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on behalf of
Bank Information Center
The Carter Center
Center for International Environmental Law
Oxfam America
Revenue Watch Institute
World Wildlife Fund

Regarding the World Bank's Policy on Disclosure of Information

Before the
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Introduction

Thank you for the opportunity to address a number of important issues regarding access to information at the World Bank.¹ I am speaking today in my capacity as a Member of the Board of Directors of the Bank Information Center and present this testimony on behalf of the Bank Information Center, The Carter Center, Center for International Environmental Law, Oxfam America, Revenue Watch Institute, and World Wildlife Fund. I have served in prior capacities as a member of the World Bank's Inspection Panel and the Asian Development Bank's Compliance Review Panel. I received my Ph.D. from Tufts University and served with the U.S. Agency for International Development from 1986 to 1993.

In the context of development, public access to timely, relevant information is critical for a number of reasons. First, it respects democratic rights and norms that call for access to information held by public bodies.² Secondly, it strengthens development outcomes by enabling the informed participation of local stakeholders and the incorporation of local knowledge. Finally, it improves accountability by enabling third-party monitoring of development decision making and programs.

It is also important to note that international norms regarding transparency are advancing – changes that the Bank should consider as it revamps its information disclosure framework. Over 80 countries have now adopted access to information legislation, and the right to information is increasingly viewed as applicable to international organizations. For example, “[t]he right to access information applies to all intergovernmental organizations, including the United Nations, international financial institutions, regional development banks, and bilateral and multilateral bodies. These public institutions should lead by example, and support others efforts to build a culture of transparency.”³

As the Bank itself has noted:

“[T]imely dissemination of information to local groups affected by the projects and programs supported by the Bank, including nongovernmental organizations, is essential for the effective implementation and sustainability of projects. Experience has demonstrated that consultation and sharing of information with cofinanciers, partners and groups and individuals with relevant knowledge of development issues help to enhance the quality of Bank-financed operations.”⁴

The World Bank's “Policy on Disclosure of Information” should thus be viewed, in this light, as a means for respecting people's rights, for integrating stakeholders into development decision-

¹ I use the term “World Bank” and “Bank” to refer only to the public-sector arms of the World Bank Group: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). The International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID) operate under different policies than IBRD/IDA and are not considered here.

² See Mendel, Toby, *Freedom of Information: A Comparative Legal Survey* (New Delhi: UNESCO, 2003), on how the right to information has been recognized by international, regional, and national bodies, at http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 21, 2009).

³ The *Atlanta Declaration and Plan of Action for the Advancement of Right to Access Information*, The Carter Center, February 27-29, 2008, at <http://www.cartercenter.org/documents/Atlanta%20Declaration%20and%20Plan%20of%20Action.pdf>. See also *Americas Regional Findings and Plan of Action for the Advancement of the Right of Access to Information*, The Carter Center, at <http://www.cartercenter.org/resources/pdfs/peace/americas/conference2009/ATI-AmericasPlan-full.pdf> (both accessed September 6, 2009).

⁴ World Bank, “Policy on Disclosure of Information” (Washington: World Bank, 2002), para. 3, at <http://go.worldbank.org/32ZO2P03ZO> (accessed on August 18, 2009).

making, and for ensuring public accountability. While the Bank's current policy addresses some of these dimensions, it could also be significantly improved.

The World Bank's Current Policy on Disclosure of Information⁵

As civil society organizations began in the 1980s to more closely monitor projects financed by the World Bank, they found a significant lack of publicly available information. They encouraged the Bank to adopt more rigorous environmental and social policies and to be more forthcoming about its activities.⁶ In 1985 the Bank adopted its first disclosure rules. In 1991, it began to release environmental assessments prior to project approval. In 1993, faced with further civil society pressure from around the world as well as the US (including clear positions taken by this Committee with regard to IDA-10), the Bank adopted a formal information disclosure policy that introduced pre-approval Project Information Documents and expanded access to project appraisals once approved.⁷ In 2001, the Bank revised its policy and for the first time started to release documents related to structural adjustment loans (although only after approval), project completion reports, and the Board calendar.⁸ In 2005, the Bank began to release abridged minutes of its Board of Executive Directors meetings.⁹

In terms of openness, today's Bank hardly resembles the rather closed institution of the 1980s. It publishes vast amounts of development-related analysis and data. Bank management is much more forthcoming in providing information to the public.

