

Joint Submission on Responsible Exit

On

[Consultation on the proposed IFC/MIGA Approach to Remedial Action](#)

Public Consultation: February 21 – April 20, 2023

Introduction

In June 2020, a committee of external experts commissioned by the World Bank’s Board of Directors finalized its review of the IFC/MIGA accountability system. The External Review report included recommendations to strengthen these two institutions’ accountability and facilitate the remediation of harms that might be caused by, or directly linked to, their investments, loans and guarantees. Since an institution's withdrawal from an investment or loan affects its ability to provide remedy to the harms caused by this investment, IFC developed an Approach to Responsible Exit to accompany its Approach to Remedy.

The two long awaited Approaches were released in February 2023, signaling the beginning of the consultation process.

While the recommendations of the External Review were anchored on the underlying principle that when development banks contribute to harm they should also contribute to remedy—implying that development banks that contribute to harm should not exit a project before remedy has been provided—the two Approaches do not identify any remedial responsibilities for IFC/MIGA and offer no comprehensive plan for collaboratively delivering or otherwise assuring remedy.

During the February 2023 launch of the Approaches, IFC presented an outline of its Responsible Exit approach in PowerPoint form but indicated that a formal report on that Approach had not yet been fully developed. The institution has also said that it will not release the draft of the full Approach for consultation. Furthermore, IFC indicated that it piloted its so-called Responsible Exit Principles, but this pilot was not disclosed. In essence, IFC is asking affected populations that have experienced the harms of irresponsible exit to trust that IFC has established a new and adequate approach to delivering remedy and implementing preventive measures against harms associated with Exit, without demonstrating that IFC has the capacity, will, governance, or expertise to carry out the relevant work. This Approach neglects the very communities that Responsible Exit is supposed to protect.

Developing a responsible exit framework is completely and clearly justified. In their procedures and decisions, development banks are guided by various principles, including “**do no harm.**” The IFC’s Policy on Environmental and Social Sustainability states: “Central to IFC’s development mission are its efforts to carry out investment and advisory activities with the intent to ‘do no harm’ to people and the

environment, to enhance the sustainability of private sector operations and the markets they work in, and to achieve positive development outcomes.”¹ The implementation of a comprehensive Responsible Exit policy is justified and validated by this principle, which means that those affected by development bank projects should, at the very least, not be left worse off following the Bank’s involvement and Exit.

As a multilateral development bank (MDB), IFC is responsible for impacts along the full life cycle of the projects it finances. Two obligations flow from this responsibility: First, IFC’s obligation of maintaining a standard of due diligence, meaning respect for its Policy on Environmental and Social Sustainability and Performance Standards, in the decision to invest in and supervise its projects; Second, IFC’s obligation for its clients to not violate the human rights of project-impacted communities. If IFC or any development bank fails in either of these duties, and thus contributes to any community harm during any phase of a project, the bank must remedy that harm before exiting the project.

In its proposed Approach to Responsible Exit, IFC cited the following as reasons that trigger an active Exit: reputational risks, IFC’s self-interest, and non-compliance with E&S requirements. At least two of these triggers (we do not purport to know how IFC understands its self-interest) are exacerbated by failures to remediate harms.

Reputational risk: IFC’s reputation has been repeatedly damaged by hasty withdrawals from projects, perpetuating additional harms after its Exit (see examples below). When harm is done and IFC divests before remedy is provided, IFC doesn’t save its reputation but rather puts it more at risk by leaving active issues unaddressed, unmitigated, and not assuming its responsibility to provide remedy to the harm it contributed to. IFC should not exit a project to wash its hands from assuming its responsibility to remedy the harms its investment contributed to.

Non-compliance with E&S requirements: IFC has a responsibility to ensure that its clients have the capacity to comply with the E&S requirements. Unwillingness to comply can be avoided if the IFC carries out proper due diligence on the client’s capacity and ability to implement the project properly, and reinforces its contractual leverage. As a leading development institution, IFC should respond to environmental and social (E&S) violations the same way it responds to financial violations, namely, through debarment. The threat of debarment would affect clients’ reputations and borrowing ability, driving behavioral change. The fact that only financial violations, and not E&S violations, carry this risk sends a dangerous and controversial message about IFC’s priorities and commitment to development, framing IFC as a commercial bank rather than a development institution. The section below on due diligence before divestment includes contractual obligations that reinforces IFC’s leverage to ensure compliance with E&S requirements.

Fortunately, IFC still has the chance to change its proposal and provide a meaningful one that would be worthy of public consultation and direct dialogue between IFC management and interested members of the public. We await the disclosure of a new draft, and urge the IFC to, at a minimum, include the following concepts as core principles of its Approach to Responsible Exit:

¹ IFC, International Finance Corporation’s Policy on Environmental and Social Sustainability, (2012), para. 9.

1- IFC's Exit should not undermine ongoing CAO processes.

