

Key Points on Remedy and Responsible Exit

This document summarizes the comments and recommendations presented by multiple civil society organizations during IFC/MIGA's public consultation on the proposed Approach to Remedial Action and the draft Responsible Exit Principles. Refer to the full submissions for more detailed information:



<https://bit.ly/ifc-remedy-stakeholder-submissions>

Introduction

When IFC and MIGA released their proposed Approach to Remedial Action and draft Responsible Exit Principles in February 2023, civil society organizations and communities from around the world began poring over the content. Our conclusion is simple: **The drafts fail to provide a viable path for IFC and MIGA and their clients that would guarantee remedy to communities harmed by their projects.**

The failure of IFC and MIGA's first draft indicates **the need for more explicit instructions from the Board** to ensure that the next drafts outline an actionable plan for remedy.

The Right to Remedy Is a Fundamental, Indisputable Human Right

The right to remedy is a **core tenet of international human rights law** that IFC and MIGA have an obligation to uphold. The current drafts do not meet the standards of international human rights law, which dictate that those who contribute to harm should contribute to providing remedy. **If IFC and MIGA cannot guarantee remedy for project-related harm, they should not be funding development projects in the first place.**

Remedy and Responsible Exit Are Part of IFC and MIGA's Development Mandate

IFC and MIGA advance development and improve people's lives by encouraging growth in developing countries and enhancing sustainability in private sector operations to achieve positive development outcomes that will benefit people. As part of IFC and MIGA's development mandate, they must ensure that they 'do no harm' to people and the environment. Consequently **those affected by development bank projects should, at the very least, not be left worse off** following IFC and MIGA's involvement or exit.

Remedy Can Take Many Forms

Remediating harm does not always require financial compensation. Remedy may include public apology, restitution, or rehabilitation, as well as the prevention of harm through guarantees of non-repetition — depending on what affected communities require.

For example, **communities outside Santiago, Chile** have been harmed by the **Alto Maipo hydroelectric project**. Tunnels were bored through the Andes Mountains, diverting three rivers, jeopardizing the public water supply of millions of people, destroying glaciers, and accelerating desertification. Communities filed parallel cases at the Compliance Advisor/Ombudsman and the Inter-American Development Bank's Independent Consultation and Investigation Mechanism to seek justice. In this instance, they have expressed that an apology, recognition of mistakes made, and a guarantee of non-repetition would be some of the forms of remedy they would require in this case.

Residents of a community in **Alexandria, Egypt** have experienced lung disease and structural damage to their homes as a result of a polluting **Titan Cement plant** in close proximity to residential neighborhoods. They filed a case with the CAO to remedy harms, but the IFC exited the project while the case was still ongoing, avoiding responsibility and leaving communities without the apologies and compensation they are owed as a result of damaged property, medical expenses, and loss of livelihood.

IFC and MIGA's Draft Approach Fails to Guarantee Remedy for Harm

The 2020 External Review of IFC's and MIGA's Environmental and Social Accountability made multiple recommendations for how IFC and MIGA can improve their remedial environment. The Board charged IFC and MIGA with preparing a roadmap and timeline for implementing the External Review recommendations. **And yet, IFC and MIGA's draft Approach does not respond to the recommendations from the External Review.**

The draft Approach falls short in the following ways:

- Most elements of IFC and MIGA's Approach are already required by the Sustainability Framework and are being implemented to varying degrees. The few "enhancements" that IFC and MIGA promise to undertake are too vague.
- IFC and MIGA only committed to applying the Remedial Approach to new projects, failing communities who are currently experiencing harm.
- IFC and MIGA make claims about impediments to remedy without proof.
- The Approach lacks explicit recognition of the principle "contribute to harm, contribute to remedy."
- The Approach fails to establish mechanisms to fund remedial actions, which could include:
 - Contingent liability funds from the client that can be used in the event of environmental and social harm linked to a failure to comply with the IFC's performance standards.
 - A fund that IFC and MIGA contribute to that can be used in the event that either has contributed to environmental and social harm.

Remedy Benefits IFC and MIGA

Improving the remedial environment is not just vital for impacted communities — **it is also good for IFC and MIGA.**

Guaranteeing and providing remedy increases the sustainability of IFC and MIGA investments by supporting economic growth, poverty reduction, and raising standards of living. Failing to provide remedy breaches IFC and MIGA's mandate to 'do no harm,' tarnishes their reputation, and undermines their sustainability. **A rights-based commitment to remedy would also support the Evolution Roadmap** by reducing the risk of further unintended negative effects that repeatedly call into question the legitimacy of the World Bank Group.

Critically, a rights-based commitment to remedy reduces legal exposure. The contention that direct contribution to remedy will increase legal liability is unfounded. It is likely based on a flawed interpretation of *Jam v. IFC* (2019), where the IFC lost its absolute immunity to litigation. However, litigation is not the first resort for communities seeking remedy. Communities have been filing cases through Independent Accountability Mechanisms for decades, but these processes are often ineffective and do not result in remedy. This leaves communities with no choice but to pursue other avenues for justice.

Jam v. IFC was only filed because the IFC failed to respond to CAO recommendations for restoring compliance in the disastrous Tata Mundra power plant project that devastated the livelihoods of the local fishing community.

The lesson the IFC should have taken from *Jam* was that **if it had provided remedy in response to the CAO complaint, it never would have been sued.** Providing remedy is protective against legal liability, not the other way around.

Solutions

The proposed Approach to Remedial Action and draft Responsible Exit Principles on the table today are unacceptable. We call on the IFC/MIGA Board of Directors to use its influence to recommend the following next steps from IFC and MIGA:

- 1. IFC and MIGA must write second drafts of the proposals for remedial action and responsible exit that:**
 - a. Properly address and implement the recommendations of the External Review;
 - b. Commit to contributing financially to remedy when their financing has contributed to harm or when IFC and MIGA cannot exercise leverage over a client and a remedy gap persists; and
 - c. Commit to remedying existing environmental and social harm.
- 2. IFC and MIGA should engage in public consultations on these second drafts. Those consultations should improve upon and correct the limitations of the consultations on the first drafts, including adding more languages.**
- 3. In the meantime, IFC and MIGA should begin applying a remedial approach immediately. IFC and MIGA must remediate existing harms that persist from their projects. The first projects to start with are:**
 - a. CAO cases where non-compliance has been found,
 - b. CAO dispute resolution cases where agreements have not been fully implemented, and
 - c. Complaints that have been raised to the IFC's Stakeholder and Grievance Response (SGR) mechanism.