



## Submission of EarthRights International on the World Bank Evolution Roadmap and Development Committee Report to Governors

EarthRights International is a non-governmental organization with offices in the United States, the Amazon region, and Southeast Asia, that holds corporations and governments accountable for human rights violations and environmental harms, through litigation and legal advocacy. As part of this work, EarthRights has represented communities harmed by IFC-financed projects, including in *Jam v. International Finance Corporation* and *Doe v. International Finance Corporation*. We submit this comment on the World Bank Evolution Roadmap based on that experience and our broader expertise on accountability, remedy, legal liability, and human rights and climate change.

We appreciate the opportunity to comment on the World Bank Group’s Evolution Roadmap, which we believe comes at a pivotal moment. As an organization that specializes in private sector accountability, and given our firsthand experience working with communities harmed by projects financed by the International Finance Corporation (IFC), we focus primarily on IFC’s policies and practices; however, many of the issues raised herein apply to the World Bank Group (WBG) institutions more broadly.

### I. Introduction

The World Bank Evolution Roadmap’s central premise is that the world faces multiple development crises, including the climate crisis, the residual effects of the COVID-19 pandemic, increasing inequality, and conflicts, and that the key to solving these development crises is to “dramatically scale up development finance,” with a particular emphasis on greater private sector financing. While we agree these are pressing global problems that require serious, innovative attention and action, including from global institutions like the WBG, we have serious concerns about the Evolution Roadmap as a means of addressing those crises.

In particular, the Evolution Roadmap is focused on increasing the *quantity* of development finance, with minimal discussion of actual development impact. Notably absent is any meaningful analysis of the effectiveness of the WBG’s development model to date, the development impact of the WBG’s existing private sector portfolios, or any evaluation of the effectiveness of the tools and strategies the WBG now proposes to dramatically scale up. The Roadmap is proposing to get more money out the door, and faster, without meaningful attention to the concrete impact of that financing on people, their environment, poverty, or development more broadly.

While the Evolution Roadmap asserts that its approach to development has been largely effective,<sup>1</sup> the experience of communities around the world has repeatedly shown otherwise. Too often it is the poorest who bear the brunt of “development”, and too often, WBG projects do *not* result in promised development outcomes – instead leaving the poorest and most vulnerable worse off than before. Too often, communities hosting WBG projects see their livelihoods, way of life, and environment destroyed in the name of development. These are the same communities bearing the brunt of the climate change impacts the WBG now (finally) seeks to address. Failing to evaluate actual development

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<sup>1</sup> See, e.g. Evolution Roadmap ¶ 11, 21.

outcomes and assess on-the-ground impact perpetuates the same cycle of preventable mistakes and unmitigated harm.

Likewise absent from the Evolution Roadmap is any discussion of environmental and social standards and safeguards, or the broader accountability framework. But to date, the WBG has shown it is unable and unwilling to hold itself accountable for ensuring net-positive development outcomes or for addressing and remedying harm that its projects cause. And WBG institutions have shown they are too often unwilling to hold private actors accountable for satisfying expected environmental and social standards and remedying harm.

Without robust accountability, private actors simply will not put development impact above their bottom line. Pumping money into the private sector in the name of development has caused, contributed to, or exacerbated the very crises the WBG now says it must urgently address. Scaling up financing and increasing private-sector investment without enhanced safeguards, transparency, and accountability is not a credible strategy for ending poverty and promoting shared prosperity.

The WBG has a crisis of accountability, trust, and relevance today. That is one of the reasons for the Evolution Roadmap process, and why IFC and MIGA are going through a separate, but undeniably related, process to address their accountability problems and particularly their repeated failure to remedy harm caused by their investments.<sup>2</sup> A lack of robust accountability has already undermined the WBG's ability to carry out its development and anti-poverty mission and the Evolution Roadmap's complete failure to grapple with this accountability crisis, while proposing to scale up operations and accelerate private-sector financing, threatens to do substantially more damage, worsen global crises and inequities, and further undermine public trust in the WBG as a development institution.

The Evolution Roadmap sets forth a plan for the WBG to grow without evolving at all. But the WBG has a crucial opportunity now to course correct – to use this moment to reflect on its development model, learn from experience to date, and evolve into a more effective development institution better able to tackle the problems plaguing humankind – thereby rebuilding global trust and credibility that has been lost. We address here a number of concrete ways the WBG can do so.

## **II. Any proposal to scale up World Bank Group activity, and in particular private sector investment, must be informed by a comprehensive, retrospective evaluation of the WBG's development model and actual learning from impacts on the ground.**

The Evolution Roadmap rests on the premise that the WBG's development model has largely been successful and what is needed is primarily *more* of the same – and faster. But there is no attempt anywhere in the Evolution Roadmap or the associated policy discussions to meaningfully evaluate the model and the extent to which it has – or has not – been effective thus far in achieving positive development outcomes. How will the WBG ensure that it is effectively rising to meet the pressing global problems it has identified if it cannot speak to what has worked in the past and what has not?

Both the Evolution Roadmap and Development Committee Report indicate the need to embed learning and evaluation approaches into projects to generate new knowledge, yet retrospective impact

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<sup>2</sup> See IFC/MIGA Draft Approach to Remedial Action (2022); External Review of IFC's/MIGA's Environmental and Social Accountability including the CAO's Effectiveness Review Report (2020) (“External Review Report”).

assessment is nowhere to be found in the Evolution Roadmap or surrounding policy discussions. The Roadmap itself recognizes that “impact evaluations” currently only cover approximately 5% of the World Bank portfolio.<sup>3</sup> It is unclear what metrics the WBG uses to measure “success” or by which it will evaluate its future performance. But the Evolution Roadmap’s claims of WBG effectiveness seem to rely only on the volume of money the WBG has expended and “mobilized” without any mention of the *quality* of the investments or their actual development impact.<sup>4</sup>

The failure to – and in fact, outright resistance to – evaluating actual project impacts and concrete development outcomes appears particularly acute for IFC and MIGA and private sector investments. The Independent Evaluation Group of the World Bank (IEG), for example, has repeatedly noted IFC and MIGA hostility to evaluating development impact.<sup>5</sup> Indeed, IFC does not assess the *actual* impact of its investments at all. IFC’s Anticipated Impact Measuring and Monitoring (AIMM) system only considers “anticipated” development impacts at the Board approval stage, and in doing so, only considers the intended *positive* development impacts. Though risk assessments are also undertaken at the project approval stage, the foreseeable adverse impacts that are identified therein are not incorporated into the analysis of anticipated development impact.<sup>6</sup> This stacks the deck in favor of approving investments, regardless of their anticipated *net* development impact. The problems with this approach are further compounded by the frequent shortcomings in IFC risk assessments of proposed projects, which often fail to properly identify and assess environmental and social risks.<sup>7</sup>

But anticipated impact is plainly not the same as actual impact. There is seemingly no assessment done after a project is completed to determine whether the anticipated impacts actually occurred let alone examination of other unintended impacts like harm to local communities and the environment. IFC thus does not really know whether its investments, no matter how substantial, are actually producing *net* positive results. As addressed further below, even where harm is obvious, IFC consistently refuses to take any action to provide remedy or require remedial action from borrowers or partners. This is no doubt made worse by out impacts are assessed: because IFC does not take into account the actual

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<sup>3</sup> Evolution Roadmap ¶ 32.

