



January 17, 2025

International Finance Corporation (IFC)

Attn: Ajay Banga, World Bank Group President; Makhtar Diop, Managing Director; Jamie Fergusson, Director, Climate Business; Paolo Lombardo, Acting Director, ESG Sustainability Advice & Solution; Nessim Ahmad, Senior Director, Environment and Social Policy and Risk; IFC Member State Executive Directors; World Bank Group Climate Advisors
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Re: Cover Letter to 28 CSOs' Ask for IFC to Implement Its CAOs' Determinations of IFC's Board Adopted Policy Requirements Applicable to Climate Change Prior to IFC Financing Decisions

Dear President Banga, IFC Executive Directors, and Directors Diop, Fergusson, Lombardo, and Ahmad:

On October 30, 2024, the IFC/MIGA Compliance Advisor Ombudsman (CAO) Advisory Function issued a [Climate Change Advisory Report](#) (CAO Opinion). The CAO Opinion (1) interprets and confirms IFC's obligations under its own board adopted policies in regards to GHG emissions quantification, alternatives analysis, and mitigation for each IFC investment prior to its financing decision, (2) establishes IFC is failing to adhere to these requirements, and (3) substantiates Bank Climate Advocates' (BCA's) findings demonstrating IFC's systematic non-compliance with these policies across 350 IFC direct investments and IFC's entire portfolio from 2012 to the present.

IFC's failures to implement its current policies have a profound impact on climate change. As BCA's analysis **details, just 233 directly financed IFC projects and 2 financial intermediary investments continue to result in approximately 168,000,000 tCO₂-eq emitted per year that IFC is responsible for.** This is roughly equivalent to the GHGs the Netherlands emits – and does not include all the missing emissions IFC failed to quantify from these investments and others. Had the IFC adhered to the clear requirements of its board adopted policies, all or most of these GHG emissions could have been avoided.

The CAO serves as the IFC's independent accountability and dispute resolution mechanism. As such, the CAO Opinion's interpretation of IFC's policy requirements settles the 2023 dispute between IFC Management and CSOs regarding IFC's climate change obligations under its board adopted policies prior to financing decisions, and its non-adherence to them.¹ IFC adhering to its board adopted policy requirements is critical. It is required under international law, can help IFC and its member states avoid liability arising from IFC's failures to adhere to its harm prevention policies, and is essential to getting IFC closer² to aligning each of its investments and its overall portfolio with the UNFCCC Paris Agreement goal to limit global warming to 1.5°C.

Considering the climate crisis that IFC acknowledges is already having severe impacts on the Global South communities it is supposed to be benefiting, time is of the essence for IFC to implement its climate change policies.

IFC's update to its sustainability framework, offering an opportunity for IFC to align its financial flows for each investment and across its portfolio with 1.5°C, appears to be at least two years away from adoption and implementation. Further, immediate implementation of IFC's board adopted policies is needed to fill gaps in IFC's Paris Agreement Alignment Methodology and bring IFC's finance flows into closer alignment with 1.5°C for two additional reasons.

First, IFC's Paris Agreement Methodologies do not require IFC align, or ensure IFC's alignment of, each of its investments with 1.5°C. Rather, they allow IFC to defer to a country's Nationally Determined Contributions (NDCs) where an investment is located. However, current NDCs will only limit global warming to 2.5 – 2.9°C, and IFC's Paris Methodology allows IFC to finance fossil fuel and other GHG-intensive projects that the IPCC and IEA have shown will cause 1.5°C to be exceeded. And second, unlike IFC's board adopted policies, IFC's Paris Methodology does not require IFC to ensure: quantification of each investment's Scope 1, 2, and 3 GHG emissions that is needed to determine the mitigation needed to avoid these emissions; supported and credible GHG emissions alternatives analysis that meets a good international industry practice or any standard; public disclosure and review of GHG emissions figures and avoidance/mitigation assessments; or adoption of measures and alternatives that avoid GHG emissions as far as feasible.

¹ See [December 11, 2023 CSOs' request to the CAO](#) detailing this dispute.

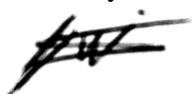
² As detailed in our enclosed January 17, 2024 letter, IFC's board adopted policies and Paris Methodology fall well short of IFC's and its member states' obligations under international law to assess and prevent climate change harms prior to IFC's financing decision. As such, they must be improved to ensure the alignment of each IFC investment and IFC's overall financial flows with 1.5°C. The CAO Opinion also identifies that IFC and its member states have these obligations and must consider them (See [CAO Opinion](#) at fn. 19).

For all the above reasons, if IFC does not take corrective action by immediately implementing the requirements of its board adopted policies, it will cause and contribute to two more years of significant GHG emissions that can be feasibly avoided. Approximately 3.3–3.6 billion people that live in contexts that are highly vulnerable to climate change are already suffering from the worst impacts of global warming, such as more frequent and severe heat waves, wildfires, supercharged storms, atmospheric rivers, and extended droughts. And things will get worse - global warming is expected to increase at least through 2040 mainly due to increased cumulative GHG emissions in nearly all considered scenarios and modelled pathways. The world and its most marginalized people cannot handle further GHG emissions, and especially ones that IFC has the duty and ability to avoid causing.

The enclosed letter from 28 civil society organizations (CSOs) and CSO alliances, collectively encompassing over 150 CSOs from the Global South and North, thus asks IFC to confirm in writing that it agrees with, and will immediately implement, specific requirements in its board adopted policies that the CAO Opinion identifies as applicable to climate change. In addition, we ask IFC to commit in writing to immediately disclose its Paris Alignment Methodology analysis and findings for public review prior to IFC's financing decisions. We see no conceivable rationale for IFC not to disclose this information, and IFC's board adopted policies require this timely public disclosure. Further we emphasize that because of the climate crisis, that time is also of the essence for IFC to meet its legal, moral, and institutional obligations to align its board adopted policies and Paris methodologies with 1.5°C. We thus urge IFC and the Board of Directors to immediately make public and allow all stakeholders to contribute to the draft approach paper on IFC's Sustainability Framework review process, and to consult with Civil Society early in the process before it is approved by the Board. In the interim, our enclosed letter details the need to improve these policies so they align with IFC's and its member states' climate change obligations under international law.

Thank you for your consideration. We look forward to your timely response. Please let us know if we can provide any additional information, and please share this letter with all applicable IFC staff.

Sincerely,



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Enclosures: CSOs' January 17, 2025 Letter: Ask for IFC to Implement Its CAO's Determinations of IFC's Board Adopted Policy Requirements Applicable to Climate Change Prior to IFC Financing Decisions

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Dear President Banga, IFC Executive Directors, and Directors Diop, Fergusson, Lombardo, and Ahmad:

We appreciate IFC Management's engagement in 2023 with Bank Climate Advocates (BCA) and coalition of Civil Society Organizations (CSOs) regarding our concerns of IFC's non-adherence to the requirements of its board adopted policies¹ applicable to climate change prior to IFC financing decisions. However, to the severe detriment of IFC's alignment with the 1.5°C global warming limitation objective,

¹ These board adopted policies include the: IFC Policy on Environmental and Social Sustainability (hereinafter, "E&S Policy"), IFC Performance Standards on Environmental and Social Sustainability ("PS" or "Performance Standards"), and the IFC Access to Information Policy (hereinafter, "Access to Info Policy") (all effective January 1, 2012).

this exchange did not result in corrective action because IFC Management disagreed with CSOs as to the clear meaning of these requirements.²

On October 30, 2024, the IFC/MIGA Compliance Advisor Ombudsman (CAO) Advisory Function issued a Climate Change Advisory Report (CAO Opinion). The CAO Opinion (1) interprets and confirms IFC's obligations under its own board adopted policies in regards to GHG emissions quantification, alternatives analysis, and mitigation for each IFC investment prior to its financing decision, (2) establishes IFC is failing to adhere to these requirements, and (3) substantiates Bank Climate Advocates' (BCA's) findings demonstrating IFC's systematic non-compliance with these policies across 350 IFC direct investments and IFC's entire portfolio from 2012 to the present.

The CAO serves as the IFC's independent accountability and dispute resolution mechanism. As such, the CAO Opinion's interpretation of IFC's policy requirements settles the 2023 dispute between IFC Management and CSOs' regarding IFC's climate change obligations under its board adopted policies prior to financing decisions, and its non-adherence to them, unless overridden by a court of law. IFC adhering to its board adopted policy requirements is critical. It is required under international law (see Appendix C below), can help IFC and its member states avoid liability arising from IFC's failures to adhere to its harm prevention policies, and is essential to getting IFC closer³ to aligning each of its investments and its overall portfolio with the UNFCCC Paris Agreement goal to limit global warming to 1.5°C.

Considering that the climate crisis IFC acknowledges is already having severe impacts on the Global South communities it is supposed to be benefiting, time is of the essence for IFC to implement its climate change policies.

IFC's update to its sustainability framework, offering an opportunity for IFC to align its financial flows for each investment and across its portfolio with 1.5°C, appears to be at least two years away from adoption and implementation. Further, immediate implementation of IFC's board adopted policies is needed to fill gaps in IFC's Paris Agreement Alignment Methodology and bring IFC's finance flows into closer alignment with 1.5°C is needed for two reasons.

First, IFC's Paris Agreement Methodologies do not require IFC align, or ensure IFC's alignment of, each of its investments with 1.5°C. Rather, they allow IFC to defer to a country's Nationally Determined Contributions (NDCs) where an investment is located. However, current NDCs will only limit global warming to 2.5 – 2.9°C, and IFC's Paris Methodology allows IFC to finance fossil fuel and other GHG-

² See [December 11, 2023 CSOs' request to the CAO](#) detailing this dispute with links to correspondence between IFC and CSOs.

³ As detailed in Appendix B below, IFC's board adopted policies and Paris Methodology fall well short of IFC's and its member states' obligations under international law to assess and prevent climate change harms prior to IFC's financing decision. As such they must be improved to ensure the alignment of each IFC investments and IFC's overall financial flows with 1.5°C. The CAO Opinion also identifies that IFC and its member states have these obligations and must consider them (See CAO Opinion at Fn 19, providing: "A recent decision by the European Court of Human Rights and climate change-related cases pending before the International Court of Justice, the International Tribunal for the Law of the Sea, and the Inter-American Court of Human Rights all consider the legal responsibility of states for treaties, declarations, and principles related to human rights, climate change, the environment, national sovereignty, due diligence, harm prevention, and intergenerational equity. The ICJ has already opined that international organizations may have obligations under international law, and that states carry their obligations with them when they act through international organizations.").

intensive projects that the IPCC and IEA have shown will cause 1.5°C to be exceeded.⁴ And second, unlike IFC's board adopted policies, IFC's Paris Methodology does not require IFC to ensure: quantification of each investment's Scope 1, 2, and 3 GHG emissions that is needed to determine the mitigation needed to avoid these emissions; supported and credible GHG emissions and climate change alternatives analysis that meets a good international industry practice or any standard; public disclosure and review of GHG emissions figures and avoidance/mitigation assessments; or adoption of measures and alternatives that avoid GHG emissions as far as feasible.

