

January 31st, 2024

Ms. Attiya Waris
Ms. Tialeng Mofokeng
Independent Experts
Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
United Nations
Geneva, Switzerland
Via email: ohchr-registry@un.org

Subject: Joint Communication from Special Procedures, Office of the High Commissioner for Human Rights - AL OTH 138/2023

Dear Ms. Waris, Ms. Mofokeng,

Thank you for your letter dated 7 December 2023 (see Annexure 1). We appreciate the questions raised. We have provided the response below, including further context on the private sector's role in healthcare and IFC's strategy and review process as further background.

Our team would be happy to meet and discuss the response with you further if you believe this is needed. Given the complexity of the subject matter, we are committed to building strategic partnerships and continuing to engage with stakeholders.

First, we would like to make clear that IFC takes human rights concerns very seriously. For example, IFC's Policy on Environmental and Social (E&S) Sustainability recognizes businesses' responsibility to respect human rights independently of the state's duties to respect, protect, and fulfill human rights.

In the context of the projects we finance, the scope of the IFC due diligence includes the assessment of key issues and concerns pertaining to the client's business activities. For example, in health sector settings, due diligence is used to validate that clients will function in line with expected practices from a quality, environmental, social, and governance perspective. Within our investment portfolio oversight, we must be informed, abiding by confidentiality protocols, of serious reportable events involving patients, staff, and regulatory non-compliance, plus we must be informed of corrective action taken.

Our responses below further outline the approaches taken to making investments in the health sector.

The Private Sector in Health and the Role of IFC

The private sector plays an undeniably important role in health systems worldwide. Specifically in the health services sector, which your letter addresses, it is important to note that the private sector accounts for more than half of all health care delivered worldwide^[1]. A WHO study in 2019^[2] analyzed 65 countries over the period from 2010 to 2019 and found that the private sector provides nearly 57% of outpatient and inpatient services in Southeast Asia, 62% in the Eastern Mediterranean, and nearly 40% in Latin America and the Caribbean, Africa, and the Western Pacific. As a result, there is a growing realization among governments, international agencies, and other key stakeholders that excluding the private sector is not an option, and with the right governance and policies, the private sector can play a key role in the achievement of Universal Health Coverage (UHC) and the attainment of the SDGs. The WHO with its 2020 report – Private Sector Landscape in Mixed Health Services^[3] (please refer to Page 20) – further confirms that the private sector has a role to play in health service delivery and, for some patients, this may be the only viable care in proximity to their location. For example and quoting from the report, “In the WHO Africa region, 35% of those who seek care go to the for-profit private sector while 17% seek care at shops, faith healers and other informal providers. Overall, 26% of care seeking is done in the private sector, with an additional 10% with informal providers. The most significant proportion of private sector care seeking occurs in Nigeria (52%), while in Cameroon, Uganda, and Benin, greater than 40% of care is sought in the private sector.”

Context is also important. Many countries operate their health systems differently, and therefore, structures and the use of private sector financing and management vary widely. We have noted that, depending on country context, there is no consistent definition of public-private partnerships amongst sector stakeholders. For example, there is a big difference between public/private provision vs. public/private financing (i.e., who pays for the care). Likewise, many countries have a mix of public and private provision, for example in Georgia, Colombia, Kenya, and Indonesia where private hospitals are working with national health insurance schemes in some form or another. In addition, the private sector can be not-for-profit or for-profit.

While the early development of the private health sector in many developing countries has mainly focused on high-income segments, the for-profit private sector, with continued evolution and development of social health insurance, is increasingly exploring business models to better serve the demand coming from middle to lower-income segments of the population with NHI/SHI coverage, while maintaining financial stability and quality of services. This evolution in the private health sector can play an important role in reducing the burden on the limited public sector capacities. This can be best achieved through well-regulated and integrated health systems, encompassing all types of players within its ecosystem.

IFC’s support for the private health sectors in developing countries spans over 25 years and covers multiple sub-sectors, including health services, life sciences, and medical technologies. Our strategy and activities in the health sector have also evolved substantially over the years, in line with the changing market landscapes and the role played by the private sector in specific health systems. Accordingly, IFC has developed a robust suite of advisory competencies to increase the quality, ethical standards, productivity, environmental and social standards, climate resilience, governance, and gender equality in the projects in which we participate. IFC also collaborates closely with IBRD and IDA – the branches of the World Bank Group that engage explicitly with governments – in strengthening the regulatory and governance standards for the private sector and enabling closer public-private collaboration, the latter being key to enhancing the positive impact and reach of the private health sector in developing countries.

IFC reviews and revises its health sector strategy annually. A key component of our evolved strategy is to: (i) adapt a learning-based process to constantly improve our analysis and processes for the selection of, and support for, private sector partners; (ii) strengthen impact measurement and disclosure; and (iii) engage more closely and proactively with key stakeholders, including civil society organizations and international agencies (such as WHO), to continue to improve on IFC's own work as well as jointly address key challenges to strengthen this important pillar of the health systems.