<sup>4</sup> See, e.g. Development Committee, Evolution of the World Bank Group – A Report to Governors ¶¶ iv, viii (2023) (“Development Committee Report”).

<sup>5</sup> Independent Evaluation Group, Annual Report (2022) at 94, 14. See also IEG, International Finance Corporation Additionality in Middle-Income Countries, 2023 at xvi, 58-59 (finding substantial shortcomings in IFC’s evaluation, monitoring and reporting of nonfinancial additionality).

<sup>6</sup> Similar problems exist with respect to evaluation of non-financial additionality. For example, according to the IEG, “IFC assesses whether additionalities” – related to, but distinct from development impact – “were realized only for a sample of mature projects.” “Projects not selected for self-evaluation generate no information on whether or not anticipated additionality was realized.” IEG, International Finance Corporation Additionality in Middle-Income Countries (2023) at 59.

<sup>7</sup> For example, a recent CAO report analyzing IFC and MIGA data highlighted troubling trends in IFC/MIGA ability to effectively evaluate risk under existing standards and safeguards. CAO, The Remedy Gap: Lessons from CAO Compliance and Beyond (2023) (“CAO Remedy Gap Report”) at 3. The CAO’s analysis indicates that IFC/MIGA often fail to properly identify risk when assessing the environmental and social impacts of a proposed investment and in managing and monitoring risk. Among other things, CAO found that complaints about unaddressed adverse environmental and social impacts often arise from projects the IFC/MIGA did not classify as high risk or monitor for poor E&S performance. Since 2013, 50% of CAO complaints about adverse impacts have related to projects that IFC/MIGA categorized as limited risk. CAO Remedy Gap Report at 5. This points toward significant flaws in the metrics IFC/MIGA use to assess risk and/or the accuracy of the evaluation of risk against those metrics.

situation of host communities or the broader unintended and unexpected negative impacts in assessing development impact, it continues to attribute little to no value to remedying such harms. This position and this result is wildly inconsistent with the institution's mission.

There is no reason why an institution as powerful and well-resourced as the WBG should be operating at such a scale without making an evidence-based case for its own relevance and effectiveness. Without having engaged in any serious retrospective evaluation, the WBG is blindly proposing to dramatically increase its ability to impact the lives of more people, on a larger scale, without any guarantee of whether that impact will actually solve problems or cause more harm.

### **III. Increased reliance on the private sector to advance development goals and end poverty without substantially stronger safeguards risks serious harm to people, the environment, and the WBG's legitimacy as a development institution.**

The Roadmap treats the private sector as pivotal to solving development crises. The privatization of development is problematic for many reasons, and we do not attempt to treat this issue comprehensively here. But there can be no debate over the basic reality that private companies are principally driven by their own financial interests, not development goals. Ending poverty is simply not a part of their mission or reason for existence. It is therefore irrational to assume that private sector investment will necessarily produce positive development outcomes, and minimize negative impacts, as opposed to simply advancing private corporations' financial interests.

The only way to ensure that the private sector can be effectively utilized to achieve, or even seek, positive development outcomes is to build in robust accountability measures and binding safeguards, and to align incentive structures within the WBG to ensure such safeguards and accountability measures are actually enforced. But current standards are inadequate, enforcement and accountability are lacking, and the institutional culture and internal incentive structures at the WBG favor deals over development. The WBG cannot effectively tackle global crises without concrete action on each of these fronts.

We have seen firsthand how these problems together result in failed development projects that leave the poorest and most vulnerable worse off. We have addressed the lessons from the Tata Mundra project and the *Jam v. IFC* litigation at length in our recent submission to IFC/MIGA on their Draft Approach to Remedial Action.<sup>8</sup> We recommend this submission be reviewed in detail as part of this process as well. While we do not reiterate all of those points here, we note that the experience of the communities harmed by that project and their struggle, over more than a decade, for any measure of accountability are emblematic of the failures of IFC's approach to risk assessment under existing standards, IFC's unwillingness to take necessary action when faced with evidence of adverse impacts, IFC's refusal to use any of the extensive power and authority at its disposal to compel borrower compliance with binding environmental and social standards, and its steadfast refusal to require – or

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<sup>8</sup> Although we do not address the issues of legal liability and jurisdictional immunity here, the WBG should be wary of these issues and learn the correct lessons from recent litigation. For further discussion of these issues, *see generally* EarthRights International, Submission of EarthRights International on the Draft IFC/MIGA Approach to Remedial Action (2023) (“EarthRights Remedial Action Submission”), *available at* <https://earthrights.org/wp-content/uploads/2023/04/ERI-Submission-on-IFC-MIGA-Remedial-Approach-4.20.23.pdf>.

itself provide – remedial action of any kind when harm results. And it is emblematic of the tragic consequences all of that has on people, the environment, and development outcomes.

**A. The WBG’s existing standards and safeguards are inadequate to effectively evaluate and mitigate risk, prevent harm, and produce positive development impacts.**

Environmental and social standards and safeguards are critical to the quality of financing and the ability of project finance to result in positive development impacts and avoid causing unintended harm that undermines development outcomes. This is not a controversial point. It is therefore inexplicable to see not a single reference to environmental and social safeguards and standards or due diligence in the entire Evolution Roadmap. Indeed, implicit in the Roadmap and the policy debates surrounding this process is that measures aimed at increasing efficiency and cutting costs will lead to *weakened* environmental and social safeguards and weakened enforcement of standards meant to protect people and the environment.<sup>9</sup> Such a result is fundamentally at odds with the WBG’s development mission and begs the question of what then differentiates the WBG from a private investment bank? What is its value add?

While existing WBG environmental standards and safeguards have had an important role to play, too often, WBG projects have failed to deliver on development promises and have left host communities and their environment worse off. Communities’ experiences, the evolution of other DFIs’ practices, and the findings of IAM and external assessment reports all highlight the need to strengthen existing WBG safeguards and standards in order to be able to effectively assess risk and ensure the institution and its partners take action to anticipate, prevent, and mitigate harm and produce better development outcomes. Scaling up current financing levels and increasing private sector financing without such reforms risks disastrous consequences for communities and the environment on which they depend.

Despite decades of being a standard-setter for development finance, WBG standards and safeguards have fallen behind international standards and best practices.<sup>10</sup> Among other indications that IFC, for example, is no longer a leader on environmental and social protections, “in 2020, for the first time, the Equator Principles were updated independently of the IFC Performance Standards, due in part to the need to reflect emerging norms.”<sup>11</sup> As the OHCHR has observed, “while the IFC Sustainability Framework was state-of-the-art in 2012,” it has “fallen behind” international standards and best practice and must be strengthened.<sup>12</sup>

The External Review of IFC’s/MIGA’s Environmental and Social Accountability, ordered by the Board in 2019, emphasized that “IFC/MIGA should be leading with the most ambitious E&S principles and commitments; experimenting with innovative practices and instruments; and delivering

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<sup>9</sup> See, e.g. OHCHR, World Bank Group Evolution Roadmap: Comments and recommendations of the UN Human Rights Office ¶ 9 (2023).

