

Historic Supreme Court Win: World Bank Group Is Not Above the Law

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*In a historic 7-1 decision, the U.S. Supreme Court decided today in *Jam v. International Finance Corporation (IFC)* that international organizations like the World Bank Group can be sued in U.S. courts.*

The Court's decision marks a defining moment for the IFC – the arm of the World Bank Group that lends to the private sector. For years, the IFC has operated as if it were “above the law,” at times pursuing reckless lending projects that inflicted serious human rights abuses on local communities, and then leaving the communities to fend for themselves.

International organizations like the IFC have long claimed they are entitled to “absolute” immunity, even as they engage in commercial activities, like the coal-fired power plant at the heart of this case. Because the relevant statute only gives the IFC the same immunity as foreign governments, and foreign governments do not have absolute immunity in U.S. courts when they engage in commercial activities, the Supreme Court rejected this position: “The International Finance Corporation is therefore not absolutely immune from suit.”

The case involves an IFC-financed power plant in Gujarat, India. The plaintiffs are members of local fishing and farming communities whose livelihoods, air quality, and drinking water have been devastated by the project. They allege that the IFC and the project developers knew about these risks in advance but nevertheless chose to recklessly push forward with the project without proper protections in place.

The plaintiffs originally tried to raise their concerns through the IFC's internal grievance mechanism, but when the IFC's leadership ignored the grievance body's conclusions, they reluctantly filed suit in the United States as a last resort. EarthRights International represents the plaintiffs, along with the Stanford Law School Supreme Court Litigation Clinic.



The IFC is headquartered in Washington, DC, along with the rest of the World Bank Group, because the U.S. government is by far the largest shareholder in these organizations. The U.S. government has long supported the plaintiffs' interpretation of the law: that international organizations can be sued for their commercial activities or for causing injuries in the United States. The U.S. Departments of Justice and State submitted an amicus curiae brief in support of the plaintiffs' position, as did members of Congress from both parties.

The IFC argued that allowing it to be sued would be disastrous, but the Supreme Court, in an opinion by Chief Justice John Roberts, found these concerns to be "inflated." The Court noted that, unlike many international organizations, the IFC's founding members did not grant the organization absolute immunity in its charter.

The case is Docket No. 17-1011. Justice Brett Kavanaugh recused himself, because he was on the U.S. Court of Appeals for the D.C. Circuit when the case was heard there. Justice Stephen Breyer was the sole dissenter, arguing that a "broad exposure to liability" for international organizations runs counter to Congress' original purpose in providing immunity.

Now that the Supreme Court has established that the World Bank Group can be sued, the case will return to the lower courts for further litigation.

Another case against the IFC is also expected to proceed in the U.S. District Court for the State of Delaware. The case, [*Juana Doe et al v. IFC*](#), involves IFC projects that have been linked to murders, torture, and other violence by paramilitary groups and death squads in Honduras. EarthRights International represents the plaintiffs, whose identities are kept anonymous to protect them from retaliation.

Statements

"We are extremely happy with the decision of the Supreme Court of US. This is a huge victory for the people of Mundra in particular and other places in general, where World Bank's faulty investments are wrecking communities and environment. This is major step towards holding World Bank accountable for the negative impacts their investments are causing." – Dr. Bharat Patel, the head of fishworkers' rights group MASS, one of the plaintiffs in the case

"We are delighted with this judgment. This is a victory of all who have fought

for a more accountable World Bank since the past many decades world over and has fought valiant struggles against Bank funded projects on the ground, exposing the monumental human and environmental costs of their lending. This judgment will strengthen communities' efforts to hold the Bank accountable and is a step in the direction of bringing accountability in financial institutions." – Joe Athialy, Executive Director of the Centre for Financial Accountability, India

"Immunity from all legal accountability does not further the development goals of international organizations. It simply leads them to be careless, which is what happened here. Just like every other institution, from governments to corporations, the possibility of accountability will encourage these organizations to protect people and the environment." – Marco Simons, General Counsel, EarthRights International

"The commercial activities of international organizations such as the IFC can have a significant impact on lives of Americans and others around the world. We welcome today's decision." – Prof. Jeffrey Fisher, Co-Director, Stanford Law School Supreme Court Litigation Clinic

Background

From the start, the IFC recognized that the Tata Mundra coal-fired power plant was a high-risk project that could have significant adverse impacts on local communities and their environment. Despite knowing the risks, the IFC provided a critical \$450 million loan in 2008, enabling the project's construction and giving the IFC immense influence over project design and operation. Yet the IFC failed to take reasonable steps to prevent the harms it predicted and failed to ensure that the project abided by the environmental and social conditions of IFC involvement.

As predicted, the plant has caused significant harm to the communities living in its shadow. Construction of the plant destroyed vital sources of water used for drinking and irrigation. Coal ash has contaminated crops and fish laid out to dry, air pollutants are at levels dangerous to human health, and there has already been a rise in respiratory problems. The enormous quantity of thermal pollution – hot water released from the plant – has destroyed the local marine environment and the fish populations that fisherfolk like Mr. Budha Ismail Jam rely on to support their families. Although a 2015 law required all plants to install cooling towers to minimize thermal pollution by the end of 2017, the Tata plant has failed to do so.

A nine-mile-long coal conveyor belt, which transports coal from the port to the Plant, runs next to local villages and near fishing grounds. Coal dust from the conveyor and fly ash from the plant frequently contaminate drying fish, reducing their value, damage agricultural production, and cover homes and property. Some air pollutants, including particulate matter, are already present at levels dangerous to human health, in violation of Indian air quality standards and the conditions of IFC funding, and respiratory problems, especially among children and the elderly, are on the rise.

The IFC's own internal compliance mechanism, the Compliance Advisor Ombudsman (CAO), issued a scathing report in 2013 confirming that the IFC had failed to ensure the Tata Mundra project complied with the environmental and social conditions of the IFC's loan at virtually every stage of the project and calling for the IFC to take remedial action. IFC's management responded to the CAO by rejecting most of its findings and ignoring others. In

a follow-up report in early 2017, the CAO observed that the IFC remained out of compliance and had failed to take any meaningful steps to remedy the situation.

The harms suffered by the plaintiffs are all the more regrettable because the project made no economic sense from the beginning. In 2017, in fact, Tata Power began trying to unload a majority of its shares in the project for one rupee (a few cents) because of the losses it has suffered and will suffer going forward. At the moment, the plant is operating at only one-fifth capacity in part because India has an oversupply of electricity.

The case is *Budha Ismail Jam v. International Finance Corp.*, No. 17-1011.

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