While no country is the same, some common challenges involve the following:

- The demand-supply gap for health services is so severe that it is not possible for governments to address it through public resources alone. Along with an acute underinvestment in many developing countries' health systems, the gap has been widening due to the twin burden of proliferating non-communicable diseases and increased risk of pandemics and other health emergencies caused by climate change, urbanization, aging populations, and many countries' inability to manage communicable diseases.
- The financing needs to close these gaps and create strong health systems are immense and have further increased in the aftermath of the COVID-19 pandemic. WHO (WHO, 2017; Stenberg et al., 2017) estimates the additional annual investment needed to meet SDG 3 on health at US\$371 billion in 67 low- and middle-income countries, covering 75 per cent of the global population. These financing needs can only be met through appropriate allocation of limited fiscal resources, supported by private capital mobilization.
- Many countries have health systems that consist of public, private for-profit, and private not-for-profit provision. Often these structures operate in silos that lead to fragmentation. These structures can at times lead to a lack of effective mechanisms to enhance public-private collaboration that could better leverage each country's existing resources. This limits countries' abilities to effectively leverage all capacities available to close healthcare gaps and respond to healthcare emergencies.
- The healthcare supply gaps in developing countries have created reverse medical tourism. For example, the Nigerian Sovereign Investment Authority estimates that Nigerians spend \$1bn annually on accessing health services abroad due to challenges in-country. Many patients from African countries seek care overseas, especially for cancer, cardiology, and complex surgery. A lack of investments in these specialties have left countries unable to serve patients well, which disadvantages their poor populations who cannot afford to travel to get the care they need. These gaps create severe economic and social inequalities and fuel the "brain drain," with medical professionals seeking employment abroad. The African Union estimates that about 70,000 skilled health professionals emigrate from Africa every year, and the continent has some of the lowest physician levels in the world.
- In the absence of social health insurance mechanisms, developing countries face a growing burden of formal and informal out-of-pocket payments, which exist in both public and private settings. The effects of a lack of a financial safety net are especially severe for low-income populations who face further impoverishment while trying to meet their healthcare needs.
- Many countries lack the required policies and capacities to effectively regulate the public and private health actors, which leads to unethical practices, sub-quality services, informal payments, inequality of access and lack of investment. According to WHO, between 5.7 and 8.4 million deaths are attributed to poor quality care each year in low- and middle-income countries (LMICs), which represents up to 15% of overall deaths in these countries^[4].

The above confirms the need for rolling multi-stakeholder engagement, which IFC is keen to promote and support.

True to its developmental agenda and given its footprint, IFC has a significant role to play in shaping investment models that can increase the standards of the private health sector and bring private sector solutions to support universal health coverage.

Ultimately, the World Bank Group (WBG) is one of few global entities that is in a position to advocate for policies and provide support for mechanisms to better regulate the provision of healthcare in countries – including the private sector – and strengthen public-private partnership. Many governments have increasingly called on the WBG to actively engage with the private sector to close the public sector supply gaps.

^[1] The Global Fund Technical Brief: Private Sector Engagement in Service Delivery:

https://www.theglobalfund.org/media/12160/ps_private-sector-engagement-technical_brief_en.pdf

^[2] Engaging the private health service delivery sector through governance in mixed health systems:

https://www.who.int/docs/default-source/health-system-governance/strategy-report-engaging-the-private-health-service-delivery-sector-through-governance-in-mixed-health-systems.pdf?sfvrsn=3e870582_1

^[3] Private Sector Landscape in Mixed Health Services: https://hlh.who.int/docs/librariesprovider4/private-sector/private-sector-engagement---private-sector-landscape-in-mixed-health-systems---conference-copy.pdf?sfvrsn=99c6944d_13

^[4] WHO Internet page: Quality health services: <https://www.who.int/news-room/fact-sheets/detail/quality-health-services>

IFC Health Sector Strategy, Investment plus Advisory Processes

Just as IFC's health sector strategy has evolved with experience and in line with the changing landscape in our client countries, our investment portfolio differs from what it was 5 years ago. We take a selective approach to health service investments and place an increased focus on life sciences and medical technology sectors. This shift is not only in line with the market requirements, but also to ensure our investments and advisory support can contribute to health system strengthening, improving access, and enhancing quality and governance standards.

Our current core investment focus aligns with our health sector strategy and includes:

1. **Health service companies** which includes: (i) integrated models in more mature markets that can drive down costs of healthcare by ensuring insurance coverage, prevention, early diagnostic and treatment at the appropriate level of care; (ii) centers of excellence in less mature markets, where the private sector is able to close service gaps and introduce first of its kind critical services and products; and (iii) innovative business models that can enable the private sector to expand its affordability and access to middle to lower income populations.
2. **Life science companies**, with the objective of creating better access to medical countermeasures through a diversified and competitive manufacturing, supply chain and distribution ecosystem in developing countries.
3. **Medical equipment companies** (including manufacturers and distributors) to diversify access to medical products and technologies as well as position developing countries as competitive actors within the global supply chains.
4. **Early-stage disruptive technology companies** (e.g., AI based diagnostic, e-procurement, and telemedicine) to enable the use of technology in enabling better access, augmented capacities/capabilities, affordability, and performance of healthcare.
5. **Advisory and investment support for public-private partnership models**, which can range from large-scale infrastructure to service contracts and social health insurance structures, appropriately selected in line with country needs.
6. **Investment into health sector-specific funds**, which may cover specific subsectors where IFC has not been able to take direct exposure (for example, innovative technologies, small innovative providers etc.).

For insight into our current health sector investments please see <https://disclosures.ifc.org/>. In addition, in accordance with IFC's Access to Information Policy, IFC periodically discloses the names, locations and sectors of sub-projects that have been supported by IFC investments through private equity funds, subject to regulatory constraints and market sensitivities.