<sup>10</sup> External Review of IFC/MIGA E&S Accountability, including CAO’s Role and Effectiveness: Report and Recommendations ¶¶ 6-8 (2020) (“External Review Report”); OHCHR, IFC/MIGA Draft Approach to Remedial Action: Comments and recommendations of the UN Human Rights Office 5 (2023).

<sup>11</sup> OHCHR, *Remedy in Development: Guidance and Practice* 18 (2022), <https://www.ohchr.org/sites/default/files/2022-03/Remedy-in-Development.pdf>.

<sup>12</sup> OHCHR, IFC/MIGA Draft Approach to Remedial Action: Comments and recommendations of the UN Human Rights Office 5 (2023).

world-class economic, environmental, and social results.”<sup>13</sup> After all, a key IFC (and broader WBG) value-add is supposed to be assuring better social and environmental standards and performance and thus enhanced development impact. But as the External Review Report observed, there is a “need for IFC to regain leadership in shaping E&S policies and practices.”<sup>14</sup> The inadequacy of existing standards is also particularly troubling in the context of financial intermediaries, which will be central to the Evolution Roadmap’s goals of mobilizing private capital, and to which IFC has thus far failed to properly apply its Performance Standards.<sup>15</sup>

The WBG cannot eradicate poverty by destroying the livelihoods of communities around the world, nor can it address the climate crisis by continuing to fund environmental destruction in the name of development. Stronger safeguards, if properly implemented, will lead to better risk identification at the outset, better risk mitigation, better project design, and better development outcomes and better position the WBG to tackle the global crises motivating the Evolution Roadmap in the first place.

**B. IFC’s demonstrated unwillingness to act on identified risks, its failure to actually enforce its standards and hold borrowers accountable, and its refusal to address adverse impacts and remedy harm to communities demonstrates that the WBG is presently unable to ensure that private sector investments actually achieve positive development outcomes.**

Strong standards and safeguards are essential, but they only result in better environmental and social performance when they are actually applied, implemented, and enforced. But this remains an area of weakness for the WBG, and IFC in particular, and must be addressed.

With respect to the Tata Mundra project, IFC knew from the outset that it would substantially harm the environment and local communities if sufficient steps were not taken to address critical issues, which it specified in great detail. IFC also identified “improper mitigation or insufficient community engagement” as having the potential to trigger “unacceptable environmental impacts.”<sup>16</sup> The specific issues IFC flagged at the outset, prior to investment, were precisely those that then devastated the lives and livelihoods of local communities and their health. The harms were not only foreseeable, they were accurately predicted by IFC.

Among other things, the project is a stark example of how a failure to effectively consult with and account for host communities from the beginning – and an unwillingness to course correct – led to cascading failures to identify, prevent, and mitigate impacts. These early failures compounded later

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<sup>13</sup> External Review Report ¶ 22.

<sup>14</sup> *Id.* ¶ 8.

<sup>15</sup> Given that over half of IFC’s long-term financial commitments are to financial intermediaries, the recent External Review of IFC/MIGA emphasized the need for IFC to “further clarify how it will assure itself of FI E&S performance, and strengthen its due diligence and supervision of FI clients,” as “significant gaps remain in IFC’s ability to ensure that FI clients are adequately assessing E&S risks in their portfolios and ensuring the application of the IFC Performance Standards in their higher-risk investments.” External Review Report ¶¶ 8, 22, 26. Instead of following this recommendation, IFC/MIGA punted the FI question entirely in their Draft Approach to Remedial Action. IFC/MIGA Draft Approach to Remedial Action, vi. The Evolution Roadmap suggests that the WBG will continue to rely on financial intermediaries for capital mobilization, which means clarifying and applying robust standards to such instruments all the more essential.

<sup>16</sup> CAO, CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India 15 (Aug. 22, 2013) (citing IFC, PDS Approval (Mar. 2008)).

shortcomings in the project, particularly with respect to supervision and monitoring. IFC continued to maintain that the communities were not being harmed, because they were not identified by the borrower in initial studies as project-affected – even when the design of the project changed, without additional studies – and because it lacked baseline information against which to compare the mounting impacts on the local community. This in turn was made worse by its ignoring these communities when they repeatedly sounded the alarm.

With the Tata Mundra project, the problem was not a failure to build in binding environmental and social safeguards. The IFC’s loan agreement was made public as a result of the *Jam v. IFC* litigation. This is significant both because it is difficult to understand how this is not standard practice, and because it finally shed some light on the arrangement IFC puts in place and thus where the breakdowns are. It showed, among other things, that IFC incorporates strong environmental and social standards into the contract as binding obligations. And it also showed how, despite the common refrain from IFC about having insufficient leverage to act, at least in this case, IFC had remarkably strong leverage at every stage of this project. IFC had numerous legal and other tools available to compel compliance with the environmental and social conditions of the loan agreement and to protect local people, to prevent and mitigate further harm, and to remedy harm that had already occurred, including after repayment.<sup>17</sup>

The problem was not that IFC lacked the power, and it was not that IFC was unaware of the harm. The problem was that IFC simply chose not to act. These robust contractual tools and binding environmental and social standards have done nothing to protect the community or their environment because IFC never took any action to use or enforce them. As IFC explained its view in the *Jam* litigation, “[a]ny violation of the IFC E&S Standards by [the borrower] provides IFC with various contractual enforcement options, but does not *require* IFC to do anything in response.”<sup>18</sup> Even robust standards and safeguards to protect communities and the environment and ensure access to remedy made binding via contractual terms are meaningless if implementation and enforcement is left solely to IFC discretion.

This failure to enforce binding standards and unwillingness to utilize contractual leverage meant to enable it to effectively prevent, mitigate and remedy harm are not unique to the Tata Mundra project. Analysis by the CAO has found “under-use of leverage by IFC/MIGA” to be a common factor contributing to a lack of remedy where harm results from IFC/MIGA projects.<sup>19</sup> The CAO has noted, for example, that while provisions conditioning disbursements on compliance with Environmental and Social Action Plans (ESAPs) are common, IFC/MIGA made use of that contractual leverage in only 23% of cases where it “considered a client’s E&S actions inadequate.”<sup>20</sup> In 54% of cases, it

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<sup>17</sup> OHCHR, IFC/MIGA draft Approach to Remedial Action: Comments and recommendations of the UN Human Rights Office 5-7 (2023). Among other things, it gave IFC substantial control over design and construction, the power to withhold disbursements based on noncompliance with environmental and social conditions, the power to audit environmental and social compliance and compel corrective action, and the power to compel the borrower to remedy harm, among others, and the obligations survive repayment of the loan. For a thorough analysis and detailed overview of the provisions of the loan agreement and the power and authority it gave - and continues to provide - to IFC to take action to compel compliance and remedy harm, among other things, see EarthRights Remedial Action Submission 30-38.

<sup>18</sup> Defendant’s Renewed Motion to Dismiss at 17, *Jam v. Int’l Fin. Corp.*, 442 F. Supp. 3d 162 (D.D.C. 2020) (No.1:15-cv-00612).

<sup>19</sup> CAO Remedy Gap Report at 13.

<sup>20</sup> *Id.* at 16.

allowed disbursement to go ahead despite unfulfilled commitments, either through waiver, or amending or extending the E&S compliance deadlines, and in *no case* did IFC/MIGA actually bother to analyze the impacts that waiver and disbursement had on E&S performance.<sup>21</sup> Far from using their leverage to ensure and improve environmental and social performance, IFC/MIGA freely give it up for nothing in return.