IFC's failures to implement its current policies applicable to its financing activities have a profound impact on devastating climate change impacts and GHG emissions growth. BCA's analysis

documents that IFC's direct financing of 233 projects from 2012 through 2023 are alone responsible for approximately 129,800,000 tCO₂-eq (GHG emissions) per year.⁵ This figure is not counting the plethora of GHG emissions IFC has impermissibly failed to ensure quantification for (including project's scope 3 emissions in almost all instances, and major scope 1 emissions from many projects), the 75 projects BCA analyzed where IFC failed to disclose any GHG emissions at all, nor the 700 plus category B IFC investments not included in BCA's analysis. It also does not account for the GHG intensive projects enabled by IFC's advisory services and trade finance. Nor does it account for IFC's financial intermediary (FI) investments resulting in the financing of fossil fuel projects, including the Java 9 & 10 coal power plants estimated to emit over 10,000,000 tons per year and 10 coal fired plants in the Philippines estimated to emit approximately 28,420,000 tCO₂-eq per year.⁶

Adding just this sample of two IFC FI investments to IFC's directly financed projects results in approximately 168,000,000 tCO₂-eq emitted per year that IFC is responsible for. 168,000,000 tCO₂-eq is roughly equivalent to the GHGs the Netherlands emitted in 2022 – and this figure does not include all the missing emissions IFC failed to quantify from these investments and others.⁷ **Had the IFC adhered to the plain meaning requirement of its board adopted policies, all or most of these GHG emissions could have been avoided.**

We note BCA's data evidences IFC is failing to ensure quantification and also mitigation of Scope 3 emissions for 95% of its investments, which is similar to the CAO Opinion findings. This is consequential given these emissions can be minimized and that the CAO Opinion detailed how Scope 3 emissions can comprise more than 70% of an investment's carbon footprint. BCA's data also demonstrates IFC is failing to ensure quantification and disclosure of major sources of direct Scope 1 GHG emissions prior to its financing decisions. For instance, IFC often only discloses GHG emissions from the electricity generated from multiple industrial livestock investments, and not the exceptionally high commonly known Scope 1

⁴ See Appendix A, *post*.

⁵ See Exhibit 2 (excel spreadsheet summary tab, items IV) for calculations resulting in this figure. For methodology used for this approximation, see [CSOs' May 1, 2023 Request to IFC Management](#) at page 3, section I.

⁶ Closing loopholes - How the IFC can help stop fossil fuel finance, Recourse and Trend Asia, (March 2021) at 4; Office of the Compliance Advisor Ombudsman (CAO), *Compliance Investigation Report, IFC Investments in Rizal Commercial Banking Corporation (RCBC), The Philippines* (Nov. 19, 2021) at 71-110 (approximate emissions of 28,420,000 tCO₂-eq per year is a middle value estimate from 10 coal power plants out of 11 evaluated in this CAO RCBC report. The emissions estimates from the Atimonan coal power plant are excluded, as it was not pursued.).

⁷ Crippa, M., et al., GHG emissions of all world countries, Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/953332, JRC134504 at 174 (providing Netherlands 2022 emissions was 167,847,000 tCO₂-eq) (avail at: https://edgar.jrc.ec.europa.eu/booklet/GHG_emissions_of_all_world_countries_booklet_2023report.pdf).

methane emissions from livestock manure. In addition, for gas pipelines and LNG projects, IFC often fails to ensure client quantification of major GHG emissions from methane and natural gas leakage.

If IFC does not take corrective action by immediately implementing the requirements of its board adopted policies, it will cause and contribute to at least two more years of significant GHG emissions that can be feasibly avoided. About 3.3–3.6 billion people that live in contexts that are highly vulnerable to climate change are already suffering from the worst impacts of global warming, such as more frequent and severe heat waves, wildfires, supercharged storms, atmospheric rivers, and extended droughts. And things will get worse - global warming is expected to increase at least through 2040 mainly due to increased cumulative GHG emissions in nearly all considered scenarios and modelled pathways. The world and its most marginalized people cannot handle further GHG emissions, and especially ones that IFC has the duty and ability to avoid causing.

We thus request IFC confirm in writing that it agrees with, and will immediately implement, the requirements in its board adopted policies that the CAO Opinion identifies as applicable to climate change, including the following:

- (1) **IFC’s Duties to Ensure Client Adherence to the GHG Emissions Requirements in Performance Standard 1 and 3:** The CAO Opinion⁸ provides IFC’s sustainability policy requires IFC ensure that its clients satisfy (a) PS 1’s good international industry practice (GIIP) requirement for environmental and social impact assessments, which requires client quantification of Scope 1, 2, and 3 GHG emissions for the contemplated investment prior to financing decisions (the CAO Opinion found “[b]y only requiring clients to quantify Scope 1 and 2 emissions, IFC falls short of GIIP standards, which typically also require reporting on Scope 3 value chain emissions”) and (b) PS 3’s GHG quantification and reporting requirement when Scope 1 and 2 GHG emissions combined will exceed 25,000 tCO₂eq *per year*.

In relation to these requirements, the CAO found IFC is not ensuring client adherence to the GIIP standard in IFC Performance Standard 1 because it almost always impermissibly omits Scope 3 emissions that “can comprise more than 70 percent of their [investment’s] carbon footprint” (the CAO Opinion found only 2 of 16 investments analyzed included Scope 3 emissions).⁹ The CAO also found “effectiveness and impact of IFC’s climate strategy depends on measuring and mitigating its GHG emissions at the project and institutional levels [but]...[i]n order to mitigate climate change impacts, IFC and its clients must have comprehensive knowledge of and data on project emissions.”

- (2) **IFC’s Duties, Irrespective of its Clients’ Obligations, to Disclose GHG Emissions for Each Investment Prior to Financing Decisions:** The CAO Opinion acknowledges that prior to financing decisions, paragraph 31(a)(v) of IFC’s Access to Information Policy (AIP) requires IFC to disclose GHG emissions when estimated over 25,000 tCO₂eq total (over a project’s lifecycle), and that this requirement differs from the monitoring and reporting requirements in PS 3 paragraph 8 applicable to clients when a clients emissions are estimated to be over 25,000 tCO₂eq per year. See CAO Opinion at fn. 39 and 94 distinguishing and differentiating the two independent and separate requirements. IFC’s AIP thus necessarily requires IFC to quantify the total estimated Scope 1, 2, and 3 GHG emissions an

⁸ Like CAO Compliance Function opinions, the CAO Opinion provides IFC is required to ensure client adherence to the PS requirements.

⁹ The CAO Opinion also details that “Analysis conducted by Bank Climate Advocates of IFC’s portfolio notes that, despite the availability of methodologies to estimate Scope 1, 2, and 3 emissions for over a decade, IFC is still failing to quantify Scope 3 emissions prior to financing decisions for approximately 95 percent of its investments, and does not quantify GHG emissions at all for approximately 21 percent of projects.”

investment will emit over its lifecycle when its clients do not, so IFC can disclose these figures as its AIP demands. BCA findings demonstrate for 21% of the 350 investments BCA analyzed, IFC did not disclose any GHG emissions when Scope 1, 2, and 3 emissions would clearly exceed 25,000 tCO₂eq total (see Exhibit 2). BCA's data also demonstrates that for almost all investments, IFC is failing to disclose Scope 3 emissions and in many instances significant Scope 1 emissions.

(3) IFC's Duties to Ensure Client Adherence to the GHG Emissions Alternatives Analysis

Requirements in Performance Standard 1: The CAO Opinion finds that prior to financing decisions, IFC's policies requires it ensure that for all investments that are greenfield developments or large expansions of an activity likely to generate potential significant environmental or social impacts, that the client adhere to the PS 1 paragraph 7 requirement to conduct a GHG emissions and climate change impact alternatives analysis that adheres to GIIP. The CAO Opinion details that GIIP for an alternatives analysis includes at a minimum:

- a. "a detailed discussion of each alternative presented to IFC"
- b. "specific proposed GHG mitigation measures to address E&S risks for each alternative"
- c. "considers [] GHG-reducing alternatives within the project scope, and [] lower-carbon alternatives to projects"
- d. "provide a solid justification/rationale for the alternative they chose"

Like IFC's own PS Guidelines, the CAO Opinion also points to the United States National Environmental Policy Act (NEPA) requirements for alternatives analysis as GIIP.¹⁰ Of note, NEPA requires all findings in alternatives analysis pertaining to whether avoidance and mitigation measures are feasible be supported by substantial evidence, and not be cursory and unsupported.

¹⁰ NEPA has its own guidelines specific to GHG emissions and climate change alternatives analysis that further details common sense GIIP. See Interim U.S. Council of Environmental Quality (CEQ) NEPA guidance effective January 8, 2023 for GHG emissions and climate change assessments, alternatives analysis and mitigation in environmental impact statements, available at: <https://www.regulations.gov/document/CEQ-2022-0005-0001>. These guidelines specify necessary components of GIIP for alternatives analysis, including the need to quantify Scope 1, 2, and 3 GHG emissions in the first instance, and to analyze the feasibility of the lowest carbon alternatives (for instance renewable energy sources when fossil fuel projects are contemplated) to inform the alternatives analysis. These components include, but are not limited to, the following accompanied by analysis/study sufficient to support findings: (1) *for energy projects - comparison of the proposed energy project to a no project alternative and all renewables options with a thorough assessment of the energy demand to be met and whether and which renewable and other clean energy options could be used to provide this demand*; for all other projects with GHG emissions, comparison of the contemplated project to a no project alternative and other feasible project alternatives that can avoid or significantly reduce GHG emissions and climate change impacts; (2) technical and economic feasibility analysis for all renewable energy sources; (3) full quantification of Scope 1, 2, and 3 GHG emissions for the proposed project over its lifetime in comparison to all feasible alternatives that can avoid or minimize/significantly reduce GHG emissions; (4) *for the proposed project and all alternatives, best available social cost of GHG emissions estimates with monetary figures of the societal cost from incremental metric ton of GHG emissions including from physical damages (e.g., sea-level rise, infrastructure damage, human health effects, etc.)*; (5) full analysis of mitigation measures to reduce GHG emissions to the greatest extent economically and technically feasible; (6) an explanation of how the proposed action and alternatives would help meet or detract from achieving relevant climate action goals and commitments that looks beyond NDCs to limiting warming to 1.5°C; and (7) analysis, after affected community engagement, to explain the real-world effect, including those that will be experienced locally and disproportionately by vulnerable communities, associated with GHG emissions from the proposed project that contribute to climate change (e.g. from sea-level rise, fire, drought, health impacts, etc.).