Despite these welcome shifts, the Bank's current "Policy on Disclosure of Information" continues to limit public access in a number of important ways:

1. *No presumption of disclosure*: Public bodies should presume that information they hold would be released unless there is a compelling reason to withhold it. The Bank's current policy provides a list of documents that are to be disclosed (a "positive list"). For everything not on the list, there is a general presumption of non-disclosure. In addition, overly broad exceptions to disclosure could justify withholding nearly any type of information. For example, disclosure may be precluded if it would be "detrimental to the interests of the Bank, a member country, or Bank staff."¹⁰ This approach generates public distrust of the Bank.

⁵ The following two sections rely in part on the work of the and the Global Transparency Initiative (GTI) (www.ifitransparency.org) and the Bank Information Center (www.bicusa.org) which have carefully tracked the disclosure policies of the international financial institutions. GTI's "World Bank Model Policy on Disclosure of Information" articulates detailed disclosure standards for the Bank, at http://www.ifitransparency.org/?AA_SL_Session=24e08f7da061c240bcbe3c067bfb9c0b&x=67865 (accessed September 2, 2009).

⁶ For details on the Bank's adoption of social, environmental, and disclosure policies in response to civil society pressure, see Wade, Robert, "Greening the Bank: The Struggle over the Environment, 1970-1995," in Kapur, Devesh, John P. Lewis, Richard Webb (editors), *The World Bank: Its First Half Century*, vol. 2 (Washington: Brookings Institution, 1997), pp. 611-734.

⁷ For background on U.S. Congressional interest in the Bank's disclosure policy, see "World Bank Disclosure Policy and Inspection Panel: Hearing before the Subcommittee on International Development Finance, Trade and Monetary Policy of the Committee on Banking, Finance and Urban Affairs, House of Representatives," 103rd Congress, 2nd Session, Serial No. 103-146, June 21, 1994 (Washington: U.S. Government Printing Office, 1995).

⁸ See World Bank, "Policy on Disclosure of Information" (Washington: World Bank, 2002) at <http://go.worldbank.org/32ZO2P03Z0> (accessed on August 18, 2009).

⁹ See World Bank, "World Bank Disclosure Policy: Additional Issues – Follow-up Consolidated Report (Revised)," Operations and Policy Services, February 14, 2005, at <http://go.worldbank.org/32ZO2P03Z0> (accessed on August 18, 2009).

¹⁰ World Bank, "Policy on Disclosure of Information," para. 90.

2. *Limits on access to draft and pre-approval information:*
 - a. *Country strategies:* While the Bank considers it best practice to consult selectively with country stakeholders as it develops its overarching country lending strategy (known as the Country Assistance Strategy or Partnership), the Bank's policy does not provide for release of working drafts to facilitate dialogue, unlike the policies of the Asian Development Bank,¹¹ African Development Bank,¹² and European Bank for Reconstruction and Development.¹³
 - b. *Projects:* Through environmental assessments and Project Information Documents, communities that may be affected by World Bank-financed operations are provided important information before projects are approved. However, the Bank does not release project appraisals (the Project Appraisal Document, PAD) until after approval.
 - c. *Conditionalities:* Development Policy Operations (formerly known as structural adjustment programs) comprise over 30% of World Bank financing operations (loans and grants) and are often the most politically sensitive interventions in that they finance reforms to a country's economic policies, governance structures, and social sectors. Public information on these operations while under development is quite limited. A short (3-5 page) Program Information Document is disclosed that outlines the program's broad parameters. Some social and environmental background analysis may be available on an ad hoc basis. However, the specific matrix of conditionalities that form the centerpiece of development policy operations are only disclosed after Board approval.
3. *Virtually no project implementation information:* External monitoring of ongoing World Bank operations is constrained by the lack of published information during implementation. The degree to which borrowers release such information depends entirely on their internal regulation of governmental openness, and thus varies widely. Currently the Bank releases only one short paragraph annually on each ongoing project or policy loan, even though much more extensive and valuable information is collected by project monitoring teams from Bank staff. Supervision reports, project audits and financial statements are withheld.
4. *Weak request system with no appeals:* The Bank does not provide timelines and procedures for the handling of public requests for information. It also does not provide for an appeals process for those who feel their information requests were unduly denied. The right to appeal is an essential element of a well-functioning access to information system.
5. *No access to shareholder positions:* Citizens have few if any means of following their government's positions at the Bank. There are several causes of this "democratic deficit."¹⁴

