

**Testimony of**

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Chairman Cleaver, Ranking Member Hill,

Good morning, and thank you for the opportunity to testify today. My name is Jolie Schwarz and I am the Policy Director at the Bank Information Center (BIC). BIC is an independent, non-governmental organization whose mission is to advance social, ecological, and economic justice by amplifying community voices and democratizing international development finance. BIC partners with civil society in developing and transition countries to monitor and influence the policies and operations of the World Bank Group and other international financial institutions (IFIs). In partnership with international, regional, and local CSOs, BIC conducts research and advocacy aimed at reforming and improving IFI policy and practices.

IFIs like the World Bank Group underpin the global financial system, and while they are imperfect, they are considered standard setters for other major players in the broader development community, especially in terms of transparency and accountability. In large part this is due to the history of leadership by the U.S. government and Congress. Both of which have worked for decades to improve and reform the IFIs, encouraging the adoption of strong social and environmental standards, access to information policies, and independent accountability mechanisms (IAMs) that together have enhanced the development impact of the institutions. The World Bank Inspection Panel in particular represents one of the most important innovations ever to be adopted by an IFI, and together with its sister institution, the Compliance Advisor Ombudsman (CAO) continue to provide critical pathways for impacted communities to raise environmental and human rights concerns. These two mechanisms—the Panel and the CAO—help to ensure that projects supported by U.S. taxpayers through the World Bank Group do not destroy the environment or undermine human rights.

The World Bank Group is once again at a crossroads, as it was when it first created the Panel in 1993—facing a crisis of multilateralism as well as pressure to lower its high standards in order to engage in ever riskier contexts and to compete with new rivals. The ongoing review of the Inspection Panel toolkit as well as the recently commenced accountability review at the IFC present clear opportunities for the U.S. government and Congress to encourage the Bank to renew its commitment to transparency and accountability by adopting specific, structural reforms, including:

- 1) The addition of monitoring and dispute resolution functions to the World Bank Inspection Panel toolkit; and
- 2) The creation of a remedy fund at the IFC to enhance accountability and responsiveness to the CAO's work.

## **The Creation of the Inspection Panel**

More than twenty five years ago, under pressure from Congress, the World Bank created the Inspection Panel—the first IAM to be established at an IFI. At the time, the Inspection Panel was an important innovation in development finance—an effort to democratize the accountability and oversight process by giving a voice to people impacted by the development activities of the Bank. So often, the risks of development are borne by the poorest and most marginalized communities—those that lack the influence, opportunity, or resources to engage in the process. But through the Panel, affected communities have the opportunity to bring their concerns directly to the highest levels of the institution and seek redress through an independent process, without having to hire a lawyer or go through their own government or legal system.

Congress generally, and this subcommittee in particular, have historically played a critical role in strengthening the accountability of the World Bank Group. The Panel was created in 1993, in the wake of the World Bank’s withdrawal from the hugely controversial Sardar Sarovar dam on the Narmada River in India. A hearing by this committee regarding the Sardar Sarovar project contributed to the growing recognition among many countries that the lack of public accountability and the Bank’s “approval culture,” had eclipsed its focus on development outcomes.<sup>i</sup> By that time, Congress had already been working for several years to improve transparency and accountability at the World Bank. Legislation spearheaded by now Speaker Nancy Pelosi that was passed in 1989 led to unprecedented access to information for affected people at the World Bank and other IFIs.<sup>ii</sup> Senator Leahy, in a letter to then World Bank President Lewis Preston initially called for the creation of a “permanent, independent commission for investigating public concerns about Bank-financed projects,” but it took Congressman Barney Frank—using the jurisdiction of this subcommittee, and its authorization authority over U.S. contributions to the Bank—to ensure the Panel was established.<sup>iii</sup>