If IFC and other WBG entities are not actually willing to apply environmental and social safeguards and standards to ensure projects actually satisfy them then the WBG is neither aiding in the performance of a development project nor de-risking the project for other investors, since it is not minimizing negative impacts. Indeed, the WBG's involvement may make matters worse, since borrowers are able to use the fact of WBG investment to greenwash their projects without having to meet any of the standards that are supposed to come with WBG involvement. Without addressing enforcement and implementation gaps, the Evolution Roadmap risks serving as a blank check to private sector borrowers to cut corners and cause unmitigated harm to some of the world's poorest and most vulnerable communities without consequences.

**C. The WBG – IFC in particular – has proven itself unwilling to do anything to ensure harm its projects cause is remedied.**

The WBG's repeated refusal to acknowledge and remedy the negative consequences of its investments remains a stain on its reputation and a threat to its legitimacy. An institution that does not hold itself accountable to the very communities it proclaims to help lacks the leadership necessary to tackle the world's most pressing development needs. Yet the Evolution Roadmap fails to engage at all with instances in which WBG financing inevitably causes harm to communities and their environment, while proposing changes that could result in substantially more instances of such harm.

Again, the Tata Mundra project is emblematic of the WBG's accountability failures, particularly with respect to remedy. The CAO's Audit Report of the Tata Mundra project found that IFC had failed to abide by its own policies and standards at virtually every stage in the project, including, but not limited to, failing to adequately assess risk, weaknesses in review of impacts and risk, and failing to address environmental and social compliance during project supervision.<sup>22</sup> The communities hoped the CAO's damning findings with respect to IFC's noncompliance would finally spur IFC to act. But it did not. IFC merely noted the borrower had said it would undertake certain studies and potential corporate social responsibility measures (most of which were never implemented). IFC's response included no remedial action.<sup>23</sup> Indeed, IFC spent most of its response outlining its "different view [from] the

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<sup>21</sup> *Id.* at 16-17.

<sup>22</sup> CAO, CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India (Aug. 22, 2013).

<sup>23</sup> Notably, the Compliance Review Panel (CRP) of the Asian Development Bank (ADB), which also provided financing for the Tata Mundra project, issued a report in the Tata Mundra case in April 2015 that found similar failings. Unlike IFC, the ADB responded by taking action even before the CRP's investigation had concluded. See ADB, Lessons Learned from Compliance Reviews of the Asian Development Bank (2004-2020): Mundra Ultra Mega Power Project in India §§ 3, 4.7 (2021), <https://www.adb.org/sites/default/files/publication/747376/ocrp-lessons-india-mundra-ultra-mega-power-project.pdf>. This did not provide remedy to communities, and it did not substantially improve compliance since the CRP was required under its rules to close the case after three years, before the borrower had actually implemented action that could bring the project back into compliance. But the contrast between ADB's affirmative steps and IFC's complete rejection of any responsibility is stark. As the External Review Report noted, ADB took "more effective remedial actions... in the Jam case (as opposed to IFC) as a result of the



CAO” on nearly every finding.<sup>24</sup> Despite the numerous legal tools available to it,<sup>25</sup> IFC did not agree to address non-compliance, it did not agree to provide any kind of remedy, and it did not commit to holding the borrower accountable; it did not commit to doing anything at all.<sup>26</sup>

The External Review of IFC/MIGA accountability was prompted in part by the IFC’s mishandling of the Tata Mundra case and from the *Jam v. IFC* litigation which brought greater public scrutiny to the accountability crisis at the institution; in particular, that communities that host IFC/MIGA projects are too often left worse off, and without any remedy when they are harmed. Analysis by the CAO and external organizations demonstrates the reality that in the vast majority of cases where IFC/MIGA investments cause harm to host communities and their environment, nothing is done by either the borrower or any WBG institution to remedy that harm.<sup>27</sup>

Development projects that harm the poorest and most vulnerable, those that leave communities that host the projects substantially worse off, are simply not successful development projects. The recent External Review recognized this, emphasizing that “even investments/projects/guarantees that appear to have overall high developmental outcomes will be regarded as failures when local communities do not benefit from them, or, even worse, suffer harm from them.”<sup>28</sup> But despite numerous concrete recommendations from the External Review Team as to how IFC/MIGA could better ensure communities are not left worse off and without remedy where their investments cause or contribute to harm, IFC/MIGA have to date responded by disclaiming any remedial responsibility.

Following the External Review, IFC and MIGA put out a highly problematic draft “Approach to Remedial Action” that, among other things, disregards most of the Review Team’s recommendations and firmly stakes out the position that IFC/MIGA *do not* intend to hold themselves or their clients accountable when private sector investments leave host communities worse off – expressly disclaiming any responsibility to contribute to remedy where their investments have caused or contributed to

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firm stance on the Management Action Plan taken by the ADB Board Compliance Review Committee, and subsequent attention to implementation on the ADB investigation report on the Tata Mundra Power Plan Project.” External Review Report ¶ 319.

<sup>24</sup> Anita Marangoly George and William Blumer, IFC, Letter to Meg Taylor, CAO ¶ 7 (Sept. 12, 2013).

<sup>25</sup> See EarthRights Remedial Action Submission at 33-35 (detailing IFC’s extensive contractual power to compel remedial action under the Tata Mundra loan agreement)

<sup>26</sup> Even the studies that were ultimately done have been sharply criticized by both the CAO and the CRP as being unreliable and problematic. See, e.g. CRP Third Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Mundra Ultra Mega Power Project in India (Asian Development Bank Loan 2419) ¶ 18 (Sept. 4, 2018) (noting “serious reservations about the methodology and the results of the [NIO marine impact] study.”); *id.* ¶ 36 (criticizing the air quality study conducted in 2016, noting concerns “about the poor quality of the data on which the assessments are based” and “very high instrument downtime” and concluding the results are unreliable). See also CAO, Monitoring of IFC’s Response to: CAO Audit of IFC Investment in Coastal Gujarat Power Limited, India ¶ 56 (Jan. 14, 2015).

<sup>27</sup> CAO Remedy Gap Report at 5; see also Megan Pearson, Data Doesn’t Support IFC/MIGA’s Remedy Proposal, Accountability Console (Mar. 6, 2023) <https://accountabilityconsole.com/newsletter/articles/data-doesnt-support-ifcmigas-remedy-proposal/>.

<sup>28</sup> External Review Report ¶ 163.

harm. The draft has been widely denounced, including by legal experts,<sup>29</sup> OHCHR,<sup>30</sup> the CAO,<sup>31</sup> other development finance institutions,<sup>32</sup> civil society organizations,<sup>33</sup> and IFC/MIGA’s own clients.<sup>34</sup>

Remedy is not simply an issue of legal and moral responsibility – although it is both those things as well. It is a fundamental component of development and a failure to meaningfully engage with remedy has already hampered the WBG’s ability to carry out its development mission and undermined its credibility. It has created a trust deficit and sent a message to donors, host countries, and communities that the WBG sees itself as accountable to no one and nothing – not even its own policies. Too many communities around the world have had their way of life decimated in the name of development and nothing has been done to make them whole. These are the very people who are most vulnerable to the global crises the WBG identifies as facing us today. The WBG cannot responsibly scale up its operations or financing until it remediates the harm that it has caused and takes concrete action to put in place effective mechanisms to ensure any future harm will be remedied.

