

January 4, 2016

Via electronic mail

Fred Hochberg, Chairman and President
Export-Import Bank of the United States
811 Vermont Avenue, NW
Washington, D.C. 20571

cc: Michael T. McCarthy, Deputy Inspector General, Export-Import Bank of the United States

Dear Chairman Hochberg:

We are writing to follow up on the issuance of the Report on the Project Financing of Sasan Power Limited by the Export-Import (Ex-Im) Bank's Office of Inspector General (OIG). We find the Report's reference to the Bank's lack of a grievance mechanism and recommendation for its creation to be a promising development.¹ Further, it is encouraging that Ex-Im Bank's management has agreed with this recommendation.² As organizations that support communities that have suffered harm as a result of projects abroad, including those financed by Ex-Im Bank, we seek to engage the Bank in good faith on the next steps in the creation of such a mechanism, as well as on implementation of other recommendations in the Report.

As the OIG stressed, a grievance mechanism will help Ex-Im Bank to identify emerging risks and allow the Bank to understand and address their impact early in the transaction cycle. We look forward to Ex-Im Bank adopting clear mechanism policies and procedures based on public consultation in order to have such an effect.

We take this opportunity to offer Ex-Im Bank criteria reflecting best practice³ for creation of such mechanisms. The following is based on the United Nations Guiding Principles on Business and Human Rights "effectiveness criteria for non-judicial grievance mechanisms,"⁴ which provide a critical foundation for the development of an effective mechanism:

- *Legitimacy*, which enables trust by requiring independence from political influence and internal conflicts-of-interest stemming from the fact that grievance mechanisms are often operated within the same institution as the actors who have allegedly violated bank policy;
- *Accessibility* in that the mechanism is known to stakeholder groups, is easily used, and provides assistance to those who may face barriers to access;

¹ Office of the Inspector General, Export-Import Bank of the United States, *Report on the Project Financing of Sasan Power Limited*, OIG-INS-15-02, Sept. 28, 2015, pp. 40-44.

² *Id.* at Appendix A: Management Response and OIG Evaluation, pp. 53-54.

³ The International Finance Corporation's Compliance Advisor/Ombudsman is often cited as a grievance mechanism that has adopted a number of best practices.

⁴ United Nations Guiding Principles on Business and Human Rights, *Implementing the United Nations "Protect, Respect and Remedy" Framework*, Principle 31(a)-(h).

- *Predictability*, by way of clear and known procedures, indicative timeframes for each stage of the process, and a means of monitoring implementation;
- *Equitability/fairness*, by ensuring that aggrieved parties can engage in a process on fair and equitable terms;
- *Transparency* by keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;
- *Rights-compatibility* to ensure consistency with internationally recognized environmental and human rights standards;
- *A source of continuous learning*, drawing upon relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; and
- *Based on engagement and dialogue* with the potential users of the grievance mechanism.

The risk of not incorporating these criteria is noted in the Commentary to the Guiding Principles: “[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”⁵

We extend our support to the Bank in its effort to create a state-of-the-art mechanism. As a next step, we request that the Bank put forward a timely and comprehensive plan for implementing an effective grievance mechanism.

We look forward to meeting with you to discuss this in more detail. Please contact Kindra Mohr, Policy Director at Accountability Counsel, at kindra@accountabilitycounsel.org or 202-742-5804 to arrange a date and time. We look forward to your response.

Sincerely,

Accountability Counsel (USA)
 Action Contre l’impunité pour les Droits Humains (DRC)
 Advocacy for Principled Action in Government (USA)
 American Jewish World Service (USA)
 Bank Information Center (USA)
 BankTrack (The Netherlands)
 Bennett Freeman, former Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, U.S. Department of State (USA)
 Both ENDS (The Netherlands)
 CEE Bankwatch Network (Czech Republic)
 Center for Bangladesh Studies (Bangladesh)
 Center for Biological Diversity (USA)
 Center for International Environmental Law (USA)
 Community Policing Partners for Justice, Security and Democratic Reforms (Nigeria)
 EarthRights International (USA)

⁵ *Id.*, at Commentary to Principle 31.

Erika Lennon, Program Coordinator, Program on International and Comparative Environmental Law, American University Washington College of Law (USA)
Foundation for Environmental Rights, Advocacy & Development (Nigeria)
Friends of the Earth - Japan (Japan)
Friends of the Earth - US (USA)
Global Financial Integrity (USA)
Inclusive Development International (USA)
India Committee of the Netherlands (The Netherlands)
International Labor Rights Forum (USA)
International Rivers (Global)
Jamaa Resource Initiatives (Kenya)
La Fundación para el Desarrollo de Políticas Sustentables (Argentina)
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Maryknoll Office for Global Concerns (USA)
Mineral Policy Institute (Australia)
MiningWatch Canada (Canada)
Natural Justice (USA)
Project on Organizing, Development, Education and Research (USA, working in Latin America)
Responsible Sourcing Network (USA)
Sherpa (France)
Social Support Foundation (Ghana)
The International Network on Displacement and Resettlement (USA)
Uganda Land Alliance (Uganda)
Ulu Foundation (USA)
Urgewald (Germany)
Workers' Assistance Center (Philippines)
Worldview (The Gambia)