When IFC funds projects that cause harm, IFC becomes a contributor to those harms. In such cases, IFC should contribute to remedy. This contribution should not be limited to providing technical support to the client in the remedy process, but should also include IFC's responsibility to plan and execute remedy, including budgeting the funds necessary to fully remedy the harm. The leverage IFC has to drive remedial action derives from its financial stake in a project. Further, IFC is often the party best suited to address project related harm derived from its contractual relationship with its clients, as it often works under conditions of weak governance and contracts with private companies primarily motivated by profit, not poverty reduction. Consequently, when IFC exits an investment, it loses this leverage. Thus, remedy must be a prerequisite to Exit in order for Exit to be 'responsible.'

IFC should not exit a project associated with an open CAO case past eligibility and/or when the project's E&S performance is unsatisfactory, unless:

- a) The affected communities are clearly asking for the IFC to exit;
- b) The complaint is about fear of potential harm that has not yet materialized;
- c) The implementation of the project has not begun yet.

In which case, IFC's Exit should not affect the continuity, outcomes, or monitoring of the CAO process. On the contrary, the IFC should commit to participating in all stages of the complaint process to its conclusion, regardless of IFC's withdrawal. To that end there should be proper coordination between the IFC and the CAO to make the necessary adjustments to applicable recommendations. Ultimately, if harm to communities has occurred, then **IFC should provide remedy in a satisfactory manner before exiting.**

2- Proper due diligence before divestment should ensure all E&S commitments are met and verified with the communities.

To prevent and remedy any potential harms before exit, all programs must plan for responsible exit from the earliest stages in a collaborative process with the impacted communities. Exit is a phase of any project that should be considered from the beginning of a project, including during the viability and feasibility assessments. The responsibility for Exit should not only be assumed by the clients, but also by the IFC given its role as financiers and implicit endorsers that make the projects possible. Regardless of its reason for Exit, IFC should always apply the Responsible Exit principles. The level of IFC's responsibility for Exit does not depend on its role in the harm caused by a project, but rather what is required to comply with its obligations and policies during the implementation and operation phases of the project.

The contractual binding agreement with the client should include:

1. IFC will assess the client's compliance with all the E&S commitments before exiting — whether the Exit is initiated by the IFC or the client.

2. The pre-divestment assessment would be shared with the communities and published.
3. If the pre-divestment assessment reveals non-compliance with the E&S requirements, IFC should not exit before requirements are met and any harm caused by non-compliance is remedied properly.
4. Clear and concrete consequences in case the client initiates the Exit and rejects the IFC proposal to stay engaged in the investment until the non-compliance issues revealed in the pre-divestment assessment are fully and satisfactorily addressed.
5. A plan to uphold compliance with the E&S requirements would be developed, in consultation with the impacted community, before IFC's exit.

3-Meaningful consultation with affected communities must be an integral part of IFC's Exit from projects

Exit from an investment, active or passive, should be **announced in advance** and planned for **with participation of impacted populations**.

The concept of Responsible Exit begs the question: responsible to whom? Presumably, IFC recognizes that its responsibility is to project-affected people when it seeks to actively Exit a project. As such, affected people must be tasked to evaluate whether IFC has undertaken its withdrawal in a way that will not drive further harm. A feature of IFC's irresponsible exits is the failure to inform affected communities of proposed withdrawal, leaving them powerless to articulate their needs for remedy. IFC's Exit cannot be labeled "responsible" if it withdraws without engaging with affected people about the timeline for withdrawal, confirming the adequacy of the project's compliance with the E&S requirements, and creating a plan to uphold the project's compliance with these requirements.

For an Exit to be "responsible" the following steps should be taken:

1. IFC should document and publish its analysis and rationale for the proposed active Exit, applying each of the Responsible Exit principles.
2. Clients who initiate the Exit should be contractually bound to announce their Exit plan early and IFC should also disclose this plan in a timely manner.
3. As detailed in the previous section, IFC should carry out proper pre-divestment due diligence, regardless of the party initiating the Exit and conduct meaningful consultation with affected communities, including any who have initiated complaints processes.
4. The client prepares and discloses the plan to uphold the E&S requirements in consultation with the affected communities, including any who have initiated complaints processes.
5. Consultations should be accessible for and inclusive of the most marginalized groups, such as women, indigenous peoples, ethnic minorities, and persons with disabilities.
6. Civil society supporters should also be consulted as stakeholders.
7. Consultations for the pre-divestment assessment and possible plans and scenarios for exiting projects should start as early as possible with communities, and at least 12 months prior to divestment.
8. Upon making the decision to Exit the project, IFC should issue a divestment or Exit note to announce this event and explain the main commitments from client to address E&S issues

following the divestment. This should include, for example, ongoing or anticipated impacts that the client should address and monitor. If there is a corrective action plan prepared by the client in coordination with IFC to address outstanding noncompliance issues, the divestment or Exit note should also disclose that Action Plan and how and when these steps will be implemented.

9. Publish the information about the Exit on IFC's website and update relevant project pages to reflect the accurate project status.
10. Ensure a grievance mechanism is well functioning at the project level and trusted by the impacted community.

4 - Prevention and management of reprisals should be a core concept of the Responsible Exit approach.