**D. The institutional culture of “deals over development” is a significant obstacle to effective, accountable development finance.**

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<sup>29</sup> See Open Letter to World Bank Group Executive Board Members: Legal issues concerning the IFC/MIGA draft Approach to Remedy *available at* <https://static1.squarespace.com/static/5ab12ad9f8370ae1c0008379/t/648866cbf063c7672303e8a5/1686660811595/Letter+-+revised+June+5+with+signatories.pdf>. See also Angelina Fisher and Gráinne de Búrca, *Challenging the World Bank Group’s Stance on Remediating Harm*, DEVEX, (June 15, 2023) <https://www.devex.com/news/opinion-challenging-the-world-bank-group-s-stance-on-remediating-harm-105724/amp>

<sup>30</sup> OHCHR, IFC/MIGA draft Approach to Remedial Action: Comments and recommendations of the UN Human Rights Office (2023).

<sup>31</sup> CAO, IFC/MIGA Approach to Remedial Action: CAO Comments on Draft for Public Consultation (2023).

<sup>32</sup> Public Consultation on Proposed IFC/MIGA Approach to Remedial Action and Draft IFC Responsible Exit Principles: Development Finance Institutions (DFIs) consultation session (Mar. 7, 2023).

<sup>33</sup> See, e.g. Joint Comment on IFC and MIGA’s proposed Approach to Remedial Action <https://www.ciel.org/wp-content/uploads/2023/02/CSO-Comment-on-IFC-and-MIGAs-proposed-Approach-to-Remedial-Action-April-2023.pdf>; Comments by Indian groups on the proposed IFC/MIGA Approach to Remedial Action <https://www.cenfa.org/wp-content/uploads/2023/04/Remedy-Framework-Comments-from-Indian-CSOs.pdf>; Comentarios a las propuestas de ‘Enfoque relativo a Medidas Correctivas’ y ‘Enfoque sobre la Salida Responsable’ de la Corporación Financiera Internacional y el Organismo Multilateral de Garantía de Inversiones <https://www.ciel.org/wp-content/uploads/2023/02/Comentarios-a-propuestas-de-Enfoque-relativo-a-Medidas-Correctivas-y-Salida-Responsable-de-CFI-y-OMGI-Abril-2023.pdf>; Inclusive Development International: Comments on IFC/MIGA’s proposed Approach to Remedial Action <https://www.inclusivedevelopment.net/wp-content/uploads/2023/04/IDI-Submission-on-IFC-MIGA-Approach-to-Remedial-Action.pdf>; EarthRights Remedial Action Submission; Submission to the International Finance Corporation/Multilateral Investment Guarantee Agency (IFC/MIGA) Consultation on the proposed “Approach to Remedial Action” <https://shiftproject.org/resource/submission-to-ifc-miga/>; Submission to consultation on the proposed IFC/MIGA Approach to Remedial Action and Responsible Exit <https://www.humanrights.dk/publications/submission-consultation-proposed-ifcmiga-approach-remedial-action-responsible-exit>.

<sup>34</sup> Public Consultation on Proposed IFC/MIGA Approach to Remedial Action and Draft IFC Responsible Exit Principles: Clients’ consultation session (Apr. 5, 2023).

The internal incentive structure and institutional culture at the WBG prioritize getting money out the door over positive development results and preventing harm. This compounds the aforementioned accountability problems and makes it all the more disastrous to scale up finance to private actors without concrete reforms to enhance accountability.

The WBG, and the IFC in particular, have repeatedly been criticized for an institutional culture that values “deals over development.”<sup>35</sup> In noting IFC and MIGA hostility to evaluating development impact, the IEG has found that their staff instead measure success “primarily through monetary returns and financial sustainability.”<sup>36</sup> The IEG has emphasized it is “essential to IFC and MIGA’s development mandates” that this “culture ... be changed.”<sup>37</sup> The External Review team that analyzed IFC/MIGA accountability similarly found a need for “major cultural change in IFC” away “from an investment banking culture.”<sup>38</sup> And in its 2023 Remedy Gap report, the CAO likewise highlighted “the need for a culture shift at IFC and MIGA toward staff not only valuing the client relationship but also embracing their role to protect the interests and wellbeing of impacted communities and the environment.”<sup>39</sup>

This institutional culture and the incentive structures that perpetuate it come at the expense of the poorest and most vulnerable – the very people the institution is meant to be helping. This problem is an existential threat to the institution’s legitimacy, effectiveness, and continued relevance. By further prioritizing more money out the door and faster, rather than actual positive development impact, the Evolution Roadmap risks further exacerbating the problem.

#### **IV. A substantial overhaul and strengthening of the WBG’s Accountability Framework is a necessary prerequisite to any scaling up of WBG activity.**

As the above helps to demonstrate, the existing accountability framework at the WBG is insufficient for the current scale of World Bank activity. It is therefore imperative that the WBG take concrete action to evolve, expand, and strengthen its accountability framework before it moves to dramatically scale up private-sector lending. This necessarily includes reforms to internal incentive structures and institutional culture, enhanced transparency, more robust safeguards and standards, better due

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<sup>35</sup> See, e.g. Charles Kenny, Vijaya Ramachandran and Scott Morris, Center for Global Development, *An Agenda for Makhtar Diop at the IFC*, (Feb 18, 2021), <https://www.cgdev.org/blog/agenda-makhtar-diop-ifc>; CAO Audit of Investment in Corporacion Dinant S.A. de C.V., Honduras (Dec. 20, 2013) at 10 (“accountability for results defined primarily in financial terms may incentivize staff to overlook, fail to articulate, or even conceal potential environmental, social and conflict related risks. The result, however, as seen in this audit is that the institution may underestimate these categories of risk.”); *id.* at 57 (“investment staff are minimally accountable for either the E&S performance of their projects or the quality of their relationships with E&S staff.”); *id.* at 58 (“the development of an organizational structure and culture in which E&S concerns are appropriately voiced at key decision points requires ongoing attention”).

<sup>36</sup> Independent Evaluation Group, Annual Report 2022 at 94, 14.

<sup>37</sup> *Id.* See also, e.g. IEG, International Finance Corporation Additionality in Middle-Income Countries, 2023 at 59 (“The majority of staff interviewed raised reservations regarding the alignment of staff incentives with additionality. One issue is the lack of explicit recognition. Although anticipating additionality is mandatory, there is neither a reward nor a penalty for realizing additionality because IFC does not track realization. However, there are reportedly strong incentives to deliver projects and volume”).

<sup>38</sup> External Review Report ¶ 23. See also *id.* ¶ 25

<sup>39</sup> CAO, Remedy Gap at 15.

diligence, stronger monitoring and supervision, robust enforcement, and proactive meaningful remedial action whenever projects and investments result in harm.

**A. The WBG must strengthen its safeguards and environmental and social standards and reform its incentive structure to center compliance with such standards and on-the-ground impact.**

The WBG must strengthen safeguards and environmental and social standards in order to keep pace with current international standards and best practices – but it should go further and reclaim its role as a leader in the field. The WBG must apply these standards to all borrowers (including financial intermediaries), projects, and investments – regardless of the nature of the financing instrument. These strengthened standards must be paired with concrete reforms to internal incentive structures to ensure compliance with and enforcement of such standards, and to incentivize achieving positive development impacts while minimizing harm above loan volume and financial returns.