Specifically, the CAO Opinion finds that IFC failed to ensure adequate GHG emissions alternative analysis as consistent with the PS 1 paragraph 7 GIIP requirement, as:

“critical elements of established [] GIIP [required in Performance Standard 1] were missing from 21 of the 27 [analyses] reviewed. Specifically, the clients did not provide a detailed discussion of each alternative presented to IFC or specify proposed GHG mitigation measures to address E&S risks for each alternative...Further, IFC typically considers only GHG-reducing alternatives within the project scope, and not lower-carbon alternatives to projects...In addition, these clients failed to provide a solid justification/rationale for the alternative they chose. *As a result, the alternatives analysis for these IFC investments was limited in its utility to inform decision making on lower-carbon alternatives and the mitigation of project greenhouse gases.*”

The GIIP alternatives analysis requirements the CAO Opinion details contain a plethora of elements, that if performed, provide powerful substantive tools needed to persuade banks and their directors to abandon financing for proposed carbon intensive fossil fuel projects, and to instead direct financing towards feasible renewable energy infrastructure that can meet a country or region’s energy demand. Performance of this analysis can also significantly reduce GHG emissions from projects the IFC finances in other sectors.

IFC failures to ensure its clients adherence to GIIP for alternatives analysis prior to its financing decisions, and the adverse global warming impacts of these failures, is perhaps best demonstrated by examining 11 natural gas plants IFC financed without securing alternatives analysis demonstrating whether renewable energy alternatives were feasible instead (see Exhibit 1).

Of these 11 natural gas plants IFC financed, only three even examined renewables in an alternatives analysis (the remaining eight only looked at different configurations of the natural gas plants or higher emitting sources of energy). For all three of the alternatives analyses that examined renewables, the analyses’ finding that renewables were not feasible were cursory and not supported in text or anywhere in the EIA document or its appendices. It is thus clear that the analysis for these projects did not meet PS 1’s GIIP standard, as none of the analysis examined and documented whether implementing renewable energy sources that could meet the region’s energy was economically and technically feasible. Just stating that renewables were considered, and are not feasible, without supporting evidence, is not GIIP. **These examples highlight one of IFC’s most prominent systematic failures to ensure client GIIP for GHG emissions alternatives analysis across the 350 investments analyzed by BCA, where almost all client findings of the infeasibility of alternatives and mitigation that could entirely or furthest avoid GHG emissions are cursory conclusions and not supported by analysis.**

Excerpts of the full GHG emissions alternatives analysis from the environmental assessment (EIA) documents from the Central Termica de Temane in Mozambique, Project # 43099, approved by IFC 12/7/21 and Yerevan CGT in Armenia, Project # 39630, are pasted in Appendix E. See Appendix E, Excerpts 1 and 2. Indeed, the cursory and unsupported conclusions in both these EIA analyses that renewables are not feasible, and or lack of analysis supported by study examining the feasibility of renewables, fails to meet PS 1 pp 7’s GIIP requirement. The Yerevan CGT EIA even states, “In the dry climate of Armenia, Solar Energy is quite favorable,” but fails then to assess the technical and economic feasibility of implementing renewables and the social cost of carbon from the proposed natural gas plant to local communities.

In addition, a CSPF presentation by Lorraine Chiponda of Don’t Gas Africa and Power Shift Africa at the World Bank 2023 Annual Meeting also details how flawed the alternatives analysis was for the

Mozambique project due to its failure to credibly and adequately examine renewables that can feasibly meet energy supply for the region (see “Greenhouse Gas Emissions and Climate Change Alternatives Analysis: Ensuring World Bank Group Paris Agreement Alignment”, Oct. 13, 2023 available at <https://www.worldbank.org/en/events/2023/06/12/civil-society-policy-forum-2023-annual-meetings-2023#6>).

If IFC’s position is that the alternatives analysis for the Mozambique, Armenia, and or Myanmar¹¹ natural gas plants met a GIIP standard based on information not disclosed for the public’s review prior to IFC’s financing decision on the IFC Portal, then by definition, a GIIP standard was not met. This is because it is commonly accepted around the world that a component of GIIP for environmental assessments is disclosure of the full impacts and alternatives analysis for public review prior to decision making. See Appendix D. However, from conversations with IFC Directors and U.S. Treasury about the alternatives analysis for these projects, any supplemental alternatives analysis information provided to IFC directors not disclosed on the IFC Portal, still fell incredibly short of GIIP because they were not sufficiently supported by study.

- (4) **IFC’s Duties to Ensure its Clients Obligations to Mitigate GHG Emissions.** The CAO Opinion finds IFC’s policies require IFC to ensure that its clients adhere to PS 3’s mitigation requirements for GHG emissions prior to project financing, including the requirement in PS 3 paragraph 7 providing that “[i]n addition to the resource efficiency measures described above, the client will consider alternatives and implement technically and financially feasible and cost-effective options to reduce project-related GHG emissions during the design and operation of the project.”

In addition to finding that PS 1 requires quantification of Scope 1, 2, and 3 GHG emissions in the first instance so that PS 3’s mitigation measures can be tailored to fit an investment’s estimated GHG emissions,¹² the CAO Opinion finds that IFC only required GHG emissions mitigation measures as provided in its Performance Standards for six of 16 high energy projects the CAO analyzed, while GHG mitigation was not even analyzed for five of these projects.

Importantly, the CAO Opinion also found that IFC is required to ensure client adherence to the PS 3 paragraph 4 requirement to apply GIIP in the evaluation and selection of GHG emissions mitigation measures, and that the IFC’s Environmental Health and Safety (EHS) Guidelines mitigation standards are no longer GIIP. As such, the CAO found IFC is allowing widespread active client use of defective mitigation analysis, benchmarks, and measures from “badly outdated” EHS Guidelines mitigation standards from over 15 years ago far out of line with current GIIP and technology, resulting in “effective GHG mitigation actions are likely to be left out of environmental plans and agreements.” The CAO Opinion further details that:

both the general and many sectoral [EHS] guidelines do not reflect current expert understanding of the risks and impacts of GHGs as well as the significant technological advancements and innovations that have taken place over the past 18 years that can help companies achieve necessary GHG reductions. Further, the General EHS Guidelines section on

¹¹ Myingyan in Myanmar natural gas plant, IFC Project # 36627, approved 10/8/16 is the third out of three natural gas plant GHG emissions alternatives analysis that included an analysis of renewables and that did not meet PS 1’s GIIP requirement. Similarly to the Mozambique and Armenia alternatives analysis that impermissibly briefly discusses and dismisses renewables without supporting analysis, the Myanmar analysis briefly discusses and dismisses solar, wind, geothermal, and biomass renewable energy sources. Also, contrary to PS 1’s GIIP requirement, the Myanmar alternatives analysis does not provide information to demonstrate whether suitable hydro project (s) could be pursued as a renewable energy option in lieu of the natural gas plant.

¹² The CAO Opinion found “effectiveness and impact of IFC’s climate strategy depends on measuring and mitigating its GHG emissions at the project and institutional levels [but]...[i]n order to mitigate climate change impacts, IFC and its clients must have comprehensive knowledge of and data on project emissions.”

greenhouse gases does not recognize that supply chain inputs or downstream uses can generate significant emissions although the current state of knowledge recognizes that these can be significant.

The CAO Opinion thus clarifies IFC can no longer rely on its EHS Guidelines mitigation standards to ensure adherence to PS 3's GHG mitigation requirements.

Further, and perhaps most critically, the CAO Opinion finds that part of the requirement to conduct a GHG emissions and climate change impact alternatives analysis consistent with GIIP encompasses an analysis of alternative mitigation measures to inform the mitigation selected. Specifically, the CAO Opinion finds that this mitigation alternatives analysis must include: (a) "a detailed discussion of each alternative presented to IFC," (b) "specific proposed GHG mitigation measures to address E&S risks for each alternative," (c) analysis / "consider[ation of] GHG-reducing alternatives within the project scope, and [] lower-carbon alternatives to projects," and (d) "provide a solid justification/rationale for the alternative they chose."

Thus, to adhere to its board adopted policies, IFC must ensure (1) a mitigation measure alternatives analysis is performed that has these elements at a minimum, and (2) that this analysis accompanies disclosure of the mitigation measures IFC's AIP, and PS 1's GIIP requirement for environmental and social impact assessments, requires be disclosed to the public for review.

- (5) **IFC's Duties to Ensure its Clients' GHG Emissions Quantification, Alternatives Analysis and Mitigation Measures Comply with Host Country Laws.** The CAO Opinion affirms IFC's obligations to ensure its clients comply with applicable national law, including those laws implementing host country obligations pertaining to climate change impact due diligence and harm prevention under international law (CAO opinion at fn. 19 providing: "IFC requires clients to comply with host country laws, including [] obligations under international law (PS1, Overview, para. 5).") As such, where IFC's PS omits requirements pertaining to GHG emissions quantification, alternatives analysis, mitigation, and disclosure set forth by human rights treaties, harm prevention customary legal obligations, the Paris Agreement, and/or the Law of the Sea, that a host country has incorporated into its laws, IFC's board adopted policies require it ensure these GHG emissions analysis and mitigation requirements are secured and disclosed prior to its financing decisions. As detailed in Appendix B, human rights treaties, customary international law pertaining to harm prevention, the Law of the Sea, and the Paris Agreement require GHG emissions quantification and alternatives and mitigation analysis meet a best available practiced standard to assess and prevent climate change harms, and actions that cause or contribute to the 1.5°C warming limitation objective be avoided. An example of this standard is that practiced under NEPA, which as detailed in section (3) and footnote 10 above, requires: quantification of Scope 1, 2, and 3 emissions; a thorough GHG emissions and climate change alternatives analysis that also requires this quantification; an alternatives analysis supported by and with studies detailing the feasibility alternatives and mitigation that can be pursued to avoid GHG emissions for each investment, including the feasibility of renewables to meet energy demand; and an alternatives analysis that includes societal cost of carbon for each ton of GHGs a contemplated investment and all of its alternatives would emit.

In Addition to IFC's Legal Obligations, Other Compelling Reasons Exist for IFC and its Shareholders to Ensure IFC Adheres to its board adopted policies applicable to climate change:

- IFC's mandate is to achieve sustainable development, end extreme poverty, and boost shared prosperity on a livable planet,¹³ and IFC recognizes climate change impacts are inexorably linked to its success in fulfilling these mandates. For instance, IFC acknowledges climate change is deepening poverty and President Banga himself has called climate change an "existential" crisis.¹⁴ If IFC continues to not adhere to what its board adopted policies applicable to climate change require, it will keep working against its own mandate. As the CAO Opinion and BCA's data demonstrate, these alarming practices and lack of accountability continue to result in substantial and avoidable GHG emissions (at least and much more than 168,000,000 tons CO₂-eq per year - see page 3 above) that contribute to an unlivable planet and harms to communities in its investment regions.
- The World Bank Group itself recognizes the centrality and urgency of the climate crisis, updating its mission in 2024 to seek to "eradicate poverty *on a livable planet*."¹⁵ As President Banga himself said "the truth is: We cannot endure another period of emission heavy growth."¹⁶ President Banga is right: On the world's current trajectory of GHG emissions, the global temperature will increase by up to 2.7°C by 2100.¹⁷ This is more than the previously envisaged 1.5°C, which has been considered a critical threshold for limiting the most severe effects of climate change.¹⁸ According to the Intergovernmental Panel on Climate Change, this temperature rise will have devastating effects not only on ecosystems but also on human health and wellbeing, water, agriculture, cities, settlements, and infrastructure.¹⁹ People living in the Global South, and economically, politically, and socially marginalized people living in poverty, and who deal with the lasting effects of racial injustice and inequality, are likely to be hit hardest.

