

July 25, 2014

Via Electronic Mail

Mr. Maina Kiai
Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association
Palais des Nations
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**Re: Response to Questionnaire on the Rights to Freedom of Peaceful Assembly
and of Association**

Dear Mr. Kiai,

Accountability Counsel is writing in response to your request for information regarding the impact of multilateral institutions on the rights to freedom of peaceful assembly and of association. We are a U.S.-based non-profit legal organization that defends the environmental and human rights of marginalized communities. As lawyers for people harmed by internationally financed development projects, we specialize in the use of the independent accountability mechanisms of multilateral development banks. Our response is limited to our field of expertise and does not answer all parts of the questionnaire.

Questionnaire Part 2(i) – Are there any multilateral institutions which you perceive as having a positive or negative impact on the freedom of peaceful assembly based on their policies, projects, goals, engagement with governments or engagement with activists/civil society? For example, (1) funding (or refusing to fund) a development project where the multilateral’s partner government has actively worked to prevent affected communities from exercising their right to freedom of peaceful assembly, or (2) working (or refusing to work with) civil society groups because they are actively involved in planning peaceful assemblies. Describe the examples in detail.

Multilateral development banks (MDB), such as the World Bank, can have an impact on the right to freedom of peaceful assembly and of association¹ through their support for development projects. These institutions have the ability to research and choose which projects to fund and should, in our view, seek to avoid situations in which they provide support to projects that negatively impact such rights. However, in cases where there is inadequate due diligence prior to financing, or lack of oversight during project implementation, MDBs may fund projects in areas where there are serious violations of the right to freedom of assembly or of association.

¹ Please note that while this prompt requests information regarding the effect of multilateral institutions on the freedom of peaceful assembly, our response addresses effects on the freedom of association as well, with the understanding that the two rights are closely linked and multilateral institutions can seriously impact both freedoms.

I. Background on the Role of Accountability Mechanisms in Multilateral Development Banks

Maintaining strong, independent accountability mechanisms is a crucial step for MDBs to lessen any negative impacts on communities' right to freedom of peaceful assembly. Accountability mechanisms are independent offices within MDBs whose purpose is to receive community complaints about harm resulting from bank-supported projects and to investigate and address any alleged harm. They can serve as a forum to bring to light and address violations of the right to freedom of peaceful assembly and of association, but only when they function effectively.

Most accountability mechanisms provide either, or both, compliance review and dispute resolution. A compliance review is an investigation into whether the multilateral institution has violated its own policies and procedures, causing social or environmental harm. Mechanisms will typically produce a report with their findings and recommendations at the end of a compliance review, to be used by the MDB to address compliance violations and to be published publicly online. Compliance review can bring public awareness to violations of the right to peaceful assembly and association and provide necessary information for bank management to redress such abuses.

Dispute resolution can likewise serve as an important tool to advance and protect these rights. Dispute resolution is a dialogue process between affected people and the government or company implementing the project, facilitated by the mechanism, to address complaints and find a mutually agreeable solution to the concerns raised by the affected people. A successful dialogue process can also offer an opportunity for affected communities to exercise their rights to freedom of peaceful assembly and of association as they prepare for and participate in the process.

II. IFC Investment in Assam, India as Example of MDB Funding Negatively Impacting Human Rights

Accountability Counsel is currently supporting a case in Assam, India, which demonstrates both the role that MDBs can play in supporting projects that violate the right to freedom of peaceful assembly and association and the role of accountability mechanisms in helping to remedy such violations. The World Bank Group's International Finance Corporation (IFC) invested in Amalgamated Plantations Private Limited (APPL), an Indian corporation managing twenty-four tea plantations in Assam. The IFC intended its funding to allow workers to purchase shares of APPL, secure employment, and to contribute to improving labor and environmental standards in the tea industry.² Instead, its funding contributed to a host of ongoing and well-documented workers' rights violations, including long working hours, inadequate compensation, poor

² International Finance Corporation. "Information on IFC Investment in APPL and Employee Share Ownership Program," *available at* http://www.ifc.org/wps/wcm/connect/region_ext_content/regions/south+asia/countries/ifc_response_employee_share_ownership_program.

hygiene and health conditions, coercion of workers, and a lack of freedom of association and of peaceful assembly.