The creation of the Inspection Panel has been the most enduring and effective reform at the World Bank to date. It has been enormously successful—investigating dozens of cases over the last 26 years, and improving countless others by ensuring the Bank is accountable to the people it is meant to serve.<sup>iv</sup> One of the Panel’s most recent investigations highlights its continued importance. In that case, the Panel documented a particularly devastating situation in which dozens of girls in rural Uganda were victims of sexual exploitation and abuse due to failures associated with a World Bank-financed road project.<sup>v</sup> As a result of the Inspection Panel investigation, the World Bank funded programs to help many of the girls access services such as life skills training, school reintegration, psychosocial support, and support in seeking legal redress.<sup>vi</sup> In addition, the Bank’s response to the complaint went beyond project-level actions to address broader systemic issues within the institution and the Government of Uganda that had contributed to the harm.<sup>vii</sup> With the additional attention from Congress, and this Committee in particular,<sup>viii</sup> the Bank has since adopted sweeping reforms and initiatives to improve the

institution's response to gender based violence and child sexual exploitation and abuse. This in turn has catalyzed significant change across the development finance landscape in how institutions address these issues that for decades have been ignored or swept under the rug.

## **Inspection Panel Reform**

Over two years ago, the World Bank Board of Directors initiated a process to modernize the Inspection Panel. As the first of its kind, the Inspection Panel was essentially an experiment, but over the last two decades similar mechanisms have proliferated—all major development banks have adopted an IAM and there now exist over two dozen similar mechanisms at other institutions. The Panel served as an important model for these newer mechanisms, but subsequently created or revised IAMs have surpassed the Panel in both mandate and functionality. For example, all other IAMs—including the CAO—have a formal dispute resolution function, where parties can voluntarily come together to negotiate mutually agreeable outcomes,<sup>ix</sup> as well as the authority to monitor management's progress toward addressing findings of noncompliance identified through its investigations.

Because the Panel lacks a monitoring function, the World Bank Board of Directors has no independent way to verify that management has addressed the Panel's findings of noncompliance, or whether the harm experienced by complainants has been remedied. Other institutions have recognized that an independent mechanism<sup>x</sup> is much better placed to perform this function, and have given their IAMs the power to monitor and report back to the Board.

Management's ability to self-report, with no one to hold them accountable means that a remedy for complainants is often delayed or denied entirely. In the case of the Bujagali Dam, for example, complainants have filed 4 complaints at the Inspection Panel over the course of nearly 20 years.<sup>xi</sup> Even after several findings of noncompliance by the Inspection Panel, many complainants continue to face delays in receiving compensation for land and livelihoods lost. In this case, the inability to follow up after the first complaint to ensure the noncompliance was addressed, undoubtedly contributed to missed opportunities for complainants to receive redress.

Despite shortcomings in the system, the Inspection Panel has played a critical role in opening up political space for people to raise concerns about World Bank projects and the role of IFIs in their countries. While the United States government has done a great deal to push the Board to adopt the proposed reforms, which many other influential shareholders also support, the delay and the Board's inability to come to consensus around adding these tools to the Panel's mandate, calls into question the Board's commitment to strengthening the Panel or the system more broadly. At a time when civic space is closing and ever more restricted around the world, it is critical that the World Bank Board of Directors bring its accountability system in line with similar institutions across the development finance landscape by 1) giving it the authority to

monitor how the Bank responds to the Panel's investigations and 2) offering affected communities and project proponents the opportunity to seek dispute resolution through the Panel's offices.

### **Accountability Reform of the World Bank's Private Sector Arm**

While the review of the Inspection Panel's toolkit continues, the Board has just commenced a review of the accountability system at the Bank's private sector arm, the International Finance Corporation (IFC), including the CAO. The CAO has generally operated with less controversy and resistance from Management than the Panel, but in recent years IFC began to raise more objections to the CAO's compliance findings, and in some cases appeared to ignore the findings altogether.

The IFC's weak responses to CAO findings of non-compliance was exemplified by its response to the CAO's report on the Tata Mundra coal-fired power plant. In 2011, with the support of the Bank Information Center, complainants from Gujarat India approached the CAO with concerns about an IFC-financed coal fired power plant that was disrupting their fish catch and water supply.<sup>xii</sup> After a compliance investigation, the CAO found the IFC had failed to comply with its own policies and procedures. The IFC, however, failed to recognize the CAO's findings—rejecting them categorically and refusing to take action that would remedy the harm suffered by poor seasonal fishing communities that relied on land and water resources destroyed by the coal plant.<sup>xiii</sup> With nowhere else to turn, communities took the unusual step of suing the IFC in federal court in the United States.