It is important to reference the IFC Access to Information Policy which dictates the level of information we are able to share publicly. <https://disclosures.ifc.org/access-info-policy>

IFC has a comprehensive due-diligence process that involves multi-specialty teams, including industry, quality, development impact, environmental & social (E&S), insurance, financial and commercial expertise, to be able to determine a potential project's fit with our sector strategy as well as its ability to meet our twin objectives of development impact and financial sustainability.

In addition to our focus on investments, IFC recognizes the requirement for localized skills and capacity building to support the development of our clients, potential clients, and, more broadly, the sector. Starting in 2015, IFC has rolled out a suite of advisory services, which has enabled IFC to help the private sector achieve the high standards that it advocates for. These advisory services include:

- **IFC Healthcare Quality Assessment Tool ([IQ-Healthcare](#)):** The overall goal of the IQ-Healthcare tool is to improve quality assurance processes and practices as well as knowledge and awareness of health care providers and other stakeholders in these areas. This contributes to increased investment in healthcare facilities as healthcare providers with better quality assurance practices can become more attractive investment targets for financiers (including IFC). The IQ methodology is also used comprehensively used during our investment due-diligence process to help us understand entity alignment to appropriate clinical care and patient safety.

Since project inception in 2018, the project has reached over 4,600 participants through webinars and training events and nearly 3,000 users of the produced online training modules devoted to fundamental topics of patient safety, including patient identification, managing high risk medications, infection control issues and other. A total of 38 medical facilities have received rapid assessments and 7 received in-depth advisory (full assessment and implementation support).

- **EPIHC:** In 2019, IFC along with other partners initiated [Ethical Principles in Health Care \(EPICH\)](#). It is designed to help build transparent, resilient health systems through a set of shared principles that promote ethical decision making and behavior. EPIHC is built around a broadly applicable set of guidelines to promote ethical conduct and support daily decision making in the health sector. Today, the EPIHC community has 325 signatories who own or manage over 6,000 healthcare facilities in more than 100 countries. EPICH, which also positions itself as a peer-to-peer learning platform, has conducted webinars and other knowledge sharing activities with a reach/views of 5,100 plus. Many of IFC investment entities have signed up to EPIHC.
- **Women's Leadership in Private Health:** IFC launched the [Women's Leadership in Private Health Care](#) working group in 2020 as a community of practice dedicated to identifying and addressing the significant barriers to women's leadership in the health care sector. The working group brought together CEOs and human resources directors representing 17 health care organizations from Africa, the Middle East & North Africa, and East Asia. Through the working group, IFC delivered nine learning webinars on key gender themes to guide working group members in taking action to address the gender gaps in their operations and organized four peer-to-peer knowledge sharing and networking events to encourage peer learning. To guide the working group's efforts to bring a gender lens into the future of the health care workforce, the team developed a series of communication pieces, campaigns, webinars, and practical resources to sensitize, self-educate, and implement gender-inclusive initiatives. In addition, the team delivered advisory engagements to four clients: two working group members and two additional pharmaceutical clients. For one of these pharmaceutical clients, the assessment resulted in hiring 500 women, including in leadership positions, and increasing the retention rate of women after maternity leave from 60 percent to 93 percent. The other client was supported in obtaining the global Economic Dividends for Gender Equality (EDGE) Certification, becoming the first pharmaceutical in Latin America and the third company in Colombia to achieve this distinction. The project closed successfully in June 2023.

IFC Impact Assessment Tool

IFC's Anticipated Impact Measurement and Monitoring (AIMM) tool was formally introduced in 2019 to replace our Development Outcome Tracking system (DOTS). IFC uses AIMM to define, measure, and monitor the development impact of each project and to guide IFC's decision-making throughout the project cycle. This includes evaluating the development impact of potential investment projects during the early evaluation stage.

After commitment, investments are monitored under the AIMM system. Each development outcome claim in IFC projects is explicitly tied to one or more monitoring indicators and regularly tracked during portfolio supervision. For example, IFC might use AIMM to evaluate whether a life sciences client building a new vaccine plant has achieved the production levels expected. IFC might evaluate whether a new hospital project has treated the expected number of patients or satisfied standards to ensure care is provided safely and at an appropriate quality.

Indicators, which differ across projects, are selected to reflect the development impact of each project. They cover the following categories:

- **Stakeholder effects**, which assess the net incremental benefits that accrue from an IFC intervention. Stakeholders include patients and employees of the client receiving financing. Indicators used to measure these benefits include measures of services and products provided, prices, affordability, quality, training, and wages.
- **Economy wide effects** are those indirect or induced economic outcomes, including externalities and spillovers that are generated by the project's linkages to the economy. These effects are measured using indicators on value added and employment by the client.
- **Environmental effects** relate to environmental and social sustainability outcomes such as the reduction or avoidance of greenhouse gas emissions, improved water efficiency, reduced pollution, biodiversity effects, and/or improvements in social welfare not captured as part of a stakeholder or economy-wide effect.

IFC reports on its development impact through its Annual Report. This includes reporting on development reach by its clients overall, which covers indicators such as patients reached. The reporting also includes case studies of the development impact achieved by particular investment projects. The Annual Report also includes a discussion on the AIMM system and AIMM scores of IFC's commitments and portfolio.

IFC's reporting on the development impact of individual investment projects complies with IFC's Access to Information Policy, which prohibits the disclosure of commercially sensitive or confidential information about its clients. In line with these parameters, IFC does not disclose the AIMM scores of individual projects.

The AIMM methodology is now available online via the www.IFC.org.