For example, global warming has already resulted in more frequent and severe heat waves, wildfires, supercharged storms, atmospheric rivers, and extended droughts resulting in catastrophic harms and loss of life. Weather events in 2022 broke records and devastated communities, ecosystems, and infrastructure. Deadly floods displaced millions in Pakistan, Nigeria, South Africa, and Australia; severe heat waves struck India, China, Europe, the U.S., and East Asia; and the Horn of Africa experienced its worst drought in 40 years.²⁰ See Appendix A summarizing IPCC's analysis as to the impacts to the approximately 3.3–3.6 billion people who live in contexts that are highly vulnerable to climate change.

¹³ See Performance Standards at pp 1, page (i); see World Bank's new mission within "Ending Poverty on a Livable Planet: Report to Governors on World Bank Evolution," September 28, 2023, World Bank Development Committee, Document Number DC2023-004.

¹⁴ Remarks by World Bank Group President Ajay Banga at the 2023 Annual Meetings Plenary, October 13, 2023 (available at: <https://www.worldbank.org/en/news/speech/2023/10/13/remarks-by-world-bank-group-president-ajay-banga-at-the-2023-annual-meetings-plenary>); See *also*, E&S Policy at ¶10 and World Bank Group Climate Change Action Plan 2021–2025, World Bank Group 2021 at ii, 2; See *also*: When poverty meets climate change: A critical challenge that demands cross-cutting solutions, World Bank Blogs, Akihiko Nishio, Nov. 5, 2021.

¹⁵ See fn. 13, *ante*.

¹⁶ See fn. 14, *ante*.

¹⁷ World Bank. 2023. Creating an Enabling Environment for Private Sector Climate Action: An Evaluation of World Bank Group Support, Fiscal Years 2013–22. Independent Evaluation Group. Washington, DC: World Bank at 1.

¹⁸ IPCC (Intergovernmental Panel on Climate Change). 2018. Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty, Cambridge: Cambridge University Press; UN (United Nations). 2021. "Nationally Determined Contributions under the Paris Agreement." Synthesis Report by the Secretariat, Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, Third Session, Glasgow, October 31–November 12; UNEP (United Nations Environment Programme). 2021. Emissions Gap Report 2021: The Heat Is On—A World of Climate Promises Not Yet Delivered. Nairobi: UNEP.

¹⁹ IPCC. 2022. "Summary for Policymakers." In *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge: Cambridge University Press.

²⁰ Banking on Climate Chaos, Fossil Fuel Finance Report 2023 (<https://www.bankingonclimatechaos.org/>).

- Not only does the World Bank recognize the urgency of the climate crises, but it seeks to be at the forefront of a new model of development finance that protects the climate and works with countries to reduce emissions.²¹ President Banga himself recognizes that the Bank “must change to make good on that promise and deliver on what is being demanded.”²² From our engagement with IFC Management, what we have seen however, is that Management has not yet course corrected to meet this moment. It is not even complying with existing climate change and GHG emissions accounting and reduction requirements in IFC’s board adopted policies. Without change, IFC will not achieve its mission of poverty reduction on a livable planet.
- Further, President Banga has specifically highlighted the importance the IFC places on its quantification and mitigation of GHG emissions resulting from its financing activities, both of which this request documents that the IFC is failing to perform in accordance with its board adopted policies. At the European Union member states’ biannual meeting of top development officials in November 2023, President Banga said the World Bank is planning announcements on joint efforts with other MDBs to measure their climate impact, including an outcome-based approach to mitigation.²³ At COP28, the World Bank indeed confirmed its commitment “to tracking and reporting climate outcomes” and agreed as part of “an increased focus on measuring results and outcomes ... to develop a common approach [with other MDBs] for reporting climate results and impact.”²⁴

Conclusion

For all the above reasons, we request IFC Management to commit in writing to implement the determinations in the CAO Opinion as to the requirements of IFC’s board adopted policies applicable to climate change prior to financing decisions. In addition, we ask IFC Management to commit in writing to adhering to the information disclosure requirements detailed in Appendix D, and immediately start disclose its Paris Alignment Methodology analysis and findings for public review prior to IFC’s financing decisions. We see no conceivable rationale for IFC not to disclose this information, as the World Bank’s public financing arms are doing so, and IFC’s board adopted policies require this timely public disclosure (see Appendix D). Further we emphasize that because of the climate crisis, that time is also of the essence for IFC to meet its legal, moral, and institutional obligations to align its board adopted policies and Paris methodologies with 1.5°C. We thus urge IFC and the Board of Directors to immediately make public and allow all stakeholders to contribute to the draft approach paper on IFC’s Sustainably Framework review process, and to consult with Civil Society early in the process before it is approved by the Board. In the interim, please refer to Appendix B detailing the need to improve these policies so they align with IFC’s and its member states climate change obligations under international law.

Thank you for your consideration. We look forward to your timely response. Please let us know if we can provide any additional information, and please share this letter with all applicable IFC staff.

²¹ COP28 Multilateral Development Banks (MDB) Joint Statement (available at <https://www.ifc.org/en/statements/2023/cop28-mdb-joint-statement>).

²² See fn. 14, *ante*.

²³ Devex Invested: What to expect at COP 28. An inside look at the 28th U.N. Climate Change Conference, World Bank planned announcements at COP 28, plus the criteria for companies shaping EU aid, Vince Chadwick, 28 Nov. 2023 (<https://www.devex.com/news/devex-invested-what-to-expect-at-cop-28-106653>).

²⁴ See fn. 21, *ante*.

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Enclosures: Exhibit 1 (Ex. 1_Alternatives Analyses IFC Financed Nat. Gas Plants.pdf); Exhibit 2 (Ex. 2_BCA Consolidated GHG Data for IFC Projects_Jan.2012-Nov 2023.xlsx); Exhibit 3 (Ex. 3_2024 CAO Advisory Climate Report R4 V1 1029-1.pdf)

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Appendix A: Summary of Current and Expected Climate Change Harms

Global warming has already resulted in more frequent and severe heat waves, wildfires, supercharged storms, atmospheric rivers, and extended droughts resulting in catastrophic harms and loss of life. Weather events in 2022 broke records and devastated communities, ecosystems, and infrastructure. Deadly floods displaced millions in Pakistan, Nigeria, South Africa, and Australia; severe heat waves struck India, China, Europe, the U.S., and East Asia; and the Horn of Africa experienced its worst drought in 40 years.²⁵ And as documented by the IPCC:

Approximately 3.3–3.6 billion people live in contexts that are highly vulnerable to climate change...Regions and people with considerable development constraints have high vulnerability to climatic hazards. Increasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security, with the largest adverse impacts observed in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households. Between 2010 and 2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability.

In all regions increases in extreme heat events have resulted in human mortality and morbidity (very high confidence). The occurrence of climate-related food-borne and water-borne diseases (very high confidence) and the incidence of vector-borne diseases (high confidence) have increased. In assessed regions, some mental health challenges are associated with increasing temperatures (high confidence), trauma from extreme events (very high confidence), and loss of livelihoods and culture (high confidence). Climate and weather extremes are increasingly driving displacement in Africa, Asia, North America (high confidence), and Central and South America (medium confidence), with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (high confidence).

Climate change has caused widespread adverse impacts and related losses and damages to nature and people that are unequally distributed across systems, regions and sectors. Economic damages from climate change have been detected in climate-exposed sectors, such as agriculture, forestry, fishery, energy, and tourism. Individual livelihoods have been affected through, for example, destruction of homes and infrastructure, and loss of property and income, human health and food security, with adverse effects on gender and social equity. (high confidence) ... In urban areas, observed climate change has caused adverse impacts on human health, livelihoods and key infrastructure. Hot extremes have intensified in cities. Urban infrastructure, including transportation, water, sanitation and energy systems have been compromised by extreme and slow-onset events, with resulting economic losses, disruptions of services and negative impacts to well-being. Observed adverse impacts are concentrated amongst economically and socially marginalised urban residents. (high confidence).

Global warming will continue to increase in the near term (2021-2040) mainly due to increased cumulative CO2 emissions in nearly all considered scenarios and modelled pathways... Continued emissions will further affect all major climate system components. With every additional increment of global warming, changes in extremes continue to become larger... With further warming, every region is projected to increasingly

²⁵ Banking on Climate Chaos, Fossil Fuel Finance Report 2023 (<https://www.bankingonclimatechaos.org/>).

experience concurrent and multiple changes in climatic impact-drivers. Compound heatwaves and droughts are projected to become more frequent, including concurrent events across multiple locations (high confidence). Due to relative sea level rise, current 1-in-100 year extreme sea level events are projected to occur at least annually in more than half of all tide gauge locations by 2100 under all considered scenarios (high confidence). Other projected regional changes include intensification of tropical cyclones and/or extratropical storms (medium confidence), and increases in aridity and fire weather (medium to high confidence).

Synthesis Report of the IPCC Sixth Assessment Report (AR6), March 2023, Summary for Policy Makers at 5-6, 12-13 (available at www.ipcc.ch/report/ar6/syr/).

Appendix B: IFC's and its Member States' Climate Change Due Diligence and Harm Prevention Obligations Under International Law

I. IFC's Member States' General Obligations Under International Law

International law has long provided that if a state breaches an obligation established by a treaty or customary international law it can be held responsible in international tribunals or applicable domestic courts.²⁶ Courts have found that “when member States participate in [an] international organization’s decision-making processes, they are [] carrying out state acts that have to comport with their international obligations.”²⁷ The International Court of Justice made this finding in *FYROM v. Greece*.²⁸ In a dictum in *Southern Bluefin Tuna*, the International Tribunal for the Law of the Sea also found it could examine state conduct within an international organization to determine compliance with its legal obligations.²⁹ “[These courts and] the European Court of Human Rights indicate that when states make decisions within an international organization, they must adhere to their human rights obligations and substantive obligations related to the organization’s area of competence.”³⁰ Scholars in the field have come to similar conclusions. Barros persuasively applies those cases to the governing boards of international financial institutions, arguing that member states have due diligence obligations to take all measures to ensure that they know about risks to human rights before approving loans, mitigate those risks when making decisions, and ensure that loans already issued conform to their human rights conditions.”³¹ Kerr and Barros also point out that the Articles on State Responsibility—which were applied by the International Court of Justice in *FYROM v. Greece*—indicate that the conduct of state representatives when decision-making at international organizations can be attributed to a state and independently assessed.³²

II. IFC's General Obligations Under International Law

²⁶ Kerr, B. P. (2020), Regulating the Environmental Integrity of Carbon Offsets for Aviation: the International Civil Aviation Organization’s Additionality Rule as International Law. *Carbon and Climate Law Review*, 14(4) (hereinafter “Kerr, ICAO”) at 3; Kerr, Legal Accountability Int. Carbon Markets, at 152, 157-159 (Section 3.2); For examples, see fns. 52-57, 63, 90-105 *post*.