**B. The WBG must recognize that remedy is essential to development and commit to getting remedy right in all cases.**

Ensuring greater accountability of private sector actors and WBG institutions and achieving positive development outcomes requires a serious commitment to ensuring that where projects cause harm, that harm will be remedied. Too often remedy is viewed through the lens of admitting fault or somehow generating legal risk,<sup>40</sup> and thus to be avoided. But this simply imposes the negative externalities of development on the poorest, most vulnerable, and least responsible. For development institutions, “remedy is the functional corollary of the ‘do no harm’ mandate[ ],” “going to the heart of their mission[ ],” and “[t]he requirement to ‘do no harm’ does not stop at prevention, but also logically requires remedying any harms done.”<sup>41</sup> The WBG should use this opportunity to recognize the transformative change it could generate by committing to getting remedy right.

The WBG should embrace a serious commitment to ending the remedy gap as a central policy objective and critical component of the WBG’s affirmative approach to development. The WBG has a monumental opportunity to chart a new path that will re-establish its leadership role and enable it to produce substantially greater positive development outcomes. A strong commitment to remedying harm not only ensures that no one is left worse off, but it would also incentivize WBG entities, co-financiers, and borrowers to adopt more effective due diligence measures and responsible conduct prior to deciding to invest and throughout the project lifecycle. This would improve development outcomes and minimize risk for all actors involved, while also strengthening WBG’s competitive advantage over other financiers.

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<sup>40</sup> We note that the IFC/MIGA Draft Approach reflects a completely backward understanding of legal risk. We address at length in our submission to that process why IFC/MIGA has learned the wrong lessons from the *Jam* litigation and why its position on remedy in fact poses substantially great risk of legal liability for the institution. It is the proactive commitment to and provision of remedy that best ensures proper due diligence, prevention and mitigation of harm, and decreased litigation risk. See EarthRights Remedial Action Submission at 15-22.

<sup>41</sup> OHCHR, *Remedy in Development Finance: Guidance and Practice* 14 (2022), <https://www.ohchr.org/sites/default/files/2022-03/Remedy-in-Development.pdf>.

Getting remedy right requires remedying past harm and putting in place concrete measures to close the remedy gap for all future projects. This should include establishing funding mechanisms to fund remedial action directly, in addition to resources committed to borrower capacity building and the provision of technical expertise throughout the project lifecycle in order to prevent and remedy harm. As was recommended by the External Review Team in assessing IFC/MIGA, there should be mechanisms in place to secure borrower funding for remedy as well as to make WBG funding available.<sup>42</sup> This should include building in contingent liability funding for all projects that can be easily tapped into in the event of harm and a fund provision and disbursement process that minimizes, or removes, WBG staff/management discretion to decline to access such funds.

Committing to closing the remedy gap has the ability to make the WBG entities more effective and more powerful engines of transformative change. Showing donor countries and their Boards the WBG is willing and able to address its current failures with respect to remedy will instill confidence that it is actually ready to take on the challenges laid out in the Evolution Roadmap and capable of properly utilizing a massive capital increase in a manner that leaves communities better off.

### **C. The WBG’s Independent Accountability Mechanisms (IAMs) must be strengthened.**

The WBG entities cannot evolve in the scale or nature of their operations without their IAMs also being allowed to evolve to meet existing and new accountability needs. The mechanisms intended to hold WBG entities accountable, such as the CAO for IFC and MIGA, do not currently have the authority, independence, or resources necessary to effectively carry out their work and ensure compliance with institutional policies or ensure that those who are harmed by noncompliance receive any measure of remedy.<sup>43</sup> This is by design and must be changed.

As the Tata Mundra project, discussed above, shows, even where an IAM finds the institution failed in numerous respects and calls for remedial action, this call rarely results in any meaningful impact on the ground. Despite the CAO’s repeated calls for IFC to take remedial action in that case, it never has. No one within IFC appears to have faced any repercussions from disregarding the CAO in this case – nor any other. This is not accountability.

Analysis by the CAO shows this result is not uncommon; the majority of CAO compliance investigations into IFC/MIGA projects over the past decade “have not led to actual improvements” for project-affected people;<sup>44</sup> it notes that 78% of completed and closed CAO investigations that made project-level findings did not lead to satisfactory remedial actions.<sup>45</sup> The External Review Report likewise concluded that “[t]he majority of CAO findings of non-compliance and related harm are not remedied,”<sup>46</sup> emphasizing the “highly unsatisfactory response by IFC/MIGA in implementing corrective actions.”<sup>47</sup> It found that IFC brought a project into compliance in only *two* cases.<sup>48</sup>

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<sup>42</sup> External Review Report ¶¶ 333, 339

<sup>43</sup> We focus on the CAO because it is the institution we know best, but many of the same problems exist with respect to the Inspection Panel and similar reforms are warranted there as well.

<sup>44</sup> CAO Remedy Gap Report at 9.

<sup>45</sup> *Id.*

<sup>46</sup> External Review Report ¶ 190.

<sup>47</sup> *Id.* at ¶ 191.

<sup>48</sup> *Id.* at ¶ 111. To the extent that CAO dispute resolution or compliance processes lead to any commitments at all, these are made by the borrower only, not IFC/MIGA, and rarely carried out. Megan Pearson, Data Doesn’t Support IFC/MIGA’s Remedy Proposal, Accountability Console (Mar. 6, 2023)

This poor performance record is in large part due to CAO's lack of authority to actually compel IFC to take any action of any kind – it cannot make IFC/MIGA take corrective action, provide remedy, or even comply with its own policies. The CAO is only able to make findings and recommendations, which IFC regularly ignores.<sup>49</sup> Other development finance institutions are far ahead of the WBG in authorizing and empowering their grievance mechanisms to require, provide, or monitor remedial action.<sup>50</sup> It is vital that the power and authority of the IAMs be strengthened to ensure they can make findings of both borrower and WBG non-compliance and actually compel implementation of remedial action, including requiring provision of compensation or other remedy by the relevant institution where warranted.

Likewise, greater independence is necessary to ensure the CAO is able to carry out its functions, particularly in light of recent evidence of IFC Management acting to impede CAO investigations. Most troubling, during a recent CAO investigation into child sexual abuse, “IFC and the client entered into a wide-ranging confidentiality agreement that purports to cover CAO’s work.”<sup>51</sup> The agreement, “reached without CAO’s agreement or participation ... includes commitments from IFC that CAO will not disclose information that the client asserts to be confidential.”<sup>52</sup> That investigative report has yet to be released, raising serious questions regarding the extent to which IFC is undermining CAO’s work. But this interference has already substantially undermined IFC’s own credibility and is a serious threat to CAO’s ability to be an impartial, independent, and trusted actor. It certainly gives little reason to expect IFC management to act in good faith in any future investigations and demands reform to secure the independence of WBG IAMs.

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<https://accountabilityconsole.com/newsletter/articles/data-doesnt-support-ifcmigas-remedy-proposal/>.