In addition to IFC's own activities, we are continuously engaging with external stakeholders on the topic of impact measurement in the health sector. For example, IFC is an anchor in the Investors4Health Platform (<https://www.investorsforhealth.com/>), which regularly discusses impact measurement. IFC welcomes constructive joint advocacy and programs with civil society to address challenges faced in health systems.

Public-Private Partnerships (PPPs)

As already highlighted, helping countries advance universal health coverage is a strategic priority across the World Bank Group. Universal access requires strong public policy decisions that support multiple service providers and create a more effective regulatory structure to oversee and enforce standards that promote access and deliver higher quality services at the least possible cost to citizens.

IFC recognizes PPPs as one of a range of procurement tools available to governments that can be deployed to help strengthen the quality, efficiency, and availability of public health services. The PPPs that IFC assists governments to develop are designed to meet public health objectives and needs by supporting good quality, inclusive, and affordable public health services, thereby contributing to advancing universal access goals.

Well-structured PPPs can create clearly defined platforms that involve the private sector in delivering solutions to health challenges in developing countries. They can also help countries improve their ability to regulate the private sector and find an efficient and effective mix of public and private sector participation in the health sector. A major determinant of success or failure of a PPP is the selection of an appropriate PPP model in line with the specific healthcare gaps and structuring considerations that enhance outcomes and sustainability.

The IEG report referenced in your letter found that WBG support for health PPPs was relevant to countries and that these PPPs supported clear development priorities that were an important part of country development strategies. With regard to the IEG findings related to the potential areas of improvement, we would like to note the following:

- The need for after-care support to governments implementing healthcare PPPs: IFC Advisory Services have developed a product called Post Transaction Advisory Services, which has been deployed in numerous IDA/IDA blend countries to support governments in monitoring PPP contracts. This product has been deployed to support Ministries of Health to monitor and implement healthcare contracts in the first crucial months and years of a new contract. IFC will continue to proactively assess client capability and needs when implementing PPPs and will offer post-transaction advisory support whenever it is needed.
- IEG indicated in its 2016 report that the designs of most World Bank-supported PPP interventions have an explicit emphasis on poor or underserved populations, and the health PPPs supported by IFC Advisory Services have a poverty focus. This was a welcome recognition of WBG efforts to use PPPs to expand health benefits, including to people in IDA countries and low-income states in middle-income countries.

The WHO report referenced in the letter and to which IFC actively contributed, stresses that PPPs have higher financing and transaction costs than publicly procured projects. The same report also states that “PPPs have demonstrably led to good outcomes in terms of post-contractual cost-certainty” and that “Securing value for money means selecting the right projects (...) [and] “implementing PPPs only when they represent the most cost-effective solution, compared to other procurement options, and where the robust capacities needed to plan, design, negotiate and monitor long-term complex transactions are available”. The WHO report studies 3 different PPP models and makes recommendation to public authorities how to select and structure the right projects.

The above-mentioned summary of the findings and statements from the WHO report fits well with IFC's approach to supporting PPPs through advisory and investment as follows:

- IFC Advisory Services becomes engaged in assisting a government to develop a PPP once a PPP has already been identified as an appropriate solution and where there is a clear and identified need to strengthen a public health service. For example, IFC in collaboration with Brazil's national development bank (BNDES), supported the state of Bahia in establishing 'hub and spoke' diagnostic imaging and laboratory testing clinics across the state, bringing diagnostics into rural and remote areas where there are no radiologists and reducing the costs of delivery.
- Before assisting a government in structuring a PPP, IFC Advisory Services systematically conducts a technical and financial assessment of the way public services are delivered to identify the potential gains or losses from private sector participation and to determine whether a PPP is an appropriate option to pursue based on the public health objectives set out by the government. Based on those findings, governments take the final decision to pursue a PPP model or not. For example, IFC supported the Government of Uzbekistan in screening multiple projects as to their need, PPP suitability, and fiscal impact. Through this process, the Ministry of Health, the Ministry of Finance, and the World Bank health team determined that affordable and feasible projects to improve patients' access to dialysis and cancer care were a priority and that the PPP model would add value. These services are now provided free-of-charge to patients, contributing to UHC goals and access to life-saving health services for poor populations. Importantly, the project has also increased the affordability of this life-saving service, reducing the cost per session to the government by 23% compared to other public clinics and achieved 40% lower mortality rates for patients with end-stage kidney failure, according to Ministry of Health data.
- IFC recognizes that each country's circumstances are different and that a "one size fits all" approach to PPPs is ill-advisable. In some cases, a country requires additional quality infrastructure; in other cases, affordable services are lacking. For example, IFC financed four Turkish Hospital PPPs during 2015-2017 as part of a major Government Hospital PPP Program that aimed to revamp one-third of the country's public hospital infrastructure. The needs assessment was performed in collaboration with the World Bank and other IFIs, which co-financed the Program. These hospitals proved to be key to backbone of the Turkish government's response to the COVID-19 pandemic. In addition, 4 PPP hospitals in the overall program are located in the same area where the 2023 earthquake occurred. These facilities, due to modern design, remained undamaged and were able to treat earthquake victims.

Moreover, your letter refers to specific details of PPP advisory projects, such as assessment reports. IFC provides a contracted advisory service to governments for PPP services and does not have the legal authority to publish these reports independently of the contracting government.