¹¹ ADB: "ADB shall make draft strategies and programs available to in-country stakeholders for comment before consultations. They shall be made available (i) after the initiating paper is completed; and (ii) after the strategy and program is drafted but before its management review meeting (para. 64, ADB Public Communications Policy, 2005)

¹² AfDB: "The draft CSP will be released to in-country target audiences, as part of the consultation process, to enhance information for CSP consultation." "Draft CSPs will be released via the Bank Group website at least 50 days prior to formal Board discussion...Such drafts will however exclude confidential information as agreed with the government" (AfDB Disclosure of Information Policy, October 2005, Sec. 4,3)

¹³ EBRD: "The draft country strategy will be publicly released and posted on the Bank's web site, following a process which includes consultation with the country concerned. The draft country strategy will be posted for a period of 45 calendar days, during which time the public is invited to send comments to the Bank." Drafts are posted on the webpage "Invitation to Comment," which can be found on the country strategy pages" (EBRD Public Information Policy (Sep. 2008).

¹⁴ Joseph Nye, Professor at Harvard's Kennedy School of Government, noted that at the international financial institutions the "long lines of delegation from multiple governments combined with a lack of transparency, often weaken accountability." "...To outsiders...these institutions can look like closed and secretive clubs." See Nye, Joseph S., Jr.,

First, meetings of the Bank's Board of Executive Directors are closed and no substantive records of meetings are released (skeletal minutes that record key decisions became available in 2005). Statements presented by individual Executive Directors are not accessible. Secondly, most shareholder governments do not publish records of positions taken at the Bank. U.S. Treasury, encouraged by Congress, is an exception here.¹⁵

6. *Weak Translation Framework:* English is the official language of the Bank. It routinely translates general information and its flagship publications into Arabic, Mandarin, French, Portuguese, Russian and Spanish. For projects, however, borrower governments bear all of the translation responsibilities, and in practice, governments limit translations to summaries of environmental assessments and plans related to resettlement or indigenous peoples if the Bank requires it.¹⁶ Furthermore, project information that is translated is difficult to locate. In my own experience investigating projects, such key translated documents would routinely be located only in the nearest administrative center, such as a provincial capital, making it impossible for ordinary citizens to take the time and money to access them. Core Bank documents on projects (Project Appraisal Documents) or development policy loans (Program Documents) are rarely translated, even in summary form. In April 2009 a Yemeni civil society organization filed a claim with the Bank's Inspection Panel after the Bank repeatedly refused to provide an Arabic translation of the main "Program Document" that explained a large-scale institutional reform program.¹⁷

The question of access to information has arisen in virtually every case that has been reviewed by the Inspection Panel at the Bank. The fundamental role played by open information in every healthy society becomes clear in a review of the requests submitted to the Panel. The concern about information is rarely the first issue that triggers public concerns – rather, the public suspects that the project is a source of harm in their lives, and when they attempt to determine the accuracy of their view, they are denied the information to know if their suspicion is true or false. At that point, the denial of information becomes an important element in their lives, whether to diagnose the problems, or to come up with solutions to their own problems and to enable the project to meet its development goals.¹⁸

Proposed New Disclosure Policy

In April 2009 the World Bank commenced a review of its Policy on Disclosure of Information. The Bank posted an Approach Paper as the basis for 30 public consultations conducted in all the

"Globalization's Democratic Deficit: How to Make International Institutions More Accountable," *Foreign Affairs*, July/August 2001, p. 3.