Only 15% of publicly disclosed commitments from compliance reviews and 37% of commitments from dispute resolution agreements were actually carried out, according to CAO reports, and less than half of those were actually aimed at addressing the needs of project-affected communities. *Id.*

<sup>49</sup> *See, e.g.* External Review Report ¶ 12 (“IFC has frequently disagreed with CAO investigation findings; when it disagrees, IFC has not pursued remedial actions to correct CAO non-compliance findings.”). *See also* EarthRights Remedial Action Submission at 24-27 (addressing recent reforms to CAO and why they are insufficient).

<sup>50</sup> *See, e.g.* ANZ, ANZ Human Rights Grievance Mechanism Framework § 5.4 (2021) (“The Mechanism will... Consider and provide any ANZ remedy in consultation with the Affected People”); African Development Bank ¶¶ 67(iii) (power to recommend remedy, “[t]hat redress be provided to those harmed” including financial compensation); *id.* at ¶ 69 (if it “finds the Bank to be non-compliant, Management *shall* include in the MAP clear time-bound actions for... achieving *remedy* for affected populations) (emphasis added); Belgian Investment Company for Developing Countries, BIO’s Grievance Mechanism Policy § 7 (March 2022) (“In situations where BIO has caused the harm, for instance by failing to comply with its own policies and procedures such as the environmental and social due diligence or monitoring, BIO’s Grievance Mechanism shall take the necessary steps...to ensure the provision of remedy.” And, “where BIO contributed (or may contribute) to an adverse impact... BIO shall use its leverage on the portfolio company to mitigate any remaining impact to the greatest extent possible” and “[i]f necessary, BIO may also decide to cease (or prevent) its contribution to the harm, for instance by suspending or terminating the business relationship.”).

<sup>51</sup> CAO, Compliance Appraisal: Summary of Results: Bridge International Academies-04, at 7 (Dec. 23, 2020).

<sup>52</sup> *Id.* at 7-8.

Existing constraints on IAM authority in independence greatly restrict their ability to play a meaningful accountability function. Any scaling up of WBG lending must follow – not precede - meaningful reforms to WBG IAMs to ensure they can keep pace with current and new investments.

#### **D. The WBG must enhance transparency, particularly with respect to private sector investment.**

Transparency is key to ensuring positive development outcomes, accountability, and protection of human rights, and it is essential to public trust. Yet, the WBG’s current policies and practices fail to provide basic transparency to stakeholders. Indeed, a number of recent events and controversies, such as the World Bank’s Doing Business Report scandal,<sup>53</sup> IFC’s use of a nondisclosure agreement to cover investigations into the Bridge Academies child sex abuse scandal,<sup>54</sup> as well as scrutiny of major discrepancies in WBG claimed spending on the climate crisis,<sup>55</sup> among other things, has contributed to the broader accountability crisis across WBG institutions and made transparency reform all the more urgent.

Current WBG transparency failures – IFC’s in particular<sup>56</sup> – are all the more concerning in light of the Evolution Roadmap’s proposed increased reliance on private sector investment and blended finance arrangements (which notoriously lack transparency and consequently inhibit accountability).<sup>57</sup> We highlight three critical areas in particular, although broader transparency is needed beyond these.

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<sup>53</sup> World Bank, *World Bank Group to Discontinue Doing Business Report* (Sept. 16, 2021) (noting that internal reports raised ethical matters, including the conduct of WBG officials and staff). *See also e.g.* Philip Wang, *Investigation finds World Bank leaders pushed staffers to boost rankings for China and Saudi Arabia in high-profile reports*, CNN (Sept. 17, 2021) <https://www.cnn.com/2021/09/17/business/world-bank-investigation/index.html#:~:text=The%20World%20Bank%20says%20it%20will%20stop%20publishing,the%20law%20firm%20WilmerHale%20to%20conduct%20the%20probe.>; Andrea Shalal and David Lawder, *Analysis: World Bank, IMF face long-term damage after data rigging scandal*, Reuters, (Oct. 4, 2021) <https://www.reuters.com/business/world-bank-imf-face-long-term-damage-after-data-rigging-scandal-2021-10-04/> (“The damage from the data-rigging scandal that forced the World Bank to discontinue its ‘Doing Business’ investment climate rankings may be difficult to repair and has raised questions over whether the institutions’ influential research is subject to shareholder influence.”)

<sup>54</sup> *See supra* Section IV.C. *See also* Neha Wadekar & Ryan Grim, *A is for Abuse: Two Harvard Grads Saw Big Profits in African Education. Children Paid the Price*. THE INTERCEPT (Mar. 23, 2023).

<sup>55</sup> Fiona Harvey, *World Bank criticised over climate crisis spending*, The Guardian (Oct. 3 2022) <https://www.theguardian.com/environment/2022/oct/03/world-bank-criticised-over-climate-crisis-spending> (“Of \$17.2bn that the World Bank reported it spent on climate finance in 2020, up to \$7bn cannot be independently verified, according to research by Oxfam”); Oxfam, *Unaccountable Accounting: The World Bank’s Unreliable Climate Finance Reporting* (Oct. 3, 2022) *available at* <https://oxfam.app.box.com/s/2fsz9o1e30k4x88midql81nczrm9i4v4>

<sup>56</sup> For example, in the Aid Transparency Index, IFC’s transparency practices consistently score far worse than IDA’s – in part due to overstated commercial confidential concerns – highlighting the acute need for the WBG to improve transparency practices for private sector investments. *See, e.g.* Publish What You Fund, *Aid Transparency Index 2022*, *available at* [https://www.publishwhatyoufund.org/app/uploads/dlm\\_uploads/2022/06/Aid-Transparency-Index-2022.pdf](https://www.publishwhatyoufund.org/app/uploads/dlm_uploads/2022/06/Aid-Transparency-Index-2022.pdf).

<sup>57</sup> Oxfam, *Blended Finance 44*, [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/rr-blended-finance-130217-en.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/rr-blended-finance-130217-en.pdf). *See also* Samantha Attridge and Lars Engen, ODI, *Blended finance in the poorest countries: The need for a better approach* 22 (2019), <https://cdn.odi.org/media/documents/12666.pdf>.

First, as discussed above, it is essential that the WBG conduct effective evaluations of project impacts and that it make project-level impact data available. All WBG entities, including IFC, must publish project-level data on ex ante risk assessment and anticipated development impact, as well as on anticipated and actual development indicators and outcomes throughout the project/investment lifecycle. This must include publication of project-level private capital mobilization data for IFC investments,<sup>58</sup> including the sources, amounts, and nature of co-financed funds.<sup>59</sup> Data transparency on anticipated and actual project impacts and capital mobilization substantially enhances accountability, enables institutional learning within the WBG, as well as external independent evaluation of the impact of WBG investments, and ensures the WBG is engaging in effective development finance.

Second, all loan agreements and similar contracts must be made public. There is no credible basis on which the WBG should be making massive loans for large-scale development projects with the potential to impact the lives of thousands without making the terms of those contracts public. Indeed, one of the only IFC loan agreements to be made public was the Tata Mundra agreement, which IFC only turned over in the course of the *Jam v. IFC* litigation. The public – and in particular those most likely to be impacted by the projects IFC finances – have little meaningful insight into the terms and conditions on which projects proceed and what if anything IFC has required borrowers to do to ensure such projects will not destroy their livelihoods and threaten their lives. While the reason given is typically related to alleged business confidentiality considerations, these interests do not outweigh other stakeholders’ need for transparency, especially in light of the necessity of transparency to the pursuit of accountability. Commercial confidentiality claims are overstated and in any event could be handled through more targeted means where actually warranted, such as limited redactions, while making provisions around safeguards, and environmental and social conditions, public knowledge. As discussed above, IFC has made it clear it will not hold borrowers to account, despite having the power to do so. Greater oversight by other stakeholders is plainly necessary to fill that gap.

