 26/22, 28/11, 25/2, and 25/18.

In this connection, we would like to bring to your attention information we have received concerning **allegations of intimidation, in the form of verbal threat and harassment, against Mr. Farhan Issa Ahmed Al-Daboubi as a response to his complaints submitted to Government authorities and the European Bank for Reconstruction and Development (EBRD) in relation to the Fourth Independent Power Plant (IPP4) Al-Manakher Power Plant located in the east of Amman, Jordan.**

Mr. Farhan Issa Ahmed Al-Daboubi is an engineer and an environmental rights defender. He is the Chairman of the East Amman Society for Environmental Protection (EASEP), a non-profit organization dedicated to restoring clean air and healthy environments through scientific research, public education, mitigation measures and legal advocacy.

According to the information received:

Background

The IPP4 Al-Manakher Power Plant is a 240 megawatt peaking power plant located near the village of Al-Manakher, approximately 14 kilometers east of

Amman on a site leased from the Department of Lands and Survey of the Ministry of Finance. The IPP4 is located between IPP1 and the village of Al-Manakher and the site boundary is about 80 to 100 meters from the nearest residence in the village and about 150 meters from the village school.

AES Levant Holding BV Jordan PSC (“AES Jordan”) was set up with the sole purpose of building and operating the IPP4 Al-Manakher Power Plant. AES Jordan is owned by AES Baltic Holdings B.V and Mitsui & Company Ltd. AES Baltic Holdings B.V is a global power company headquartered in the United States of America with operations in 27 countries and Mitsui & Company Ltd is a Japanese public company.

The European Bank for Reconstruction and Development (EBRD) is financing a loan of up to USD 100 million for an estimated total project cost of USD 360 million.

Allegations of intimidation and harassment against Mr. Al-Daboubi

Since September 2014, Mr. Al-Daboubi has submitted complaints against the IPP4 Al-Manakher Power Plant (“the IPP4 Project”), raising several concerns, in particular, on the exclusion of local affected communities – population of approximate 30,000 - during the environmental decision-making process and the negative environmental impact on the local communities caused by the IPP4 Project. Mr. Al-Daboubi reportedly submitted complaints against the IPP4 Project to several Government authorities including the Ministry of Environment (on 24 February 2015, 6 April 2015, 6 July 2015, and 27 August 2015), Amman Municipality (on 24 and 28 March 2015, 4 July 2015, and 27 October 2015), and the National Centre for Human Rights of Jordan (on 13 September 2015). Mr. Al-Daboubi has not received any official responses. Mr. Al-Daboubi also contacted the relevant business entities – AES, Mitsui and AES Jordan - through emails on several occasions from September 2014 to February 2015.

Furthermore, since May 2015, Mr. Al-Dadoubi sent several emails to EBRD to raise the environmental concerns in relation to the IPP4 Project. On 29 July 2015, Mr. Al-Daboubi met with the EBRD representatives in Jordan and was invited to send a formal complaint. On 2 August 2015, on behalf of the EASEP, Mr. Al-Daboubi submitted a letter of complaint against the IPP4 Project to the EBRD through its Project Complaint Mechanism.

On 8 September 2015 and 24 November 2015, Mr. Al-Daboubi was summoned by the police and was questioned about the complaints that he had submitted to various forums including social network sites and the media.

It is alleged that the IPP4 Project’s manager filed a complaint to the Minister of Interior against Mr. Al-Daboubi claiming that Mr. Al-Daboubi had threatened the manager. The Minister of Interior issued an arrest warrant based on that

complaint. Moreover, upon Mr. Al-Daboubi's request for information and evidence on the alleged threat, no information has been provided to him.

Mr. Al-Daboubi was detained for 24 hours on 24 November 2015 and was only released following a protest by approximately 200 local community members in front of the AES Jordan premises. In addition, as a condition of release, the police reportedly requested Mr. Al-Dadoubi to sign a document committing him not to write to any international organization regarding the IPP4 Project and AES Jordan.

Concern is expressed that the alleged intimidation against Mr. Al-Daboubi may be directly linked to his legitimate and peaceful activities in the defence of environmental rights for the local affected communities and the legitimate exercise of his rights, including the right to freedom of expression and to freedom of association. Concern is also expressed that the alleged intimidation against Mr. Al-Daboubi appears to be in retaliation for his complaints filed to EBRD and Government authorities. Further concern is expressed that the Government inspection and monitoring of the power plant projects are absent and that the right of the local communities in East Amman to participate in environmental decision-making process is not safeguarded.

We have written to the Government of Jordan to express our concerns about, and to request more information on, the allegations described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. We are aware that the potential impacts on people and the environment have been evaluated in an Environmental Impact Assessment and that a "Non-Technical Summary" (providing a short summary of the project in plain nontechnical language), a "Stakeholder Engagement Plan" (describing how and where AES Jordan will provide information to stakeholders, and how stakeholders can provide their views to the company via a grievance procedure), and an "Environmental and Social Mitigation and Monitoring Plan" (describing what the Company will need to do in order to avoid, reduce, or control potential impacts to acceptable levels) were made public. In the context of the preparation of these documents, please indicate what measures have been taken by the AES Jordan to ensure prior and meaningful consultation with local communities, and to ensure

that any negative environmental and human rights impact by IPP4 are regularly monitored.

3. Has AES Jordan received any guidance from the Government of Jordan on its corporate responsibility to respect human rights, specifically on its expected due diligence process, in line with the UN Guiding Principles on Business and Human Rights?

4. How is AES Jordan meeting its responsibility to respect human rights in a way that complies with international human rights standards? Does it have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?

5. Please explain what AES Jordan is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. How does the company track the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders?

6. What, if any, operational-level grievance mechanisms has AES Jordan established or, participated in, to address the grievances identified above and remediate them directly?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Sincerely,

Dante Pesce

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

John Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact principles;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights; and
- The United Nations Declaration on Human Rights Defenders.

In particular, we would like to remind you that AES Jordan, as a private actor and business enterprise, has certain responsibilities as outlined in the Guiding Principles on Business and Human Rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. The UDHR (article 3) and the International Covenant on Civil and Political Rights (article 6.1) also guarantee the right of every individual to life and security and not to be arbitrarily deprived of life.

Following years of consultations that involved Governments, civil society and the business community, the Human Rights Council unanimously adopted in June 2011 the Guiding Principles on Business and Human Rights (contained in A/HRC/17/31).

The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

1. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
2. "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;

3. “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The corporate responsibility to respect human rights covers the full range of rights listed in the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It also includes the respect of the eight International Labour Organization core conventions, also envisaged in Principle 4 of the UN Global Compact, which states that business enterprises should uphold the elimination of all forms of forced and compulsory labour. The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

Business enterprises are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes, or may contribute, to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

The Guiding Principles recognize the important and valuable role played by independent civil society organizations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.

The Guiding Principles require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-

requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company's senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is human rights due-diligence, the procedures for which have been deemed necessary to 'identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships' (Guiding Principle 18). Adequate human rights due diligence procedures must include 'meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation' (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of a company. (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by a company to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be

based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where a company identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue.

Lastly, operational-level grievance mechanisms must not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).