Intermediated Investments

With respect to intermediated investments through financial institutions or investment funds, IFC employs measures designed to safeguard its investments from the risk of misuse by illicit actors and the risk of inadvertently supporting activity that runs counter to the institution's development goals. Amongst other controls, IFC's procedures require that IFC's due diligence prior to investing in a financial institution or fund include a review of the counterparty's know-your-customer due diligence and suspicious activity monitoring processes over the counterparty's customers or fund's investments, respectively. This enables IFC to identify vulnerabilities through on-lending or investment activities that may result in IFC contractually requiring a counterparty to improve its controls as a condition of an investment. In addition, IFC employs controls and automated systems to screen its clients and counterparties for adverse media prior to extending an investment and throughout the relationships. This includes identifying and screening the counterparty, key management, and directors, and, in the case of funds, other investors. Finally, IFC has contractual safeguards around the use of funds and monitors counterparties for compliance with these covenants. These measures are part of IFC's broader efforts to counter illicit financial flows and are incremental to mitigants taken to limit tax evasion and tax avoidance.

IFC has strict eligibility requirements applying to Intermediate Jurisdictions (as defined under the World Bank Group's Policy on the Use of Intermediate Jurisdictions in World Bank Group Private Sector Operations (Tax Policy) used in the ownership structure of IFC-funded projects. The Tax Policy requires that IFC's decision to invest in a project may only be made after careful evaluation of a project's control structure to seek to ensure that it is not going to be used for tax evasion, tax abuse, or other illegitimate purposes.

For over a decade IFC has applied the tax transparency standards developed by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) to prohibit the use of certain Intermediate Jurisdictions. Specifically, under the Tax Policy, IFC will not finance investment transactions where an entity that has a controlling interest in a project is resident in an Intermediate Jurisdiction that is non-compliant or partially compliant with the Global Forum's Exchange of Information on Request (EOIR) standard. IFC also expects Intermediate Jurisdictions to be committed to the Global Forum's Automatic Exchange of Information (AEOI) standard and the OECD Base Erosion and Profit Shifting Inclusive Framework.

Under the Tax Policy, the existence of an Intermediate Jurisdiction in the control structure of a project triggers a requirement to examine the rationale for the use of that Intermediate Jurisdiction and to conduct tax due diligence (TDD) prior to investment. TDD is a systematic examination of potential tax risks impacting the Tax base of the project jurisdiction. TDD focusses on: (i) project jurisdiction corporate and withholding taxes payable on a project's profits; and (ii) whether the broader project control structure has been designed to produce an artificial reduction in income taxes payable on the project's profits (including an examination of cross border related party transactions and use of double tax treaties). IFC continuously tracks key international tax reforms to ensure that this tax risk assessment remains up to date with changes to the international tax landscape.

Development Impact Bonds

Your letter raises questions with reference to development impact bonds, which are contractual arrangements to finance development programs with money from private investors who earn a return if the program is successful, paid by a third-party donor. IFC does not use this form of innovative financing model in the health sector.

As described in the letter the form of development impacts as described are more relevant to the work of IBRD. A summary response from IBRD/Global Financial Facility (GFF) is provided below.

Despite the need to fill large financing gaps for health in the 36 GFF-supported countries, experience with development impact bonds to finance health by the GFF has been very limited. The initial eight years of GFF private sector support focused on in-country foundational activities as starting points to bring data to the dialogue with governments on private sector engagement, and to support stakeholders to collaborate through GFF Country Platforms. Activities included establishing public-private dialogue, baseline analytics, expanding knowledge and learning tools, and supporting performance-based contracting. The GFF supported this work because engaging the private sector is essential for realizing the aspirations of the GFF partnership countries to rapidly increase health service coverage and improve quality of care, anchored in the overall health financing and service delivery reform dialogue at country level to ensure private sector engagement strategies in partner countries are inclusive of vulnerable and poor users. Beyond the private sector's delivery capacity, expertise, and financing, the GFF also recognizes the private sector's ability to bring innovation to the table to accelerate the achievement of positive health outcomes for the poorest women and children in accordance with the GFF vision and mandate.

While the GFF's country support on private sector engagement has been growing in scale, other activities such as innovative financing have moved slower than expected. Some of the GFF's innovative financing examples had positive results, such as the GFF partnership with World Bank Treasury on Sustainable Development Bonds (SDB) which demonstrated private capital investors are keen to put their financing towards women and child health priorities, and combined with the GFF's results-linked loan buydowns/co-financing grants enabled countries like Guatemala, and Indonesia to access large scale financing at more concessional rates for investing in women and child health results. However, due to the limitations of the SDB instruments, these were only able to be applied for IBRD countries in the GFF portfolio which are only a few of the 36 countries. The Cameroon Kangaroo Mother Care Development Impact Bond (DIB) surpassed the outcome and beneficiary targets and delivered positive outcomes for affected newborns, but the process also highlighted the level of transaction cost vs. scale as a limitation of the DIB instrument. Traditional development impact bonds are stand-alone programs with their own management, implementation, and results verification processes; the results process in particular (along with the design process of a DIB) can add significant costs – these ultimately need to be covered by donors/outcome payers. There may be potential ways to improve efficiency with modifications - for example, to integrate and leverage World Bank project verification systems where possible, alongside retaining the pay-for-performance and other relevant elements of impact bonds. Going forward, design of any financing instrument would build on lessons and engage closely with donors and partners to ensure the right alignment of incentives for investors, countries, and development partners to focus on targeted health and nutrition outcomes and equity.