²⁷ Baine P. Kerr, All Necessary Measures: Climate Law for International Shipping, *Virginia Journal of International Law*, 64 Va. J. Int’l L. 523 (2024) at 523-570 (available at: <https://www.vjil.org/all-necessary-measures-climate-law-for-international-shipping>) (hereinafter “Kerr, All Necessary Measures”) at 558-559, and fn. 257; Ana Sofia Barros & Cedric Ryngaert, The Position of Member States in (Autonomous) Institutional Decision-Making, 11 INT’L ORG. L. REV. 53 (2014) (hereinafter “Barros & Ryngaert”) at 53, 55.

²⁸ Kerr, All Necessary Measures at 558, and fn. 258; Application of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece), Judgment, 2011 I.C.J. Rep. 644 (Dec. 5) [hereinafter *FYROM*].

²⁹ Kerr, All Necessary Measures at 558-559, and fn. 264; *Southern Bluefin Tuna* (N.Z. v. Japan; Austl. v. Japan), Cases Nos. 3 and 4, Order of Aug. 27, 1999, ITLOS Reports 1999 [hereinafter *Southern Bluefin Tuna*], ¶ 50; See, Moritaka Hayashi, The Southern Bluefin Tuna Cases: Prescription of Provisional Measures by the International Tribunal for the Law of the Sea, 13 TULANE ENV. L. J. 361 (2000).

³⁰ Kerr, All Necessary Measures at 529-530, 559-560, and fn. 32; *FYROM*, *Southern Bluefin Tuna* at ¶ 50, *Gasparini v. Italy and Belgium*, App. No. 10750/03, (May 19, 2009), <https://hudoc.echr.coe.int/eng?i=001-92899>; *Perez v. Germany*, App. No. 15521/08 (Jan. 6, 2015), <https://hudoc.echr.coe.int/eng?i=001-151049>; *Klausecker v. Germany*, App. No. 415/07 (Jan. 6, 2015), <https://hudoc.echr.coe.int/eng?i=001-151029>.

³¹ Kerr, All Necessary Measures at 560-561, and fn. 279; Ana Sofia Barros, Governance as Responsibility: Member States as Human Rights Protectors in International Financial Institutions (2019) (hereinafter “Barros”) at Chapter III; see also Pasquale De Sena, International Monetary Fund, World Bank and Respect for Human Rights: A Critical Point of View, 20(1) ITALIAN Y.B. INT’L L. 247, 257 (2010).

³² Kerr, All Necessary Measures at 560-561, and fn. 282; Barros at 94.

International organizations,³³ including the IFC, can also be held responsible for breaching their obligations, including those established by a treaty or customary international law.³⁴ This has happened numerous times, in various domestic courts.³⁵ The ILC DARIO Articles³⁶ provide a structural roadmap for evaluating an organization's obligation established by a treaty or customary international law. International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries,' Yearbook of the International Law Commission (2011), vol. II, Part Two, UN Doc. A/66/10 (hereinafter "ILC DARIO Articles").³⁷ ILC DARIO Article 10 provides that there 'is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.'³⁸ In addition, "the ICJ found long ago that international organizations are bound by 'obligations incumbent upon them under general rules of international law.'" ³⁹ And even in the absence of an express textual indication that an international organization is bound by a treaty's obligations, an international organization is transitively bound to the same treaty obligations as their members, in a way that avoids or resolves treaty conflicts between organizations and their member states.⁴⁰ Thus, for example, the IFC itself must adhere to its member states' obligations under Article 4 of the UNFCCC to reduce or limit GHG emissions and their obligation under Articles 2 and 3 of the Paris Agreement to take ambitious efforts to hold global warming to less than 1.5°C.

III. IFC's and its Shareholders' Due Diligence Obligations Under the Paris Agreement, and human rights and customary international law.

A. Summary / Overview

The IFC, and also its member state shareholders, have obligations under international law that that they can be held accountable to in international tribunals and domestic courts. See Sections I, II, *ante*.

³³ An 'international organization' is 'an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality.' Baine P. Kerr, 'Clear skies or turbulence ahead? The international civil aviation organization's obligation to mitigate climate change' (2020) 16(1) Utrecht Law Review (hereinafter "Kerr, Clear Skies") at 104, fn. 25 (citing Chicago Convention, note 11, Art. 64).

³⁴ Kerr, ICAO at 3, and fn. 23 (citing Jan Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act,' (2017) 28(4) European Journal of International Law, 1137).

³⁵ Kerr, B. (2022). Mitigating the Risk of Failure: Legal Accountability for International Carbon Markets. Utrecht Law Review, 18(2), 145-161 (hereinafter "Kerr, Legal Accountability Int. Carbon Markets") at 152, fn. 57 and 58 (citing August Reinisch, *International Organizations Before National Courts* (2nd edn, Cambridge 2009) 28, notes 124-130 (listing and discussing cases), and fn. 61 (citing *Jam v International Finance Corp*, 586 US __ (2019) 5-6; Clemens Treichl and August Reinisch, 'Domestic Jurisdiction over International Financial Institutions for Injuries to Project-Affected Individuals: The Case of *Jam v International Finance Corporation*' (2019) 16 International Organizations Law Review 133).

³⁶ International Law Commission, 'Draft Articles on the Responsibility of International Organizations with commentaries,' Yearbook of the International Law Commission (2011), vol. II, Part Two, UN Doc. A/66/10 (hereinafter "ILC DARIO Articles").

³⁷ Kerr, ICAO at 3.

³⁸ Kerr, ICAO at 4; ILC DARIO Articles, Art. 10.

³⁹ Kerr, Clear Skies at 112, and fn. 134 (citing *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 37. *Reparation for Injuries*, note 50, 174).

⁴⁰ Kerr, Clear Skies at 112, and fn. 138 (citing K. Daugirdas, 'How and Why International Law Binds International Organizations,' (2016) 57 Harvard International Law Journal, 137, 350, 364; citing F. Megret & F. Hoffman, 'The UN as a Human Rights Violator—some Reflections on the United Nations Changing Human Rights Responsibilities,' (2003) 25 Human Rights Quarterly, 318 (arguing that United Nations should be transitively bound by their member states' treaty obligations), <<https://www.jstor.org/stable/20069667>>; O. De Shutter, 'Human Rights and the Rise of International Organizations: The Logic of Sliding Scales in the Law of International Responsibility,' (2009) (CRIDHO Working Papers Faculte de Droit de L'Universite Catholique de Louvain), 10 (discussing functional succession theory), <https://ssrn.com/abstract=2446913>; see *also*, Kerr, Clear Skies at 113, and fn. 145 (citing Daugirdas, note 137, 368; Megret, note 138, 318).

As it pertains to climate change, the obligations under international law that the IFC and its member states must adhere, include their due diligence⁴¹ and harm prevention obligations arising under the Paris Agreement, Law of the Sea, human rights treaties, and customary international law. Because the projects with GHG emissions IFC enables by providing financing or guarantees pose a severe risk of climate harm, these due diligence obligations require IFC and its member states to ensure that IFC's change impacts, and measures to avoid them, to be assessed and implemented prior to financing approvals using best reasonably available and practiced methods.⁴² Those methods include the processes required and practices performed under the National Environmental Policy Act (NEPA) in the United States applicable to quantifying GHG emissions, assessing their impacts, and analyzing alternatives and feasible avoidance and other mitigation measures because these methods are frequently and routinely practiced and implemented.⁴³ They also prohibit investments that would cause or contribute to the 1.5 C global warming limitation objective in the Paris Agreement to be exceeded.

Wealthier countries from the Global North states have a higher standard of due diligence than states with less capacity. These significant financial resources are also available to the IFC, which as an independent public institution, has its own unique due diligence obligations separate from its member states. The IFC and its Global North Member States thus have the duty, capabilities, and control - independent of IFC's clients – to fully assess (or secure an independent entity with expertise to assess) and demand alternatives or measures to prevent harm from climate change when its clients may not have the resources to. The IFC can address these harms through ensuring adequate due diligence prior to financing approval, which respects client capacity and principles of “common but differentiated responsibilities” at the project assessment and implementation stages. This is because adequate due diligence will ensure that alternatives and mitigation measures to avoid GHG emissions and their impacts are *economically and technically feasible*.

A more detailed overview of IFC's due diligence obligations under the Paris Agreement, Law of the Sea human rights treaties, and customary international law with supporting citations is provided below in Sections B-C.

B. IFC's and its Member States' Climate Change Due Diligence and Harm Prevention Obligations under the Paris Agreement

i. IFC's and its Member States' Due Diligence Obligations under the Paris Agreement

As detailed in Sections I. and II., the IFC and its Members States party to the Paris Agreement, are obliged under international law to adhere to the Paris Agreement's requirements. See Section I-II., *ante*.

Paris Agreement Article 2(1)(a) provides an objective of the Agreement is to “hol[d] the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.” Article 2(1)(c) expressly provides for “making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development” as an aim of the Agreement.

⁴¹ Due diligence is defined as the care that a reasonable person exercises to avoid harm to other persons or their property. See Merriam Webster Dictionary definition of due diligence, available at: <https://www.merriam-webster.com/dictionary/due%20diligence>.

⁴² As detailed in Appendix B, *ante*, IFC's due diligence obligations extend beyond adequate study prior to project approvals to prevent its financing activities from causing or contributing to climate change harms. They also include IFC taking substantive measures, such as ceasing all direct and indirect financing of fossil fuels.

⁴³ See fn. 10, *ante*: Interim (CEQ) NEPA guidance effective January 8, 2023 for GHG emissions and climate change assessments, alternatives analysis and mitigation in environmental impact statements.

The temperature goals set out in the Paris Agreement, including as applied to finance flows, are universally binding norms for the behavior of international organizations and their member states.⁴⁴ They do not permit members state parties to follow different, less ambitious goals.⁴⁵ “Finance flows which are inconsistent with Article 2(1)(c) are by definition those which undermine the goals of the Paris Agreement,” including the warming limitation objectives in Article 2(1)(a).⁴⁶ Thus, the language of Article 2 reflecting the object and purpose of the Paris Agreement, together with the object and purpose of the UNFCCC which the Paris Agreement supports, requires that all relevant finance flows are assessed for Article 2(1)(a) and (c) consistency, including those most likely to be inconsistent with Article 2’s temperature goals.⁴⁷ As applied to the IFC, the consistency of finance flows with the Article 2 pathways can only be assessed effectively if, prior to IFC’s financing approval, a project’s scope 1, 2 and 3 emissions and their impacts are fully quantified and taken into account, GHG/climate change alternatives analysis is conducted, and mitigation measures are assessed and implemented that can avoid and minimize a project’s GHG emissions to the furthest extent economically and technically feasible.⁴⁸

Article 3 further requires specific assessment of all relevant finance flows. It requires Parties “to *undertake and communicate ambitious efforts*,” including in regards to finance, with a view to achieving the Article 2 purposes.⁴⁹ Article 4 (1) provides “[i]n order to achieve the long-term temperature goal set out in Article 2, Parties aim ... to undertake rapid reductions [in GHG emissions] thereafter in accordance with *best available science*.”