Workers are not permitted to freely choose which union represents them and are forced to pay dues to the official union, which has a long history of compromising workers' interests in negotiations. In particular, the union has allowed workers' minimum wage to be set at a rate well below the minimum wage applicable to workers who are not union members.³

Additionally, APPL management "strictly monitors visits, restricts meetings, and intimidates visitors," despite the law requiring public access to the labor lines where workers live, thereby violating their right to peaceful assembly.⁴ When management learned that workers had met with local groups about workers' rights violations, management retaliated through threats, interrogations, building a negative record in workers' files, demotions, and transfers to unfamiliar jobs.⁵ Management demanded that workers obtain advance approval for any meeting with visitors in the labor lines.⁶ Workers fear raising issues because they have been intimidated and silenced by threats that if they pursued their grievances, funding would be withdrawn and the plantations would be forced to shut down.⁷

Despite information about these violations being freely available to anyone visiting the tea plantations and speaking with workers, as well as through various civil society and government reports about labor and living conditions on plantations in Assam, the IFC chose to invest in APPL and failed in its supervisory role to promote improvements to worker welfare on the plantations. Living and working conditions, and workers' rights to freedom of association, not only failed to improve, but many workers reported a worsening state of affairs after IFC investment. Though the IFC requires that its clients ensure that all workers have the right to freely select their union and collectively bargain,⁸ neither APPL nor the IFC took any steps to address the union situation on APPL plantations.

In February 2013, three local NGOs filed a complaint raising these issues to the IFC's Compliance Advisor Ombudsman (CAO), the accountability office designed to receive complaints about IFC-funded projects. The CAO offered to facilitate a dialogue between APPL and the workers, along with their supporting civil society organizations, but the proposal was rejected by APPL. APPL refused to negotiate with the other organizations present to support the

³ Assam Supplement to Complaint to CAO, February 14, 2014, at p. 5, *available at*

<http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-Policy-Violations-Supplement.pdf>.

⁴ Columbia Law School Human Rights Institute. "The More Things Change...": The World Bank, Tata and Enduring Abuses on India's Tea Plantations. January 2014, at 67.

⁵ Assam Complaint to CAO, February 2, 2013, at p. 5, *available at* <http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/APPL-complaint.pdf>.

⁶ Columbia Law School Human Rights Institute. "The More Things Change...": The World Bank, Tata and Enduring Abuses on India's Tea Plantations. January 2014, at 69.

⁷ Workers feared a repeat of what occurred in 2012, where 22 people died of starvation following a shutdown of other plantations in the region. *See* Assam Supplement to Complaint to CAO, February 14, 2014, at p. 24.

⁸ IFC Performance Standards on Social and Environmental Sustainability, 2006, Performance Standard 2: Labor and Working Conditions, ¶¶ 9-10; IFC Performance Standards on Social and Environmental Sustainability, 2012, Performance Standard 2: Labor and Working Conditions, ¶¶ 13-14.

workers, even though many of the local organizations are made up of former tea workers or family members of current tea workers.

After the dispute resolution process broke down, the CAO conducted a site visit and found that a full compliance review would be necessary. The affected people are now awaiting an independent report by the CAO that will include findings and recommendations regarding the IFC's compliance or non-compliance with its social and environmental policies, including those meant to protect the rights to freedom of peaceful assembly and freedom of association.

As in this case, multilateral funding can and does contribute to threats and violations of a community's freedom of peaceful assembly and of association. The IFC should have been aware of the union situation that tea workers in Assam faced before it decided to invest. Instead, IFC funding has only served to support the company that is suppressing workers' rights to association and peaceful assembly. This is a scenario that too often plays out when MDBs provide funding without adequate information or project oversight to ensure that the rights of affected people are respected.

Strong accountability mechanisms can provide redress for rights violations related to MDB funding, as well as document lessons that can help the institutions avoid supporting rights violating projects in the future. The compliance review process, now underway in Assam, is an important tool to reveal violations of the rights to freedom of peaceful assembly and of association and can prompt MDBs to develop an action plan to redress any such violations.

Questionnaire Part 2(ii) – What measures/actions would you recommend that States and multilateral institutions take to enhance the promotion and protection of freedom of peaceful assembly in their policies, projects, goals and other engagements with civil society?

I. The Need for Human Rights Due Diligence

MDBs should carry out human rights due diligence on all projects before they make funding decisions to ensure that their funding will not support or facilitate violations of the right to freedom of peaceful assembly.