Although the IFC and other IFIs have operated under the assumption that they enjoy absolute immunity from lawsuits filed in the United States, the U.S. Supreme Court accepted the case—known as *Jam v. IFC*—and decided that, in fact, IFC's immunity is not absolute.<sup>xiv</sup> That case, along with a second case involving IFC palm oil investments in Honduras, continue to work their way through the courts. Although the outcomes are still uncertain, the decision has accelerated significant reform efforts already underway at the IFC and across the World Bank Group to address the deficiencies that led to the lawsuit.

As part of this response, the CEO of the IFC, Philippe Le Houérou, has taken some welcome steps to improve the IFC's record in managing environmental and social risks of its projects.<sup>xv</sup> Most recently, IFC has created a new Environmental and Social Risk Management Unit that addresses the serious conflicts of interest and power imbalances inherent in the former system by providing greater oversight of and resourcing to addressing environmental and social risks, as well as support for IFC project teams to respond to complaints.

The independent review commissioned by the Board also has the potential to strengthen IFC's approach significantly, but Congress should monitor this review closely and send a message to the IFC that the review should not result in weakening the CAO, or curtailing its independence.<sup>xvi</sup> In addition to reaffirming the CAO's independence, the review should also lead to more proactive steps to address the current accountability gap at IFC. Most importantly, IFC should proactively establish a community remedy and response fund in order to protect communities from bearing the disproportionate environmental and social risk of IFC-financed projects.<sup>xvii</sup> Adding such a fund to the existing accountability system would not only set an important precedent for accountability across the development finance landscape, it is also consistent with the most important transparency and accountability reforms of the last 30 years that Congress has supported—including the Pelosi Amendment, which opened the door for communities to access information and influence the development process, as well as the Inspection Panel and CAO which provide an avenue to complain when harm occurs. Congress should work to address this shortcoming in the system it has done so much to help create and support by calling for a platform by which complainants can also access resources for meaningful remediation.

## **Conclusion**

For decades, Congress has maintained close vigilance over the Bank's adherence to the principles of transparency and accountability, and should continue to use the levers at its disposal—including hearings like these—to maintain and build on the important legacy that the creation of the Inspection Panel inspired across the development finance landscape. At a hearing before this subcommittee last year, Congresswoman Gwen Moore suggested the failure to adopt the three remaining Panel reforms was the result of a lack of leadership. The U.S. continues to be a strong advocate for enhancing transparency and accountability at the World Bank. As the Bank engages in more challenging contexts—at the urging of Treasury and other major shareholders—Congress also has an important oversight role to play to ensure that the institution has the tools and resources it needs to continue setting high standards for the broader development community and to ensure that all people are able to benefit from its projects and programs.

## Endnotes

<sup>i</sup> An internal Bank task force established in 1992 had been formed to look into reasons behind the recent “steady deterioration in portfolio performance,” including the rising share of projects with “major problems.” The report came to be known as the “Wapenhans Report,” and highlighted fundamental problems at the Bank that would set the stage for major subsequent reform efforts. See Report of the Portfolio Management Task Force, *Effective Implementation: Key to Development Impact* (1992),

<http://documents.worldbank.org/curated/en/596521467145356248/pdf/multi0page.pdf>

<sup>ii</sup> See United States General Accounting Office, *Report to Congressional Requesters: Multilateral Development Banks: Public Consultation on Environmental Assessments* (1998), <https://www.gao.gov/archive/2000/ns00192.pdf>.

<sup>iii</sup> See Ian A. Bowles and Cyril F. Kormos, *Environmental Reform at the World Bank: The Role of the U.S. Congress*, 35 Va. J. Int’l L. 77 (1995).