State parties are required to implement the Paris Agreement in good faith,⁵⁰ which means that action which directly threatens, undermines, or frustrates the achievement of the Article 2 goals – namely the prevention of dangerous climate change - exceeds the margin of discretion allowed by the Paris Agreement.⁵¹ It follows from Article 2 of the Paris Agreement, as read with Articles 3, 4 and 9 in particular that (1) States, as an aspect of their requisite good faith implementation, have an obligation of due diligence that encompasses undertaking *ambitious efforts* in regards to financial flows to meet the Paris Agreement’s objectives.⁵² Furthermore, these efforts must be informed by *best available science* to assess whether finance flows, including those for which the IFC is responsible, are consistent with the

⁴⁴ International Obligations Governing the Activities of Export Credit Agencies in Connection with the Continued Financing of Fossil Fuel-Related Projects and Activities, Legal Opinion, Kate Cook and Jorge E. Viñuales, March 24, 2021, available at: <https://priceofoil.org/2021/05/04/eca-legal-opinion/> (“Cook and Viñuales”) at ¶¶ 60, 70-72, 85, 265(h); See, e.g. World Bank Group, The World Bank Group’s Approach to Paris Alignment, Washington, D.C., March 16, 2023 (<http://documents.worldbank.org/curated/en/099658203162320142/IDU1598309ef195cc148fd195421981d12bf8bf6>; 2018 MDBs’ Joint Declaration, The MDBs’ alignment approach to the objectives of the Paris Agreement: working together to catalyse low-emissions and climate-resilient development at 1 (<https://thedocs.worldbank.org/en/doc/784141543806348331-0020022018/original/JointDeclarationMDBsAlignmentApproachtoParisAgreementCOP24Final.pdf>).

⁴⁵ Cook and Viñuales at ¶60

⁴⁶ Cook and Viñuales at ¶70

⁴⁷ Cook and Viñuales at ¶72

⁴⁸ *Id.*; See also, Cook and Viñuales at ¶108

⁴⁹ Cook and Viñuales at ¶ 75.

⁵⁰ Cook and Viñuales at ¶ 79 (providing there is a “general duty to implement the Paris Agreement in good faith, as reflected in Article 26 of the Vienna Convention on the Law of Treaties (VCLT) 135 and under customary international law”).

⁵¹ Cook and Viñuales at ¶ 80.

⁵² Paris Agreement, Article 3; Cook and Viñuales at ¶¶ 75, 76, 103-105.

global carbon budget.⁵³ This not only means the IFC must ensure best reasonably available commonly practiced science, such as the methods used under NEPA, are used – prior to financing approval for each project - to quantify a project’s scope 1, 2 and 3 emissions and their impacts, conduct a GHG/climate change alternatives analysis, and assess the mitigation measures that can avoid and minimize a project’s GHG emissions to the furthest extent economically and technically feasible. It also means prior to a financing approval, IFC must actually ensure alternatives and mitigation measures are adopted to avoid GHG emissions that good faith due diligence shows to be economically and technically feasible and that allows for achievement of the project purpose. Thus, for a hypothetical example – not taking into consideration that the IFC’s Paris Methodology should prohibit financing of fossil fuel energy infrastructure anyway for the reasons in the text of this letter and Appendices A and B - in the context of contemplating financing fossil fuel energy projects, such as a natural gas plant which would emit very large quantities of GHG emissions no matter the plant’s configuration, efficiency, or mitigation measures, if an alternatives analysis shows it would be technically and economically feasible for renewable energy infrastructure to meet a region’s energy demand, the Paris Agreement requires the IFC abandon financing for the contemplated fossil fuel project and facilitate financing for renewable energy options instead.

Article 4(3) further provides “[e]ach Party’s successive nationally determined contribution will represent a *progression* beyond the Party’s then current nationally determined contribution and reflect its *highest possible ambition*, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” “The standards of “highest possible ambition” and “progression” (Articles 3, 4(1) and (3) of the Paris Agreement), as these relate to the current production gap and global carbon budget, should [] inform due diligence.”⁵⁴ This further supports that prior to IFC approving financing for a project, IFC must ensure a project’s scope 1, 2 and 3 emissions and their impacts must be taken into account, a robust and supported GHG/climate change alternatives analysis is conducted in line with best reasonably available methods, and alternatives and mitigation measures are assessed and committed to that can avoid and minimize a project’s GHG emissions to the furthest extent economically and technically feasible.

Article 9(5) requires that developed country Parties are to biennially communicate indicative quantitative and qualitative information related to Article 9, paragraphs 1 and 3, of the Paris Agreement.⁵⁵ “Article 9(5) therefore entails not only a duty to report on the provision of support[,] but also to account for finance flows which run counter to the goal set out in Article 2(1)(c).”⁵⁶ It follows Article 9 also requires quantification and reporting of a project’s scope 1, 2 and 3 emissions, and assessing and reporting on the studied and actually implemented alternatives mitigation measures that could avoid and minimize a project’s GHG emissions to the furthest extent economically and technically feasible.

Article 13 establishes a transparency framework, one purpose of which is to: “provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties’ individual nationally

⁵³ Paris Agreement, Article 4(1); Cook and Viñuales at ¶¶ 103-105; Cook and Viñuales at ¶110 (providing “due diligence must entail acting in proportion to the scale of the risk posed by the conduct assessed, having regard to the best available science...This means that assessment of the risks posed by an investment/project should take account of all the risks posed.”).

⁵⁴ Cook and Viñuales at ¶ 104.

⁵⁵ Cook and Viñuales at ¶ 98.

⁵⁶ Cook and Viñuales at ¶ 100.

determined contributions under Article 4.”⁵⁷ “A good faith interpretation of this obligation entails transparency in relation to finance flows which are inconsistent with the Article 2(1)(c) pathway and Article 2 goals as well as finance flows which are consistent with it.”⁵⁸ It follows Article 13 also requires quantification and reporting of a project’s scope 1, 2 and 3 emissions, and assessing and reporting on the studied and actually implemented alternatives mitigation measures that could avoid and minimize a project’s GHG emissions to the furthest extent economically and technically feasible.

The due diligence “duties arising from Article 2(1)(c) of the Paris Agreement and related provisions, including from Articles 2(1)(a), 3, 4, 9, and 13 as detailed above, should be considered in the context of the leverage that States have to align public finance with low greenhouse gas emissions and climate-resilient development through their contributions to and regulation of a range of bodies including MDBs and DFIs.”⁵⁹ It is clear that this duty of due diligence applies to the IFC and its Global North members states, as they possess ample financial resources to satisfy it. That these due diligence responsibilities fall on the IFC and its Global North Member states, is consistent with Article 2(2) of the Paris Agreement requiring the Agreement to “be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”⁶⁰ IFC and its Global North Member States securing such diligence is also consistent with Article 3’s objective for “[t]he efforts of all Parties [to] represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of th[e] Agreement.”⁶¹

ii. IFC’s and its Member States’ Obligations under the Paris Agreement to stop financing for all upstream, midstream, and downstream fossil fuel projects

As required by the Paris Agreement and customary international law that the IFC and its Global North member state shareholders are obliged to adhere to,⁶² the IFC’s Paris Methodology must explicitly prohibit financing of and guarantees/insurance for all upstream, midstream, and downstream fossil fuel projects. These requirements are fully established by the analysis by Cook and Viñuales, and detailed in OCI’s and BCA’s December 18, 2023 OCI drafted Amicus brief to the Inter-American Court of Human Rights regarding the request from Chile and Columbia for an advisory opinion regarding “*Climate Emergency and Human Rights*”, which the undersigned incorporate by reference.⁶³ In summary, Cook and Viñuales demonstrate that:

On the basis of the best available scientific evidence, and taking into account the current emission and production gaps and the associated risk of overshoot of the Paris Agreement’s temperature goals, IFC financing and guarantee activities which support new or existing fossil-fuel related projects/activities are in principle inconsistent with the pathways set out in Paris Agreement

⁵⁷ Paris Agreement, Article 13(5).

⁵⁸ Cook and Viñuales at ¶¶ 113-114.

⁵⁹ Cook and Viñuales at ¶¶ 78-79.

⁶⁰ Cook and Viñuales at ¶¶ 56-57.

⁶¹ Cook and Viñuales at ¶¶ 56-57, 75.

⁶² Appendix B, Sections I – II, *ante*, detail how both the IFC and its Members State shareholders are obliged under international law to adhere to the Paris Agreement’s requirements, human rights treaties, and customary international law.

⁶³ International Obligations Governing the Activities of Export Credit Agencies in Connection with the Continued Financing of Fossil Fuel-Related Projects and Activities, Legal Opinion, Kate Cook and Jorge E. Viñuales, March 24, 2021, attached as Exhibit 1 and available at: <https://priceofoil.org/2021/05/04/eca-legal-opinion/> (hereinafter “Cook and Viñuales”); The analysis in Appendix B, Sections I – II, *ante*, makes it clear that Cook’s and Viñuales’ opinion applies beyond export credit agencies to international organizations like the IFC, and its Member State shareholders.

Article 2(1)(c), the temperature goals laid down in Article 2(1)(a) of the Paris Agreement, the mitigation requirements under Article 4 of the Paris Agreement, and international human rights law. Furthermore, providing financing or guarantees for projects that lock-in fossil fuel-related emissions or that may use up a significant part of the remaining carbon budget, are inconsistent with the progressive and ambitious approach for nationally determined contributions and long-term strategies laid down in the Paris Agreement.

Cook and Viñuales, including at paragraph 265; Cook and Viñuales further establish that IFC has a duty for its financing activities to result in enhanced deployment of renewable energy. In summary, they demonstrate that:

In the light of the language of Articles 2 and 9 in particular, it is also clear that the IFC and its shareholder State parties to the Paris Agreement should seek to ensure that IFC's finance flows address the climate goals and the poverty goals of developing States in an integrated way, including the need to ensure universal access to sustainable energy in developing countries, in particular in Africa, through the "enhanced deployment" of renewable energy, as indicated in the preamble to UNFCCC Decision 1/CP.21 adopting the Paris Agreement.

Id. As such, the IFC's Paris Methodology must include provisions that specify prioritization of financing for renewable energy projects to meet energy demands.

C. IFC's and its Member States' Climate Change Due Diligence and Harm Prevention Obligations under Customary International Law and Human Rights Treaties

In addition to the Paris Agreement, other sources of law that apply to the IFC's and its member states' climate change due diligence obligations prior to financing approval are customary international law, informed by principles such as harm prevention and the precautionary approach, and human rights treaties.⁶⁴

"Customary international principles require that states take all necessary measures to prevent transboundary harm, and exercise precaution when making decisions that pose a risk of harm to the environment."⁶⁵ For instance, [u]nder the harm prevention principle, states are required to 'take all appropriate measures to prevent significant transboundary harm or at any event minimize the risk thereof' from activities in its territory or arising under its jurisdiction or control."⁶⁶ This principle overlaps with others, including the "responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other States or of areas beyond national jurisdiction"—articulated in the Rio Declaration—and the requirement that states take precautionary

⁶⁴ See Appendix B, Sections I-II, *ante*; Barros, Section III; Kerr, All Necessary Measures at 525-527 and note 16 (detailing state's requirements under customary international law); Jose Viñuales, Due Diligence in International Environmental Law: a Fine-Grained Cartography, in Due Diligence in the International Legal Order, 113 (Heike Krieger et al. eds., 2021) (hereinafter "Viñuales"); Benoit Mayer, Interpreting States' General Obligations on Climate Change Mitigation: a Methodological Review, 28 RECIEL 107 (2019); Benoit Mayer Climate Change Mitigation as an Obligation under Customary International Law, 48(1) YALE J. INT'L L. 105, 130-131 (2023)); *see also*, fn.48, *ante* (Kerr, All Necessary Measures at 560-561, and fn. 279).