II. World Bank Investment in Nepal as Example of the Need for Thorough Human Rights Due Diligence

In one of Accountability Counsel's recent cases, the Nepalese government received funding from the World Bank to build a high voltage transmission line through rural villages in the southeastern part of the country. Many community members peacefully protested the project planning and design, demanding more information about the project and the ability to participate in the planning and implementation of the transmission line. In response, project officials sent in armed Nepalese security forces who violently repressed the protests, employing torture,

detention, and violent attacks on unarmed women.⁹ This violent repression evoked particular terror in the local people given the recent history of serious violence in the area, perpetrated by the same state security forces, during the Maoist People's War in Nepal between 1996 and 2006.¹⁰

Community members filed a complaint with the World Bank Inspection Panel, the accountability mechanism for the World Bank's public sector, and the Panel is currently conducting an investigation.¹¹ Although community members are hopeful that the investigation will draw attention to the rampant violations of their right to freedom of peaceful assembly, they fear renewed violence.¹²

This case is a prime example of the need for greater human rights due diligence by the MDB to identify the likelihood of violations of the right to peaceful assembly early in their involvement.

III. The Need for MDBs to Play an Active Role in Ensuring Respect for Rights

Beyond the need for due diligence at the start of a project, it is essential that MDBs take an active role in overseeing the government or agency carrying out the project to guide and monitor its compliance with all safeguards and promote and protect basic human rights throughout project implementation. MDBs are typically required to supervise a project's implementation to ensure compliance with institutional safeguards policies, including social and environmental safeguards.¹³ In cases where an MDB has witnessed violations of its safeguard policies, it should increase its supervisory role and work closely with the company or government agency implementing the project to bring it into compliance and end any rights violations.

However, where an agency or government repeatedly demonstrates an unwillingness to change its practices that violate the right to peaceful assembly, the bank must halt funding until steps have been taken to address these violations and to prevent future harm. Otherwise, MDBs risk playing an overall harmful role by supporting and facilitating violations of the right to peaceful assembly through their ongoing funding.

IV. The Need for Strong Accountability Mechanisms at MDBs

Additionally, MDBs must establish and maintain strong accountability mechanisms in order to identify violations of the right to freedom of peaceful assembly and to prompt bank management to respond to these violations. As the UN Guiding Principles on Business and Human Rights affirm, in order to be strong and effective, an accountability mechanism must be legitimate,

⁹ Nepal Complaint to Inspection Panel, July 10, 2013, at p. 1, available at <http://www.accountabilitycounsel.org/wp-content/uploads/2013/07/Nepal-Khimti-Dhalkebar-Complaint.pdf>.

¹⁰ Magnus Hatlebakk, CHR. Michelsen Institute. *Explaining Maoist Control and Level of Civil Conflict in Nepal*, 2009, at p. 3, available at <http://www.cmi.no/publications/file/3498-explaining-maoist-control-and-level-of-civil.pdf>.

¹¹ Nepal Complaint to Inspection Panel, July 10, 2013, at p. 1.

¹² Nepal Complaint to Inspection Panel, July 10, 2013, at p. 11.

¹³ See International Finance Corporation's Policy on Environmental and Social Sustainability, at 9, ¶ 45.

accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.¹⁴

To be legitimate, a mechanism must be able to operate independently from the MDB it was designed to hold accountable. It must be capable of drawing unbiased conclusions through its own investigation, without being influenced by other organs within the bank. To be accessible and predictable, a mechanism should ensure that its standards for eligibility are clearly enumerated and that all complaints that meet those eligibility criteria are assessed and investigated without undue delay.

An effective mechanism must be equitable, meaning that complainants should have the opportunity to participate in key decision-making moments during the complaint process and the process should be designed to offset any pre-existing inequalities between the complainants and the project implementer. Moreover, it is important that MDBs create and implement processes that foster institutional learning from each complaint raised to an accountability mechanism, including relaying the experiences and viewpoints of complainants, to help prevent future violations of the right to freedom of peaceful assembly.

Without the above-mentioned qualities, accountability mechanisms cannot effectively report and redress violations of the rights to freedom of peaceful assembly and of association, nor serve as a forum for communities to voice their concerns. Instead, ineffective mechanisms risk playing a negative role by letting rights violations go undetected or ignored while allowing MDBs to claim that they are living up to accountability best practices.

For instance, in April 2014, the World Bank Inspection Panel ignored unanimous civil society comments¹⁵ and released an updated version of its internal operating procedures that dramatically undermines its accountability and transparency.¹⁶ Most troubling is the addition of a new Pre-Registration Pilot program, which delays registration of an eligible complaint for months to allow World Bank Management additional time to attempt to resolve the concerns of the affected people through vague dialogue process with no clear procedures.¹⁷ Also concerning is the codification of the Panel's practice of deferring its recommendation on whether or not to

¹⁴ 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*, HR/PUB/11/04, 2011, at p. 33, ¶ 31, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹⁵ See Letter from Joint Civil Society Organizations to Eimi Watanabe, Inspection Panel Chair (January 15, 2014), available at

<http://ewebapps.worldbank.org/apps/ip/Documents/Civil%20Society%20Comments%20on%20Draft%20UpdatedOperatingProcedures.pdf>; see also Letter from Inclusive Development International to Eimi Watanabe, Inspection Panel Chair (January 31, 2014), available at

<http://ewebapps.worldbank.org/apps/ip/Documents/IDICommentsoOperatingProcedures.pdf>.