¹⁵ In response to US Congressional mandates, US Treasury publishes a monthly review of loan votes taken by the US Government at the MDBs. In addition, Treasury posts USG positions on inspection mechanism cases, positions on operational policies, and positions on projects with significant environmental impacts. See http://www.ustreas.gov/offices/international-affairs/multilateral_banks/index.shtml (accessed August 20, 2009).

¹⁶ Borrower translation requirements are located in several of the Bank's operational policies (OPs): OP4.01 Environmental Assessment, OP 4.10 Indigenous Peoples, and OP 4.12 Involuntary Resettlement at www.worldbank.org/safeguards.

¹⁷ See the Inspection Panel's "Notice of Registration" of the Yemeni complaint at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/YemenNoR.pdf> (accessed September 1, 2009).

¹⁸ See the World Bank Inspection Panel, "Annual Report 2007-2008," for descriptions of recent cases, at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Insp_Panel_2008Final-LowRes.pdf (accessed September 1, 2009). Also see [freedominfo.org](http://www.freedominfo.org), "Transparency Violations Common Theme for World Bank Inspection Panel," (21 April 2009) at <http://www.freedominfo.org/ifti/20090421a.htm> (accessed September 1, 2009).

Bank's regions.¹⁹ The Bank received significant feedback. We anticipate that a revised draft will be posted for final comment and sent to the Bank's Board for consideration in late October 2009.

The revised policy, if adopted as proposed, will represent a significant – and welcome – shift by the Bank toward greater transparency, building off of earlier policy revisions. Below are some of the most significant anticipated changes:

1. *A “true” presumption of disclosure:* The Bank would drop the ‘positive list’ approach and adopt a presumption that all information held by the Bank would be disclosed unless it falls within the defined exceptions to disclosure.
2. *A functioning request and appeals system:* Process guarantees would be put in place for handling requests for information and requesters who feel their requests were inappropriately denied would have the right to appeal [see below for potential limitations on the appeal function].
3. *Implementation information:* for the first time the Bank would systematically disclose additional supervision information for projects during implementation. Also project financial statements and project audits will be disclosed, allowing for far greater public oversight of project budgets.
4. *Release of final draft information:* the final drafts of Bank sector strategies and policy papers would be publicly disclosed at the same time they are sent to the Bank's Board for consideration, allowing civil society groups a “final check” on the incorporation of public input. Final draft documents related to country strategies and project/program documents would similarly be disclosed, however, only if the respective country does not object.
5. *Expanded access to Board records:* The Bank would begin releasing “Summaries of Discussion” of Board meetings that provide, on an unattributed basis, a description of positions presented at the meetings. Transcripts of Board deliberations and statements by Executive Directors would be released after 10 years.

Some Concerns with the New Policy

The Bank is proposing to significantly increase public access to information held by the Bank. By adopting a true presumption of disclosure, the Bank will position itself as a “transparency leader” among the other international financial institutions.

At the same time, there remain a number of issues deserve further consideration as the Bank finalizes its new policy:

1. *Transparency of the Board:* There remains a lack of ready access to the deliberations of the Executive Directors. While disclosure of unattributed summaries of discussion would provide far more information on the direction of Board debates, citizens would continue to be kept in the dark regarding their government's positions. The policy did not propose public access to Board meetings and deferred release of Board transcripts and Executive Director statements for 10 years – an inordinately long delay.

¹⁹ World Bank, “Toward Greater Transparency: Rethinking the World Bank's Disclosure Policy – Approach Paper,” Operations and Country Services, January 29, 2009) at <http://go.worldbank.org/FSBLXEWJ50> (accessed August 18, 2009).