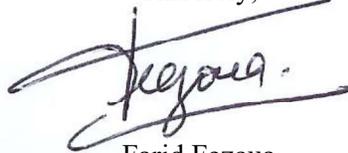
Concluding Comments

We welcome and thank you for your questions. As highlighted in our response, IFC is committed to supporting countries in attaining UHC and achieving the SDGs. Given the legacy of under-investment in many global health systems today, we face growing demand for health services that is outpacing available supply.

We fundamentally believe that given the status of health systems in many countries, without coordinated private sector participation, many patients from across all segments of society will fail to access the health services they need. As we learned during the COVID-19 pandemic, countries cannot develop an effective health emergency preparedness, readiness, and response program, without being able to create resilient health systems that utilize all capacities available. Addressing this is a major priority for the World Bank Group, and we are currently developing programs to help strengthen WBG's integrated support across the health systems. IFC's health sector strategy, strengthened by the overall WBG competencies, is designed to support multiple countries in realizing sustainable health system improvements.

As we highlighted above, health systems are extremely complicated. IFC, therefore, advocates for further open, data-based discussion and dialogue across multi-stakeholder groups to explore relevant public and private sector models to support health system enhancement and continue to survey and integrate input from the multi-sector group as part of a continuous improvement process. Your letter helps confirm that there is a growing requirement for this increased collaboration and coordination. IFC, together with our IBRD and IDA colleagues, welcome future constructive dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fezoua', written over a light blue rectangular background.

Farid Fezoua
Director

Global Health, Education and Services Department

cc: Mr. Makhtar Diop, Managing Director, International Finance Corporation

Annexure 1: Letter from United Nations Human Rights Office of the High Commissioner



TÉLÉCOPIÉ - FACSIMILE TRANSMISSION

DATE: 7 December 2023

À TO: Mr. Makhtar Diop
Managing Director
International Finance Corporation

FAX:

EMAIL: AskSustainability@ifc.org; klim@ifc.org; tjacobs@ifc.org; mlandy@ifc.org

DE/FROM: Beatriz Balbin
Chief
Special Procedures Branch
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A handwritten signature in blue ink that reads "Beatriz Balbin".

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REF: AL OTH 138/2023 (PLEASE USE THIS REFERENCE IN YOUR REPLY)

PAGES: 9 (INCLUDING THIS PAGE)

OBJET/SUBJECT: **JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a joint communication sent by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.



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Mandates of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref: AL OTH 138/2023
(Please use this reference in your reply)

7 December 2023

Dear Mr. Makhtar Diop,

We have the honour to address you in our capacities as Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 52/17 and 51/21.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the Special Procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your entity, information that we have received concerning the lack of accountability and transparency of the International Finance Corporation's (IFC) investments in healthcare and ensuing risks for the realization of human rights.

International Finance Corporation

Of primary concern is the impact that IFC's investments may be having on the realization of the right to health, especially regarding the context of constrained public finances due to the pressing debt crisis in many developing countries. The IFC reportedly manages a healthcare investment portfolio of \$3.5 billion in health care companies for their emerging markets. The World Bank Group's (WBG) "Cascade Approach", which seeks to further establish its relationship with the private sector to attain the development targets outlined in the Sustainable Development Goals (SDGs) and save public financing and resources for the areas that require them the most, is also part of the IFC 3.0 strategy. This approach appears to be problematic in relation to health care as it runs counter to not only the human rights obligation to respect, protect and fulfil the right to health stemming from the International Covenant on Economic, Social and Cultural Rights, but also the World Health Organization's (WHO) policy guidance, which states that Member States should reduce reliance on private healthcare financing and progress towards publicly funded healthcare to achieve Universal Health Coverage (UHC)". Health financing experts, highlighting the statement that "not everything goes in the path to UHC", have claimed that not all private health investments contribute to UHC. Moreover, the COVID-19 pandemic has revealed to the world the essential role of public healthcare in tackling the contagion and the need for strengthening public health systems taking stock.

The IFC Impact Assessment Tool

The Anticipated Impact Measurement and Monitoring (AIMM) system, the assessment tool of the IFC, which allows the IFC to ameliorate its monitoring and measuring of the development impacts of projects, is not accessible to the public. While the IFC Access to Information Policy includes a section dedicated to the anticipated development impact of each project, the impact of investments in health projects is often unclear, particularly regarding their claimed contribution to UHC. In addition, the Independent Evaluation Group (IEG) has noted important gaps in prioritizing the measurement of the risks and the distributional impact of IFC investments in its 2018 World Bank Group Support to Health Services: Achievements and Challenges report. The IEG has also highlighted important gaps in IFC investment in the health sector, such as the fact that the IFC's Investment and Advisory Services have non-communicable diseases and general health as their focal point, with priorities in health care reflecting those of middle-income countries, as the majority of their support goes to hospitals, clinics, and pharmaceutical companies. Failures in the measurement of risks, alongside the gaps in quality and equity of its investments, continue to be reported with the IEG further noting that the IFC rarely monitors all dimensions of its health interventions. In addition, reports indicate that IFC's clients have abused human rights, for example the right to a healthy environment and access to communities' livelihoods and failed to conduct effective environmental assessments and consult with local communities. A full public account of how these cases have been addressed along with the corrective actions taken remains unavailable to the public. Remedy for harms inflicted through IFC projects, which result in the unintended cost of development projects being felt by the surrounding communities, (confirmed and investigated in lawsuits worldwide) and perpetuated by their clients is also not apparent. Lastly, the criteria for selecting IFC investments are listed in the AIMM system, which are currently undergoing revision. However, there is concern that the lack of transparency encountered with the first iteration of AIMM -in which the health sectoral framework remained undisclosed despite several attempts to claim its disclosure- will be replicated in the AIMM 2.0

process. It is also imperative that the next iteration of AIMM engage in a robust consultation process with civil society and affected communities.