¹⁶ See The Inspection Panel, *Inspection Panel adopts updated Operating Procedures*, (April 7, 2014), <http://ewebapps.worldbank.org/apps/ip/Lists/NewsFromThePanel/NewsFromThePanelDisp.aspx?ID=167&source=http://ewebapps.worldbank.org/apps/ip/Pages/News-fom-the-panel.aspx>.

¹⁷ The Inspection Panel, *Operating Procedures April 2014, Annex I, Piloting a new approach to support early solutions in the Inspection Panel process*, at p. 24, available at <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>.

investigate a complaint in order to provide yet more time for management and complainants to seek a solution.¹⁸

As a pre-requisite for filing a complaint to the Inspection Panel, complainants must already have attempted to address their concerns directly by contacting management.¹⁹ Communities turn to the Panel process when they are unhappy with the results of their attempts to address issues directly with Bank Management. Additional opportunities to address matters directly with management are unlikely to produce different results. In addition, both of these provisions greatly undermine the accountability, transparency, and accessibility of the Panel by unnecessarily delaying an investigation and even blocking affected people from accessing the mechanism at all.²⁰

Questionnaire Part 1(iii) – Please describe (a) ease and/or (b) challenges of accessing information related to decision-making processes within multilateral institutions.

Project-affected communities and their representatives continually face barriers to accessing basic project information, and information related to key decisions and decision-making processes of MDBs and accountability mechanisms. Without this information, communities are extremely limited in their ability to understand the full impacts that a project will have on their rights and engage in free, prior and informed consultation or consent, and are prevented from learning what avenues of redress they may have.

In seeking redress through an accountability mechanism, complainants are often left out of key communications between bank management and the accountability mechanisms, preventing them from real, informed participation in decision-making moments throughout the process. For example, in the Nepal high-powered transmission line case discussed above, World Bank Management was provided an opportunity to conduct consultations with the affected communities before the Inspection Panel began its compliance review investigation. Bank Management drafted a report describing the results of the consultation and submitted it to the Inspection Panel. Despite repeated requests, affected communities were not provided with a chance to comment on a draft version of the report and even the final report was withheld from them until months after it had been provided to the Inspection Panel.

Further, complainants are often unable to participate during key decision-making moments of the mechanism process. For instance, after a compliance investigation, bank management must typically draft a response to findings of non-compliance with bank policies and must include plans to remedy such violations. Management then meets with the bank's president or board of

¹⁸ The Inspection Panel, Operating Procedures April 2014, at p.17, footnote 7.

¹⁹ *Id.* at ¶ 12(d).

²⁰ In the only case in which the Pre-Registration Pilot has been applied to date, registration was delayed for eight months and ultimately denied entirely, despite a written request from the original Requesters expressing their dissatisfaction with the Pilot and reiterating their request for registration. See The Inspection Panel, *Request for Inspection Nigeria: Lagos Metropolitan Development Governance Project (P071340): Notice of Non-Registration and Panel's Observations of the First Pilot to Support Early Solutions*, IPN Request RQ13/09, July 16, 2014, available at [http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Notice%20of%20Non-Registration%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/91-Notice%20of%20Non-Registration%20(English).pdf).

directors to present the plan and seek approval. However, the procedural rules of many accountability mechanisms do not entitle complainants to provide input during the drafting of the plan, to attend the board meeting, or to express an opinion regarding the Board's ultimate decision on whether or not to approve the plan.²¹ As a result, complainants are often cut out of the process to develop a plan to remedy the violations of their rights.

Blocking complainants from participating in the development of these plans – plans which are intended in part to remedy harm suffered by the complainants – can lead to a final remedy that does not adequately address the complainants' concerns. To address these issues, accountability mechanisms should implement policies that require increased participation of affected communities in all key decision-making moments, including sharing all relevant documents and communications with complainants and inviting their feedback at each stage of the process.

We thank you for your attention to these issues and the opportunity to respond to the questionnaire. Please do not hesitate to contact us with any questions you may have or to discuss these matters in further detail.

Sincerely,



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²¹ See Compliance Advisor/Ombudsman Operational Guidelines, 2013 at §§ 4.4.5 – 4.4.6, *available at* http://www.cao-ombudsman.org/howwework/documents/CAOOperationalGuidelines2013_ENGLISH.pdf.