IFC should develop protocols to not put communities and workers at risk of retaliation due to its Exit from a project. Project-affected communities who lead advocacy efforts to stop a harmful project are exposed to higher risks of harassment and criminalization. The effective prevention and management of reprisals against community members must be a core component of Responsible Exit, since the reprisals are used to repress community demands for respect of IFC's policies and Performance Standards . **IFC must strengthen its capacity to prevent and address reprisals post-Exit, and should develop clear channels to receive and respond to reports of reprisals linked to its projects post-Exit.**

The undersigned civil society organizations would therefore request to be consulted on a proposal that meets the above criteria as expected from a leading development finance institution.

1. Arab Watch Coalition (AWC)
2. NGO Forum on ADB
3. Both ENDS
4. CEE Bankwatch Network
5. Inclusive Development International
6. Accountability Counsel
7. Center for International Environmental Law
8. Bank Information Center (BIC)
9. Urgewald
10. Oxfam
11. Just Ground
12. Recourse
13. Rivers without Boundaries Coalition
14. Oyu Tolgoi Watch
15. Green Advocates International (Liberia)
16. Alliance for Rural Democracy (Liberia)
17. Natural Resources Women Platform (Liberia)
18. Mano River Union Civil Society Natural Resources Rights and Governance Platform (West Africa)

19. Interamerican Association for Defense of the Environment (AIDA)
20. International Accountability Project (IAP)
21. Lumiere Synergie pour le Developpement
22. Public Interest Law Center (PILC)
23. Centre for Financial accountability
24. The Bretton Woods Project (BWP)
25. Peace Point Development Foundation - PPDF, Nigeria

Table 1. Examples of IFC projects where banks have exited without notice or remedial actions.

Project Name	Description / Location	Harms	Outcome (remedy, disclosure)	Terms of withdrawal (loan repayment, loan default, equity sale/default)
Canadian Solar	Solar manufacturing company	Documented ties to forced labor	None. Harms persist.	Unclear – Possible divestment
Camel Battery	Acid-Lead battery breaking facility, lead smelter, battery manufacturing in China	Health & environmental risks; Documented forced labor transfers	None. Harms persist.	Apparent loan forgiveness – free money to genocidaires
Chenguang Bio	Biotech firm converting agricultural inputs, China	Documented forced labor, forced eviction	None. Harms persist.	Apparent loan forgiveness – free money to genocidaires
Goldwind	Wind turbine manufacturer in China	Documented ties to XPCC	None	Unclear – possible divestment?
Titan Alex	Cement power plant in Egypt	Health and environmental risks; labor safety risks; illegal dismissal of workers; use of force and coercion tactics	None	Titan paid the loan and purchased IFC equity. Not clear if the exit was initiated by the IFC or the client.

		against communities and workers. ²		
Titan Beni Sueif	Cement power plant in Egypt	labor safety risks; illegal dismissal of workers.	None	Titan paid the loan and purchased IFC equity. Not clear if the exit was initiated by the IFC or the client.
Alto Maipo Hydroelectric Project	Run of the river hydropower project in Chile	Major environmental damage to Maipo watershed and aquifers risking water access and impacting health and livelihoods. Loss of social cohesion, culture and traditions. Cybersurveillance.	None, harms persist.	IFC exited in May 2018. IFC FI client Itau Corpbanca remains a project financier. And IFC has ongoing business relationships with AES Corp parent company.
Ituango Hydroelectric Project	Large scale hydroelectric project in Colombia	Forced resettlement, physical and economic displacement of hundreds of people. Violent conflict, criminalization, reprisals. Environmental damage to the Cauca River impacts health and livelihoods. Loss of culture and traditions.	None, harms persist.	IDBInvest exited the project after loan repayment by client in December 2021.

² IFC acknowledged that at the time the decision to invest was taken, it knew that the company did not have a proper legal license to operate a cement plant, that there were many court cases against the company related to its contested license and its labor practices.

Condor Gold, Plc	Gold exploration project, early equity investment in Nicaragua	Potential environmental impacts and damage to water sources, health and livelihoods.	Community was satisfied with IFC divestment, but was criminalized. Harassment and reprisals left leaders at risk.	IFC divested fully from the project in 2019.
New Liberty	Gold mine, processing facilities and related infrastructure	Physical and economic displacement without adequate compensation; impacts to community livelihoods; destruction of agricultural lands and threats to food security; health and safety concerns from water pollution, dynamite blasting, and tailings storage.	None. IFC quietly divested following a disastrous cyanide and arsenic spill. ³ Harms persist.	IFC divested its 17.42% direct equity investment in the project without any announcement or disclosure.

³ During the IFC board meeting that approved the initial investment in New Liberty, the US delegate formally raised “serious concerns” regarding the environmental and social risks posed by the project, urging the IFC to “work with the company to ensure that all appropriate funds are set aside for this [resettlement] plan.” This proved to be a valid concern, as the company reportedly ran out of funds before adequately resettling and compensating the community. The delegate also raised concerns about the inadequacy of the tailings storage facility, which ultimately ended up failing and polluting the surrounding area with cyanide. Based on limited publicly available information, we understand that IFC divested from the project shortly thereafter.