Intermediated Investments in Healthcare

Investments in healthcare from IFC-supported financial intermediaries are difficult to scrutinise and important dimensions remain undisclosed to the public, including investment amounts and impact monitoring information. While financial intermediaries may not have the same mandate as the IFC, their operations should remain coherent with the WBG's development mandate. We are aware of recent improvements at the IFC, regarding levels of transparency pertaining to disclosures of investments through private equity funds and commercial banks. However, reports indicate that stakeholders continue to face significant obstacles in tracking the money trail or identifying the repercussions of intermediated investments in domestic markets. Moreover, financial intermediaries allegedly make extensive use of tax havens. Resorting to tax havens may collide with "the strong culture of corporate integrity and governance" that IFC advocates for. The use of tax havens is highly unlikely to meet the requirements of performance standards in IFC sustainability policies. It also seems to refute IFC's statements about its due diligence to limit tax evasion and tax avoidance, as well as the need for companies to be fiscally liable within the national jurisdictions of the countries they operate in. The IFC would benefit from taking action to urgently address this glaring contradiction and prohibit any tax avoidance practices for investments it is involved in.

Development Impact Bonds

Development impact bonds should be reconsidered. The World Bank's new long-term strategy delineated in the WB Evolution Roadmap, puts significant emphasis on relaunching the use of development impact bonds. Development impact bonds have been relevant in the health sector, where they have been used for the Global Financial Facility (GFF) and the International Financial Facility for Immunization (IFFIm), whose operational activities are entrusted to the Global Alliance for Vaccine Immunization (GAVI). While success stories heralded in institutional communication promote innovative financing, research has also demonstrated how such approaches can be more expensive for the public sector than traditional financing, as private investors and speculators seem to have a high cost of capital and pursue large profit margins. Such costs are generally not considered. Moreover, the mechanical complexity of such development bonds renders them extremely difficult to track and monitor despite the key contribution of donor governments' grants. This opacity has serious implications in terms of weakening political control over global health and development, and of shaping undesirably unbalanced geographies of power and financial concentration in the global North. In this regard, the World Bank Evolution Roadmap's potential allusion to securitization platforms to encourage private finance for achieving sustainability is of concern. The securitization approach will likely not deliver on its promises, particularly in terms of health outcomes. Securitization will only further narrow policy efforts to provide universal public healthcare, a highly undesirable horizon.

Public-Private Partnership

The IFC often presents Public-Private Partnership (PPP) projects as being effective pro-poor strategies. However, research seems to hint at the opposite. A

recent report published by the World Health Organization on Public-Private Partnerships for Health Care Infrastructure and Services, the first ever of its kind, highlights that PPPs have higher financing and transaction costs. Already back in 2017, the IEG, monitoring the World Bank Group engagement on PPPs in health, highlighted several critical aspects related to the WBG's promotion of PPPs in the healthcare sector. The Public-Private Partnerships in Health report notes that: (1) "the current Bank Group monitoring and evaluation (M&E) system for health PPPs is inadequate and needs to be improved to better track results", especially in relation to poor people's access to health services; (2) "the Bank Group rarely provides crucial "aftercare" for contract management"; (3) before deciding to implement a PPP contract, public procurement was almost never presented as an alternative option; (4) there is little evidence that fiscal implications are assessed consistently, "even if the proposed PPP could have significant fiscal implications". In other words, PPP-project designs often lack the necessary justifications, indicators, baselines and targets to track access by poor and marginalised populations. As of today, it seems that the recommendations formulated by the IEG have not entirely been taken into consideration and implemented.

In light of this, we would encourage a comprehensive evaluation of the IFC activities in healthcare from the WBG's IEG, as well as public scrutiny with inputs from all concerned actors, including parliaments and governments as well as civil society and the rest of the population.

In addition, we would like to remind you of the IFC's responsibilities regarding the human right to health and the principles of equality, non-discrimination, transparency, and accountability.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify matters brought to our attention, we would be grateful for your observations on the following:

1. Please provide any additional information and/or comment(s) the IFC may have on the above-mentioned allegations.
2. Please describe how the IFC plans to take into consideration and implement the recommendations formulated by the IEG and follow up on the aforementioned issues.
3. Please indicate which measures are being taken to ensure that the IFC contributes to the WBG's expanded vision and mission.
4. Please indicate what methods exist for the IFC to effectively prohibit practices of tax avoidance pertaining to investments it is involved with.
5. Please indicate how the IFC would adjust health service projects to include a form of monitoring that would provide a means by which distributional impacts of projects can be evaluated to realize and then compare the actual distributional impact these projects provide. What are the most precise and beneficial forms of monitoring that the IFC would recommend?

6. Please provide information on ways to incorporate explicit equity objectives when examining projects where specific disadvantaged or marginalized population groups are identified as the beneficiaries.
7. Please describe how the monitoring framework of the IFC projects can be adjusted to gain a more complete understanding of whether projects are contributing to expanding coverage versus improving the availability and usage amongst those already covered?

