

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the right to development

Ref.: AL OTH 104/2024
(Please use this reference in your reply)

28 June 2024

Mr. Griffin,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises and Special Rapporteur on the right to development, pursuant to Human Rights Council resolutions 53/3 and 51/7.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **the lack of a central effective grievance mechanism for the Equator Principles governing body**.

According to information received:

While the Equator Principles require the establishment by project sponsors of project-level grievance mechanisms for high-risk projects financed by Equator Principles Financial Institutions (EPFIs), neither the EPFIs financing the project nor the governing body, the Equator Principles Limited (formerly Equator Principles Association) and Equator Principles Steering Committee, are a party to these mechanisms. We understand that there are currently no means by which project-affected rights holders or their legitimate representatives can raise instances of alleged non-compliance with the Equator Principles and/or other relevant international standards such as the UN Guiding Principles on Business and Human Rights (UN Guiding Principles)

by its EPFI signatories. In cases in which complaints have been raised to the Equator Principles governing body regarding projects financed under the Equator Principles where there has been no effective grievance mechanism to deal with the complaint and/or lack of remediation, we understand that the governing body has responded that it does not have the authority or capacity to respond to these complaints. We also understand that there has been a decision by the Equator Principles Steering Committee not to create its own independent grievance mechanism to deal with these types of complaints. This is despite the position that including such a grievance mechanism would help minimize environmental and social risks to local communities before further harms may arise, and could reduce reputational, financial, operational and legal risks to EPFIs and their clients by effectively addressing problems and grievances as they arise. It could also enhance the Equator Principles' effectiveness by contributing to improved human rights due diligence and risk management.

While we do not wish to prejudge the accuracy of these allegations, we express our concern about the refusal by the Equator Principles governing body to establish a central effective grievance mechanism to consider complaints about non-compliance by EPFIs with their own obligations under the Equator Principles. This refusal can be an obstacle to a means by which affected communities can raise issues to remediate potential and actual adverse human rights impacts are addressed and remediated as soon as possible. We raise this issue because the type of large infrastructure projects financed by signatories to the Equator Principles can have serious and irreversible human rights impacts on people and the planet, so it is vital that the Equator Principles are effective at ensuring human rights risks are approached in compliance with the UN Guiding Principles, including by having in place an effective grievance mechanism.

We would like to draw to your attention that, under the UN Guiding Principles, unanimously endorsed in 2011 by the Human Rights Council in its resolution A/HRC/RES/17/31, all business enterprises (including industry associations) have responsibilities to respect all internationally recognized human rights. We note that all signatories to the Equator Principles have explicitly accepted that they will operate in line with the UN Guiding Principles. Accordingly, the Equator Principles, being an industry initiative based on respect for human rights-related standards, should, under guiding principle 30 of the UN Guiding Principles, "ensure that effective grievance mechanisms are available". As explained in the Commentary to guiding principle 30, this includes effective grievance mechanisms for both individual members and for the industry initiative itself, because "such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met". The effectiveness criteria of such grievance mechanisms are expressly stated in the latest revision of the Equator Principles (EP 4) to be in accordance with the UN Guiding Principles.

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

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate the ways in which the Equator Principles currently has effective grievance mechanisms, including where there has been non-compliance by EPFIs with their own obligations in relation to grievance mechanisms and remediation. If grievance mechanisms are not currently available, please indicate what effective action you will take to bring yourself in compliance with the UN Guiding Principles.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to avoid any further adverse impacts on the rights of victims of human rights abuses arising from activities of EPFIs.

Please accept the assurances of our highest consideration.

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Surya Deva
Special Rapporteur on the right to development

Annex

Reference to international human rights law

We would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations with governments, civil society and the business community. The guiding principles have been established as the authoritative global standard for all States and businesses to prevent and address business-related adverse human rights impacts. These guiding principles are based on the recognition of:

- a) "The existing obligations of States to respect, protect and fulfill human rights and fundamental freedoms;
- b) The role of business enterprises as specialized bodies or corporations performing specialized functions, which must comply with all applicable laws and respect human rights;
- c) The need for rights and obligations to be matched by appropriate and effective remedies when they are violated".

The obligation to protect, respect and fulfill human rights, recognized in conventional and customary law, entails the duty of the State not only to refrain from violating human rights, but also to exercise due diligence to prevent and protect individuals from abuses committed by non-State actors (see, for example, Human Rights Committee General Comment No. 31, para. 8). Consistent with these legal obligations, Guiding Principle 1 reiterates the State's duty to "protect against human rights abuses within its territory and/or jurisdiction by third parties, including business enterprises." In addition, guiding principle 3 reiterates that States should take appropriate measures to "prevent, investigate, punish and redress such abuses through effective policies, laws, regulations and adjudication". Furthermore, this requires, inter alia, that a State "provide business enterprises with effective guidance on how to respect human rights throughout their operations". Finally, in accordance with recognized conventional and customary international law (see, for example, article 2(3) of the International Covenant on Civil and Political Rights), the guiding principles reiterate that States should ensure that victims have access to an effective remedy in cases of adverse human rights impacts related to business activities.

The guiding principles also clarify that business enterprises have an independent responsibility to respect human rights. Principles 11-24 and 29-31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide remedies when they have caused or contributed to adverse impacts. The guiding principles have identified two main components of the corporate responsibility to respect human rights, which require that "enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address those impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly related to operations, products or services by their business relationships, even if they have not contributed to those impacts." (guiding principle 13). The commentary to guiding principle 13 notes that business enterprises may be affected by adverse human rights impacts, either through their own activities or as a result of their business relationships with other parties. (...)

The "activities" of business enterprises are understood to include both actions and omissions; and their "business relationships" include relationships with business partners, entities in their value chain and any other non-State or State entity directly linked to their business operations, products or services.