As a public international organization, the Bank should further open up its deliberative process.²⁰ At a minimum, the Bank should launch a pilot program of conducting public Board discussion on a limited range of topics, such as Bank strategies, policies, and budget, and assess its affects on the quality and candor of discussion. Importantly, the Bank should further recognize the evolving dual role of Executive Directors – their increasingly important role as representatives of shareholder governments in addition to decision-making on behalf of the Bank – and facilitate greater accountability to citizens of shareholder countries through disclosure of Executive Director statements. To address concerns about affecting the deliberative process, these statements could be released once the issue under consideration has been decided upon. Transcripts could be released much earlier than the proposed 10 year time lag.

2. *Narrowness of the Exceptions:* Third-parties (shareholders, contractors, etc.) are granted significant discretion over the release of information that they have provided to the Bank, beyond a set of required disclosures. The policy allows too-much leeway here that could potentially be abused by governments that have little interest in public access and debate in their own countries. The Bank should ensure that claims of confidentiality are not abused by reviewing, and if need be, rejecting inappropriately classified material.
3. *Strength of Appeals Function:* During the consultation process, civil society organizations argued that the proposed one-step appeals process for denied information requests was inadequate, particularly given that Bank management would oversee this stage of an appeal.²¹ The Bank should add a second-stage, independent appeals function to provide greater integrity to the request and appeals system. (As seen in countries with national freedom of information systems, the independent appeals function – mainly the courts – often countermand denials made at the administrative level.) The World Bank Inspection Panel, which is independent of Bank management and reports directly to the Board of Executive Directors, could perform this function.
4. *Support for Translations:* In order to strengthen participation of local stakeholders in development decision making as well as monitoring of programs, the Bank should affirm that it would fulfill translation requests, within reason, and certainly from communities potentially affected by Bank-financed operations. The Bank should ensure that all translated project materials, even those performed by the borrower, are readily available, including on the Bank's website.
5. *Active Promotion:* The Bank has created a vast network of county offices and Public Information Centers: over 100 of its own centers, and more than 230 centers run in conjunction with local partners or other development agencies.²² It clearly possesses the means to ensure that relevant information (project and program documents, supervision reports, evaluations, financial statements, etc.) is pushed out to local communities and not

²⁰ For arguments in favor of Board openness and examples of other public institutions with open executive decision-making bodies, see Bank Information Center, "Memorandum on World Bank Board Transparency," (April 2009), at <http://www.bicusa.org/en/Issue.Resources.47.aspx> (accessed September 2, 2009).

²¹ See Global Transparency Initiative, "GTI Comments on World Bank's Approach Paper 'Toward Greater Transparency: Rethinking the Bank's Disclosure Policy,'" (May 2009), pp. 12-13, at http://www.ifitransparency.org/index.shtml?AA_SL_Session=84d037805907d62c550e5a6345f2a4&x=67862 (accessed September 1, 2009).

²² See the World Bank's Public Information Services page at <http://go.worldbank.org/E39AN1XM60> (accessed September 1, 2009).

just passively posted at some administrative capital far from a project site. The Bank should redouble efforts to proactively disseminate information in its client countries.

6. *Adequate resources to carry out the revised policy:* Strong, global information dissemination systems are not cheap. But they also do not have to break the bank if all the stakeholders understand their mutual interest in ensuring their respective contributions of time and people to make it effective.
7. *Setting a new gold standard:* The Bank should ensure, to the greatest of its ability, that these improvements in its policy, as well as future improvements, are matched by the regional multilateral development banks (MDBs) who face similar challenges. At one time, the Bank's policies were the "gold standards" for all MDBs, and now the record is quite inconsistent. In this key area of information disclosure, the Bank Board and senior management have an opportunity to demonstrate the kind of leadership to which it should aspire.

Conclusion

Thomas Jefferson once wrote, "No ground of support for the Executive will ever be so sure as a complete knowledge of their proceedings by the people." One has to wonder if the decline of support for the World Bank in recent decades has derived from the failure of its leaders to act promptly on the advice of that statesman. The Bank has responded grudgingly and only partially to build public understanding among its stakeholders as why and when it acts as it does in investing billions of the public's dollars in projects to alleviate poverty and improve the conditions of mankind. We want to work with the Bank on its continuing journey to improve its transparency and accountability. We support the steps taken. We will continue to press for further measures to build a 21st century global, public organization.