<sup>iv</sup> The Inspection Panel has also shown significant restraint throughout its history—the flood of cases that so many within the Bank were concerned about at the time of its creation has never materialized. Since the start of FY2014, of the 133 requests received, 22 cases were registered, and 8 investigation reports issued. It has also operated on a relatively flat budget which, over the last five years has averaged \$3.75 million—amounting to a tiny fraction of the Bank’s operating budget and far less than the Bank’s other independent oversight and accountability functions receive. See United States Treasury Department, *Report on the World Bank’s Inspection Panel and the International Finance Corporation’s Compliance Advisor Ombudsman: Issues and Recommendations*, pg. 3 (April, 2019), <https://home.treasury.gov/system/files/206/2019-04-08-World-Bank-Panel-and-CAO-report-to-Hill.pdf>, and International Bank for Reconstruction and Development, International Development Association, *FY19 World Bank Budget* (August 31, 2018), <http://documents.worldbank.org/curated/en/793471537214192071/pdf/FY19-World-Bank-Budget-for-Public-Disclosure-FINAL-vF-09112018.pdf>.

<sup>v</sup> See Bank Information Center, Uganda Transport Sector Development Project, <https://bankinformationcenter.org/en-us/project/uganda-transport-sector-development-project-tdsp/> (last visited, Nov. 11, 2019).

<sup>vi</sup> See Report of the Global Gender Based Violence Task Force, *Working Together to Prevent Sexual Exploitation and Abuse: Recommendations for World Bank Investment Projects*, pg. 67 (2017), <http://documents.worldbank.org/curated/en/482251502095751999/pdf/117972-WP-PUBLIC-recommendations.pdf>.

<sup>vii</sup> See Uganda Transport Sector Development Project, *supra*, note 5.

<sup>viii</sup> See *Examining Results and Accountability at the World Bank: Hearing Before the Subcomm. on National Security, International Development and Monetary Policy* (2017), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400325>.

<sup>ix</sup> While the Inspection Panel was established as only a compliance function, all other IAMs now have both with both compliance and dispute resolution functions and have adopted operational solutions to address any potential conflicts to having both functions housed under one unit.

<sup>x</sup> The Panel’s independence from World Bank management and staff was an important aspect of its design when it was created, and continues to be critical to its effectiveness today. The Panel does not sit within the management hierarchy, but rather reports directly to the Board of Directors—a design feature intended to ensure investigations would be impartial and robust. Panel Members are selected based, in part, on their ability to be independent from management and are barred from working for the World Bank Group after their service on the Panel.

<sup>xi</sup> The case has also been the subject of several complaints at the CAO, as well as the accountability mechanism of the African Development Bank, around concerns stemming from inadequate compensation, worker health and safety, and unpaid wages, among others.

<sup>xii</sup> See Bank Information Center, Tata Mundra Power Plant, <https://bankinformationcenter.org/en-us/project/tata-mundra-power-plant> (last visited Nov. 11, 2019).

<sup>xiii</sup> IFC Response to CAO Audit (September 12, 2013), <http://www.cao-ombudsman.org/cases/document-links/documents/IFCresponseToCAOAudit-CoastalGujaratPowerLimited.pdf> (last visited Nov. 11, 2019).

<sup>xiv</sup> Vijaya Ramachandran, *In a 7-1 Decision, The United States Supreme Court Rules that IFC is Not Above the Law*, (Feb. 27, 2019), <https://www.cgdev.org/blog/7-1-decision-united-states-supreme-court-rules-ifc-not-above-law>.

<sup>xv</sup> For example, under Le Houérou’s leadership, the IFC has implemented a new system for measuring and monitoring the development impact of its projects, as well as adopted a policy of zero tolerance for retaliation against civil society and project stakeholders when raising concerns around IFC projects.

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<sup>xvi</sup> The CAO's independence, credibility and effectiveness depend on maintaining (1) the dominant role of external stakeholders in the process for selecting the head of the CAO; (2) the CAO's ability to decide eligibility without interference from the Board or Management; and (3) the CAO's ability to release publicly its findings without censure from the Board or Management.

<sup>xvii</sup> The fund could be structured in different ways, but should be designed to (1) provide redress to communities where the CAO has found that IFC's non-compliance has contributed to the harm done to the community; and (2) provide support for implementing agreements completed through the CAO's dispute resolution process.