⁶⁵ Kerr, All Necessary Measures at 527, and fn. 17; Viñuales at 113; *see also*, Benoit Mayer, Interpreting States' General Obligations on Climate Change Mitigation: a Methodological Review, 28 RECIEL 107 (2019); Benoit Mayer, Climate Change Mitigation as an Obligation under Customary International Law, 48(1) YALE J. INT'L L. 105, 130-131 (2023).

⁶⁶ Kerr, All Necessary Measures at 541, and fn.120; United Nations, International Law Commission (ILC), Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, A/RES/56/82, (Dec. 12, 2001), at art. 3, commentary to art. 3, ¶ 18; Viñuales at 124.

measures even in the absence of scientific certainty as to significant harm.”⁶⁷ The cumulative climate impacts from the significant GHG emissions resulting from IFC’s financing activities cross those risk thresholds, as climate change poses a risk of significant harm. See pages 1-2 and Appendix A, *ante*. This is because “assuming an approximately linear relation between GHG concentrations in the atmosphere and the severity of climate change, even very small cuts in global emissions can achieve significant global harm-prevention (or risk-reduction) benefits.”⁶⁸ Accordingly, harm prevention and precautionary customary principles clearly apply to climate change.⁶⁹ This means, international environmental principles require that the 1.5°C warming limitation objective must guide IFC’s and its member states in their actions related to the climate impacts of IFC’s financing activities, and IFC must take all necessary measures to ensure that its financing activities do not cause or contribute to exceedance of the 1.5°C warming objective.

Human rights law continues to evolve to encompass protection of the environment,⁷⁰ and it is firmly established “[c]limate change is one of the greatest threats to human rights.”⁷¹ The UN General Assembly recognized the right to a clean, healthy, and sustainable environment as a human right in 2022.⁷² Moreover, “human rights treaties guarantee rights to life and property—rights that international and domestic courts have found implicate a positive obligation to reduce environmental risks, including risks of harm from climate change.”⁷³ “Cases from the International Court of Justice, the International Tribunal for the Law of the Sea, and the European Court of Human Rights indicate that when states make decisions within an international organization, they must adhere to their human rights due diligence obligations and substantive obligations related to the organization’s area of competence.”⁷⁴

As directly related to climate change impacts, “recent opinions from human rights treaty bodies have adopted a risk-based test for when human rights due diligence obligations apply to climate change: if it is reasonably foreseeable

⁶⁷ Kerr, All Necessary Measures at 541, and fn. 121; Viñuales at 116-117 (citing Rep. of the UN Conf. on Envir. and Devel., Rio Declaration on Environment and Development, A/ CONF.151/ 26 (1992); Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, Case No. 17, 2011 ITLOS Rep. 10, ¶¶ 125-135.

⁶⁸ Kerr, All Necessary Measures at 541, and fn. 122; Benoit Mayer Climate Change Mitigation as an Obligation under Customary International Law, 48(1) YALE J. INT’L L. 105 (2023) at 134.

⁶⁹ Kerr, All Necessary Measures at 541, and fn. 123.

⁷⁰ Kerr, All Necessary Measures at 550.

⁷¹ The United Nations Environment Programme (UNEP) - “[c]limate change is one of the greatest threats to human rights of our generation posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world.”

⁷² Kerr, All Necessary Measures at 550, and fn. 188; G.A. Res. 76/300, The Human Right to a Clean, Healthy and Sustainable Environment, at 3 (July 28, 2022).

⁷³ Kerr, All Necessary Measures at 527, and fn. 20; Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland, App. No. 53600/20, ¶¶ 573–74 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206> (holding that Switzerland is required to quantify GHG emissions limitations through a carbon budget and implement reduction measures); Budayeva v. Russia, App. No. 15339/02, ¶ 116, 133 (Mar. 20, 2008), <https://hudoc.echr.coe.int/eng?i=001-85436> (holding that states have a positive obligation to protect life and property from environmental risks). The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda (Urgenda) [2019] Dutch Supreme Court 19/00135 (Engels); See also, Jaqueline Peel & Harri Osofsky A Rights Turn in Climate Change Litigation, 7(1) TRANSNAT’L ENVTL. L. 37, 48 (2018) (discussing case law); Siobhan McInerney-Lankford, Climate Change and Human Rights: an Introduction to Legal Issues, 33 HARVARD ENVTL. L. REV. 431, 433 (2009). Other courts have recognized the right to a healthy environment as an autonomous right. See, e.g., The Environment and Human Rights (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 62–63, 101–03 (Nov. 15, 2017) [hereinafter Colombia Advisory Opinion].

⁷⁴ Kerr, All Necessary Measures at 529, and fn. 32 (citing numerous cases and scholarly articles in support).

that an activity under a state's jurisdiction or control will cause a risk of climate harm, the state must diligently prevent it within the limits of its capacity.”^{75 76 77}

“Due diligence requires states to ‘employ all means reasonably available to them’ to prevent a violation ‘so far as possible’.”⁷⁸ The types of conduct that could breach a due diligence obligation include action, inaction, or deficient action.⁷⁹ Cases from the International Court of Justice, the International Tribunal for the Law of the Sea, and the European Court of Human Rights indicate that when participating in the governing boards of international financial institutions, “member states have due diligence obligations to take all measures to ensure that they know about risks to human rights before approving loans, mitigate those risks when making decisions, and ensure that loans already issued conform to their human rights conditions.”⁸⁰ The same reasoning applies to states’ climate decision-making within the IFC. Accepting that climate change harms human rights,⁸¹ and IFC member states are bound by their human rights obligations when acting as decision-makers within the IFC, they are therefore under an obligation of conduct to do all they can in that role to make sure the IFC’s climate decisions, and actions or inactions, uphold human rights.⁸² Applying the harm prevention principle and precautionary principle yields the same due diligence obligations.⁸³

⁷⁵ Kerr, All Necessary Measures at 527, and fn. 21 (citing UN Human Rights Committee, ‘Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019,’ UN Doc. CCPR/C/135/D/3624/2019 (Sept. 22, 2022), ¶ 8.13; UN Committee on the Rights of the Child, ‘Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019,’ No. CRC/C/88/D/104/2019 ¶ 10.5-.7 (Oct. 8, 2021); *see* Case Comment, Committee on the Rights of the Child Extends Jurisdiction over Transboundary Harms; Enshrines New Test, *Saachi v. Argentina*, 135(7) HARVARD L. REV. 1981 (2022); Federica Violi, The Function of the Triad ‘Territory,’ ‘Jurisdiction,’ and ‘Control’ in Due Diligence Obligations, in *Due Diligence in the International Legal Order* 75 (Heike Krieger et al. eds., 2021) at 81-82 (in Colombia Advisory Opinion, *supra* note 20 “court equated jurisdiction with causality and ultimately with imputability, thus altering the vertical understanding of human rights jurisdiction, and eventually risk proximity.”)).

⁷⁶ *See* European Court of Human Rights case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* ([judgement available here](#)), and the May 21, 2024 International Tribunal on the Law of the Sea Advisory Opinion in response to the Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law ([advisory opinion available here](#)); Pending cases before regional human rights courts and the International Court of Justice may further reinforce how human rights intersect and impact states’ obligations to prevent climate harm. *See* Kerr, All Necessary Measures at 550, and fn. 189; UN General Assem., Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change,’ G.A. Res. A/77/L.58 (Mar. 29, 2023); Request for an Advisory Opinion on the Climate Emergency and Human Rights Submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, (Jan. 9, 2023), https://www.corteidh.or.cr/solicitud_opiniones_consultivas.cfm?lang=en.

⁷⁷ Cook and Viñuales at ¶¶ 47, 132-146, and fn. 182 (citing Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 50).

⁷⁸ Kerr, All Necessary Measures at 556-557, and fn. 244; Case Concerning the Application on the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 430 (Feb. 26, 2007); SRFC Advisory Opinion, *supra* note 203, ¶ 129; John Dugard & Annemarieke Vermeer-Künzli, The Elusive Allocation of Responsibility to Informal Organizations: the Case of the Quartet on the Middle East in *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie*, 265 (Maurizio Ragazzi ed., 2013); *see also* Barros at 158, n. 916.

⁷⁹ Kerr, All Necessary Measures at 556, and fn. 245 (citing Barros at 121-122, 124, 195).

⁸⁰ Kerr, All Necessary Measures at 560-561, and fn. 279; Barros at Chapter III; *see also* Pasquale De Sena, International Monetary Fund, World Bank and Respect for Human Rights: A Critical Point of View, 20(1) ITALIAN Y.B. INT’L. L. 247, 257 (2010).

⁸¹ Kerr, All Necessary Measures at 546-550.

⁸² *See* fns. 105-109, 111-112; Cook and Viñuales at ¶¶ 47, 132-146, and fn. 182 (citing Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, paragraph 50; Ana Sofia Barros, Member States and the International Legal (Dis)order Accounting for the notion of Responsible Governance, *International Organizations and Member State Responsibility, Critical Perspectives*, Brill Nijhoff 2017, Chapter 4 at 66-71).

⁸³ Kerr, All Necessary Measures at 541, 561-562; Cook and Viñuales at ¶¶ 41, 44, 46, 47, 48 (PDF at 29-34).

Accordingly, in light of the climate risks and impacts from IFC's financing activities, customary international principles and human rights law impose an equivalent obligation mandating that the IFC and its member states use best available and practiced methods, and take all measures, to diligently account for, prevent, and mitigate the GHG emissions. This means that IFC and its member states must require IFC's Paris Methodology mandates IFC ensures it diligently assesses and prevent the risk of climate harm from IFC investments to extent of its capacities prior to financing approvals that meets the best reasonably available and practiced standard.

“As with other international environmental obligations, the required degree of diligence differs based on states' development and individual circumstances.”⁸⁴ Thus, like in the context of transboundary harm from hazardous activities, a highly developed or technologically advanced state has a greater scope of diligent conduct than other states.⁸⁵ This means, IFC and its Global North Member States must use their best efforts, and best available practiced methods, to ensure that GHG emissions and their impacts from each project the IFC finances are fully assessed, avoided, and mitigated to the furthest extent technically and economically feasible prior to IFC financing. It also means, assuming that climate measures do not burden least developed countries or small island developing states and otherwise account for equitable principles, IFC and its Member States are obliged to use their influence to push its clients to adopt a high level of ambition and effective measures that are consistent with the best available and used GHG emissions and mitigation methodologies and technological developments.⁸⁶ Considering the IFC itself is required to commit the resources to ensure that for each project: Scope 1, 2, and 3 GHG emissions are fully quantified, that an adequate GHG / climate change alternatives analysis is conducted, and that a mitigation hierarchy for GHG emissions is implemented that avoids and eliminates GHG emissions as far as feasible, such a diligence obligation accounts for equitable principles and the right to develop.