At the same time and while awaiting the above additional information, we would like to call on the International Finance Corporation to:

1. Immediately disclose the AIMM framework for the health sector and the timeline for the publication of the next AIMM framework – including the roadmap for public consultations. The lessons learnt from the previous framework should also be made publicly available;
2. Fully disclose IFC investments in financial intermediaries that operate in the healthcare sector and their corresponding sub-projects, including timely information that contains specifically: 1. the names of investee companies, 2. fund amounts and 3. monitoring criteria for respective sub-activities/sub-projects. The IFC needs to ensure that all of its clients, including private equity funds, pay their fair share of taxes, incorporating through conditionalities on publication of specific information on tax payments in each country where they operate, responsible corporate tax policies and publication of all discretionary tax treatments;
3. Suspend using development impact bonds and reorient such healthcare development schemes towards traditional financing approaches. In view of the evidence displayed by recent scholarly research, there is no reason why the public sector should bear such high costs of capital for innovative finance schemes that come to the exclusive advantage of private investors and speculators;
4. Publish the assessment reports of PPPs on the IFC website.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your institution will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that the same issues have been raised in a letter addressed to the World Bank Group.

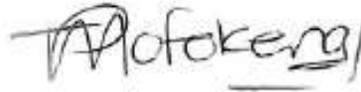
We would like to thank you for sharing a copy of this letter with the IFC Board members.

Please accept, Mr. Makhtar Diop, the assurances of our highest consideration.



Attiya Waris

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.



Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to the International Covenant on Economic, Social and Cultural Rights. In particular, we would like to highlight articles 12 and 2.2 of the Covenant, which guarantee the right to the highest attainable standard of physical and mental health without discrimination.

In addition, General Comment No. 14 adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) states that the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. (General Comment No 14, para. 18).

The Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care (General Comment No. 3, para. 10). It also interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to healthy environmental conditions, among others.

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that the COVID-19 pandemic has drawn attention to the urgent need for strategic, equitable investments in public health infrastructure (A/77/197, para. 95). She recalled that the “right to health relies on public participation in health-related decision-making at community, national and international levels” stressing the challenges due to the private sector influence over these processes and the technical knowledge needed to effectively participate in decision-making” (A/HRC/53/65, para 9). She added that “the meaningful and consequential participation required to realize the right to health and health-related rights is intricately connected to State’ obligation of non-discrimination” (A/78/185, para. 65; see also E/C.12/2000/4, para. 54).

The Special Rapporteur also recalled that the Guiding Principles on Business and Human Rights set out a “global, authoritative framework for the duties and responsibilities of States and businesses to prevent, address and remedy human rights abuses in the context of businesses operations” (para. 10). In this regard, Principle n°11, states the “Business enterprises should respect human rights” and that “they should avoid in infringing on the human rights of others and should address adverse human rights impacts with which they are involved”. This also implies that businesses enterprises should “comply with all applicable laws and respect internationally recognized human rights, wherever they operate” (Principle 23 (a)). The Special Rapporteur also stressed that “businesses are expected to take a number of measures,

including the adoption of policy commitments to meet that responsibility, putting in place an effective human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights and have in place processes to enable the remediation of any adverse human rights impact they cause or to which they have contribute or been linked” (A/HRC/53/65, para 25).

In this sense, the Special Rapporteur recommended to States and other stakeholders to “help to identify, through the constituent components of accountability, namely monitoring, review and redress, where progress has been made and where it is lacking, and allow rights holders to review and redress for violations where they have occurred”, stressing that “accountability constitutes a way for duty bearers to explain their actions and adjust (A/78/185, para. 97 (o)).

Furthermore, we wish to bring to your attention resolution 78/4 adopted by the United Nations General Assembly on 5 October 2023, entitled “Political declaration of the high-level meeting on universal health coverage”. In particular its para. 8, which reaffirms that States recognize that health coverage is fundamental for achieving the Sustainable Development Goals, not only to health and well-being but also to “promoting sustained, inclusive and sustainable economic growth, [...] reducing inequalities within and among countries, ensuring just, peaceful and inclusive societies and to building fostering partnerships, while reaching the goals and targets included throughout the 2030 Agenda for Sustainable Development is critical for the attainment of healthy lives and well-being for all, with a focus on health outcomes throughout the life course”. As stated in this resolution, “health is an investment in human capital” (para. 10) and that UHC implies that “all people have access without discrimination, to nationally determined sets of the needed [...] essential health services and essential safe, affordable, preventive, curative, rehabilitative and palliative essential health services and essential safe, affordable, effective and quality medicines and vaccines, diagnostics and health technologies [...], while ensuring that the use of these services does not expose the users to financial hardship, with a special emphasis on the poor, vulnerable and marginalized segments of the population” (para. 11). We wish to also remind the importance of equity and social protection mechanisms to ensure UHC and equitable access to quality health services without financial hardship for all people, in particular those in vulnerable situations (para. 14), we as the “significant gaps in the financing of health systems across the world” (para. 36). In this resolution States are also encouraged to “continue pursue policies towards adequate, sustainable, effective and efficient health financing and investments in universal health coverage and health systems [...] to respond to unmet health needs and to eliminate financial barriers to access to quality, safe, effective, affordable and essential health services [...] and ensure financial risk protection for all throughout the life course, especially for the poor and those in vulnerable situations” (para. 83). Finally, the resolution recommends States to “improve the efficiency of public management, accountability and transparency, and prioritize coverage of the poor and people in vulnerable situations, while noting the role of and the risks associated with private sector investment, as appropriate” (para. 87).