Moreover, IFC should at least be meeting international standards and best practices, and ideally setting higher standards for development finance. Contract transparency is now an established norm across

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<sup>58</sup> In the 2022 Aid Transparency Index, “World Bank-IFC performed particularly poorly for the finance and budgets component, dropping nearly three points from 2020. It only published data for one out of the seven indicators to the IATI Registry. For budget alignment, the capital spend was not present in the IATI data. World Bank-IFC made its total organisation budget and project budget available elsewhere but did not disclose disaggregated budgets in any format.” In fact, in preparing the index, PWYF “could not find project budget documents nor disbursements and expenditures data” for WBG-IFC projects. Publish What You Fund, *World Bank-International Finance Corporation* (2022), available at:

<https://www.publishwhatyoufund.org/the-index/2022/world-bank-international-financial-corporation-ifc/>.

<sup>59</sup> While MDBs and donors argue that commercial confidentiality restrictions prevent them from publishing disaggregated transactional data, when donor funds are being used to subsidize private finance there must be transparency and accountability. OECD, *Scaling Up Blended Finance in Developing Countries* (2022) (noting that reliable and robust disaggregated data is needed to assess the results of blended finance, but that such data – as well as information on financial terms – is lacking due to confidentiality concerns). Not only are such concerns overstated, but other development finance institutions have found ways to fulfill transparency obligations in the face of such concerns. There is no reason IFC cannot do the same. Publish What You Fund, *An impactful and accountable World Bank: A proposal to reform the transparency of the World Bank and IFC in 2023* (July 2023), available at

[https://www.publishwhatyoufund.org/app/uploads/dlm\\_uploads/2023/07/Publish-What-You-Funds-proposal-for-World-Bank-transparency-reforms.pdf](https://www.publishwhatyoufund.org/app/uploads/dlm_uploads/2023/07/Publish-What-You-Funds-proposal-for-World-Bank-transparency-reforms.pdf).



many sectors, including the extractive sector where IFC has itself been a major supporter of such transparency.<sup>60</sup> There is no reason IFC should be holding itself to a lesser standard; if anything, IFC's development mandate requires far greater transparency.

Third, greater transparency is needed as to borrower compliance with environmental and social conditions throughout the project lifecycle. Despite contracts like the Tata Mundra loan agreement requiring annual and quarterly reporting on E&S compliance and impacts from the borrower to IFC, IFC does not make this information available publicly. This sets IFC behind its peers, such as the ADB, which make all such reporting available.<sup>61</sup> Because IFC has a proven track record of ignoring adverse environmental and social impacts and refusing to use the leverage available to it to require compliance with IFC's own standards or domestic law, any measure of accountability for non-compliance requires that this information be made available to IAMs, project-affected communities, and other stakeholders.

Existing WBG practices make it difficult for stakeholders, including project-affected communities, host governments, and donor governments, to assess the development impact of WBG projects and investments and to hold relevant actors accountable to minimize, mitigate, and remedy harm. Indeed, too often those most affected by WBG investments do not even know about it until years down the road.<sup>62</sup> Improvements to transparency across WBG entities – and across all projects and financing instruments – is essential for institutional learning, improving development effectiveness, accurate risk assessment, and maintaining donor and public trust in the use of public funds.

## V. Conclusion and Recommendations

The World Bank Group must evolve into an institution that prioritizes transparency, accountability, and positive development outcomes. We urge the WBG to use this process as an opportunity to course correct, to engage in transformative change and in the process, restore its legitimacy and credibility as a development institution. In particular, the WBG must:

1. Impose stricter and more comprehensive environmental and social standards that meet or surpass current international best practice and include human rights protections, including the right to remedy.
2. Expressly acknowledge the WBG's remedial responsibilities and make filling the remedy gap in all projects a central development policy. Commit to ensuring there are funding mechanisms in place for remedy for all projects and investments in the event of harm.

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<sup>60</sup> See, e.g. Extractive Industries Transparency Initiative, Policy Brief: The Case for Contract Transparency at 7 (2021) available at [https://api.eiti.org/sites/default/files/attachments/eiti\\_policy\\_brief\\_contract\\_transparency.pdf](https://api.eiti.org/sites/default/files/attachments/eiti_policy_brief_contract_transparency.pdf) (noting extractive contract transparency has become a “global norm” and citing strong support from institutions like the IFC)

<sup>61</sup> Compare, e.g. ADB's quarterly reports on the Tata Mundra Project, available at <https://www.adb.org/projects/41946-014/main>, with IFC's lack of published E&S compliance reports for the Tata Mundra Project, available at <https://disclosures.ifc.org/project-detail/ESRS/25797/tata-ultra-mega>.

<sup>62</sup> On average, CAO complaints are lodged 3-4 years after an IFC/MIGA project. This is in part due to lack of information about the existence of CAO. CAO Remedy Gap Report at 20.

3. Remedy past cases of harm. At a minimum, all cases where WBG IAMs found non-compliance must be addressed. This must include a commitment to provide remedy, including compensation, to the communities harmed by the Tata Mundra project.
4. Disclose existing contractual terms and explain existing practice. Commit to full contract transparency going forward.
5. Write and fully publish a model contract(s) for all future projects and investments with meaningful, innovative contractual terms to enhance WBG leverage to ensure social and environmental compliance.
6. Expressly commit to using all available leverage to enforce social and environmental conditions and remedial obligations and describe in detail what this will look like so prospective borrowers, communities, and the public are fully aware of this commitment and what is expected.
7. Require the evaluation of development outcomes for every WBG project and investment and overhaul the way development outcomes, and more generally “success” is evaluated to require assessment of the impact on the local community and the environment. This new approach must include an evaluation of initial assumptions and justifications against actual outcomes and include a detailed assessment of environmental and social impacts, including negative impacts, to assess the net development outcomes. Publish project-level or transaction-level data for all projects and investments on anticipated and actual development outcomes, as well as anticipated and actual adverse impacts.
8. Substantially overhaul internal structures and incentives, with particular emphasis on how staff and management performance is evaluated and reshape other incentive structures necessary to shift the culture away from emphasizing money out the door, and instead toward positive development outcomes and the prevention of harm to third parties and the environment.
9. Strengthen IAMs, including by giving them greater access to information, more independence and authority, more resources, and the power to compel action by WBG entities, including remedial action, and especially compensation.
10. Substantially enhance information disclosure and access to host communities. For every project, provide, and distribute locally, materials in the local language regarding potential WBG involvement before loans are committed. Include information on IAMs as part of this.
11. Substantially enhance commitment to enabling and supporting remedy to clients, but expand this to make resources available to communities to support them in accessing mechanisms for redress and in balancing the asymmetry of power, resources, and information.

We would be happy to discuss any of the above further.

Respectfully,

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