Accordingly, the IFC and its member states have a due diligence obligation to account for and reduce GHG emissions from its financing activities beyond what is required by any climate treaty.⁸⁷ As supported by Kerr, to the extent the risk of harm posed by climate change is not adequately addressed by the climate regime (e.g. the Paris Agreement, see Appendix B, Part II.B, *ante*), IFC's general obligations imposed by human rights treaties and customary law demand that the IFC and its member states do more.⁸⁸

⁸⁴ Kerr, All Necessary Measures at 529, and fn. 29; Viñuales at 125-126; Jaqueline Peel, Climate Change, in Shared Responsibility, 1033, 1041-1044 (Andre Nollkaemper, ed., 2018) (failure to stop, reduce or regulate emitting activities could be basis for finding state did not discharge due diligence obligation of harm prevention).

⁸⁵ Kerr, All Necessary Measures at 529, and fn. 30; United Nations, International Law Commission (ILC), Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, A/ RES/ 56/ 82, 12 December 2001, commentary to art. 3, ¶18; Cook and Viñuales at ¶47.

⁸⁶ Kerr, All Necessary Measures at 529-530; Kerr, Erga Omnes Obligation; Baine P. Kerr, Binding the International Maritime Organization to the United Nations Convention on the Law of the Sea, 19 INT'L ORG. L. REV. 391 (2022).

⁸⁷ See Kerr, All Necessary Measures at 526, and fn. 15; Neil McDonald, The Role of Due Diligence in International Law, 68 INT'L & COMP. L.Q. 1041 (2019).

⁸⁸ Kerr, All Necessary Measures at 529-529, and fn. 27 (citing Natalie Dobson, Extraterritoriality and Climate Change Jurisdiction: Exploring EU Climate Protection Under International Law, 30 (2021); Jaqueline Peel, Climate Change, in Shared Responsibility 1041-1044 (Andre Nollkaemper, ed., 2018) (failure to stop, reduce or regulate emitting activities could be basis for finding state did not discharge due diligence obligation of harm prevention); Rozemarijn J. Roland Holst, Taking the Current When it Serves: Prospects and challenges for an ITLOS Advisory Opinion on Oceans and Climate Change' RECIEL (2022), 7 (“as long as intended NDCs fall short of Paris Agreement temperature goal, can be argued that due diligence under LOSC obliges states to do more.”).

Appendix C: IFC's and its Member States' Obligations to Adhere and Ensure Adherence to IFC's Board Adopted Policies Applicable to Climate Change and GHG Emissions

International organizations' obligations are also derived from their own constituent instruments, board adopted rules, and board declarations. According to the International Law Commission (ILC), an organization's board adopted rules (or policies) can impose international obligations on it.⁸⁹ ILC DARIO Article 10 provides that there 'is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of the origin or character of the obligation concerned.'⁹⁰ Specifically applied to the World Bank and thus by extension to the IFC, scholars have found IFC's board adopted policies should be binding rules of conduct in domestic court.⁹¹

IFC's Articles of Agreement provide in relevant part that IFC's purpose is to "further economic development by encouraging the growth of productive private enterprise in member countries," and that it shall "...assist in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries..." Article 1, Purpose, Amended April 16, 2022. IFC's board adopted E&S Policy recognizes IFC's purpose of furthering economic development includes working to prevent climate change impacts as a strategic priority and supporting climate friendly solutions in its innovative investments. E&S Policy at ¶ 10. It also provides "IFC, in its efforts to support its climate-related commitments, will build on its experience in energy efficiency, cleaner production, renewable energy, and carbon markets as well as in the development of GHG accounting and approaches to climate change risk assessment, to produce instruments and develop practices that allow its clients to consider climate-related risks and opportunities in their investment decisions." *Id.* at ¶ 11. IFC's E&S and Access to Info Policy, also require that prior to project financing the IFC ensure adherence to its Board adopted Performance Standards to assess, avoid, and mitigate impacts from GHG emissions. See [CSOs' May 1, 2023 Request to IFC Management](#) at 7-8; See pages 4-8, *ante*. The Policies further contain a plethora of requirements requiring disclosure and reporting of GHG emissions prior to and after project financing. *Id.*; see also Appendix D, *post*.

As detailed herein, IFC is systematically failing to adhere to the requirements of its board adopted policies pertaining to GHG emissions quantification, affected communities impact assessment, alternatives analysis, mitigation, disclosure, and reporting. Considering IFC's Board adopted policy interprets the development mandate in its Articles to include preventing climate change impacts from

⁸⁹ Kerr, ICAO at 4, and fn. 24, 25 (providing "The ILC DARIO Articles, Article 2, subparagraph (b) defines rules of an organization as 'the constituent instruments, decisions, resolutions and other acts of the organization adopted in accordance with those instruments, and established practice of the organization; citing ILC DARIO Articles, Art. 2., 10); Kerr, *Clear Skies* at 153.

⁹⁰ Kerr, ICAO at 4, and fn. 25 citing ILC DARIO Articles, Art. 10.

⁹¹ Kerr, B. (2022). *Mitigating the Risk of Failure: Legal Accountability for International Carbon Markets*. *Utrecht Law Review*, 18(2), 145-161 (hereinafter "Kerr, *Legal Accountability Int. Carbon Markets*") at 152, and fn 61 citing Clemens Treichl and August Reinisch, 'Domestic Jurisdiction over International Financial Institutions for Injuries to Project-Affected Individuals: The Case of *Jam v International Finance Corporation*' (2019) 16 *International Organizations Law Review* at 133; Kerr, *Erga Omnes Obligation* at 121 -122, and fn. 11 citing Alexander Orakhelashvili, 'The World Bank Inspection Panel in Context: Institutional Aspects of the Accountability of International Organizations', 2 *International Organizations Law Review* 57 (2005) at 71-72.

its activities, by failing to adhere to the requirements of its board adopted policies necessary to prevent these impacts, IFC is also systematically violating the mandates in its Articles.

Because IFC is in a position to act to fully quantify and mitigate GHG emissions from each of its financing activities, and has the mandate to do so under its board adopted policies and articles, it likewise has a positive obligation under international law. As such, IFC is violating its own imposed legal obligation under international law by both (1) failing to adhere to the mandates in its Articles and (2) failing to adhere to its board adopted rules. The IFC, by not quantifying, mitigating and preventing the impact of, and disclosing GHG emissions as its own board adopted policies provide, is committing an internationally wrongful omission and could be held responsible under international law. The IFC's member states could be held responsible as well, as it is failing to supervise the IFC and ensure that it is following its own rules.⁹²

⁹² See, e.g., Kristina Daugirdas, Member States' Due Diligence Obligations to Supervise International Organisations,' in *Due Diligence in the International Legal Order* 59 (Heike Krieger et al. eds., 2021).

Appendix D: IFC Board Adopted Policy Requirements to Disclose, and Provide Adequate Opportunity for the Public to Review, of the full GHG Emissions and Climate Change Impact and Mitigation Analysis, Alternatives analysis, and Mitigation Measures in IFC Management's Possession for its Direct and Financial Intermediary (FI) Clients' Investments

- I. **PS 1's requirement to use "good international industry practice" in the assessment of environmental and social impacts requires - prior to IFC financing decisions – public disclosure, and adequate opportunity for public review, of the full GHG emissions and climate change impact and mitigation analysis, alternatives analysis, and mitigation measures.**

PS 1 requires the IFC ensure that prior to project financing decisions, the environmental and social impact assessments for each project meet a "good international industry" practice standard. PS 1 at ¶ 7. For quite some time, it has been universally accepted that at the minimum, the opportunity for public review of a project and its environmental and social impact assessments prior to project approval is a central practiced component of an environmental assessment.⁹³ This is demonstrated by the inclusion of public disclosure, and opportunity for public review of, a project and its environmental impact analysis well prior to project approvals in the vast majority of countries' environmental and social impact assessment laws and within international organizations.⁹⁴

As documented in 2018 United Nations Environment Programme (UNEP) Report with examples from states around the world,

There is a wide consensus that public participation constitutes a fundamental element of EIAs – or in fact even that EIA is not an EIA without public participation. It is also widely recognized that public participation is not only a goal in itself, but that it is a key to accurate and effective environmental assessments...Due to the fact that public participation is considered an integral part of the EIA process, all countries have enacted some kind of legal measure for public participation in EIAs.... The review stage of the EIA process, i.e. the review of the EIA report prior to the decision on whether a project can go ahead taking environmental considerations into account, is a key element of the EIA process. The objective is to verify whether the information provided is sufficient and adequately presented so as to form a sound basis for decision-making. Public participation, comments from the public on the EIA report are an integral part of the review process in many countries.⁹⁵

While the UNEP Report documents that there is no general agreement in laws or the literature on what constitutes good practice in relation to public participation in EIAs, it finds most legislation in Global North and South states around the world make it mandatory to publicly publish information on disclosing a project when an application is submitted or the project is being considered, to make the draft EIA reports publicly available, and to provide the opportunity to submit comments on the EIA reports and project well

⁹³ See e.g., UNEP, *Assessing Environmental Impacts: A Global Review of Legislation* (2018) (hereinafter "UNEP EIA Report") at Chapter 3. EIA systems – Legal and institutional frameworks for EIAs, Section 3.2.3 Public participation at 50-66.

⁹⁴ See UNEP EIA Report at 50-66.

⁹⁵ UNEP EIA Report at 50-51, 65-66

prior to project approval.⁹⁶ In addition to being included in NEPA and EU's Environmental Impact Assessment (EIA) Directive (both included as examples of guidance for GIIP and best international practice for developing environmental as social impact assessment and studies in IFC's Guidance Notes to PS 1),⁹⁷ these requirements are common place in international environmental treaties.⁹⁸

Indeed, the IFC CAO has already opined that “good practice would include the FI and sub project publicly disclosing scope 1, 2 and 3 GHG emissions following the Greenhouse Gas Protocol.” CAO, *Compliance Investigation Report, IFC Investments in Rizal Commercial Banking Corporation (RCBC)*, The Philippines, November 19, 2021. By extension, this applies to all projects with estimated GHG emissions IFC funds directly as well.

Disclosure of GHG emissions impact analysis and mitigation prior to financing approval provides the opportunity for public review and input that has long been established as a key element to meeting the GIIP standard PS 1 requires at the risks and impacts assessment stage. It is critical to ensuring projects the IFC finances adequately quantify, assess the impacts of, and mitigate GHG emissions. See also, [CSOs' September 1, 2023 Reply](#) at 7, 9. It has also been accepted by the IFC as central to informed decision making, important to managing environmental, social, and governance risks, and “fundamental to fulfilling its development mandate.” Access to Information Policy at ¶¶ 3, 8, E&S Policy at ¶¶ 13, 14.

II. IFC's Board Adopted Policies Require it Ensure that Prior to its Financial Intermediary (FI) client's decisions to invest in a project, that the FI adheres to PS 1's requirements for public disclosure, and providing opportunity for public review, of the full GHG emissions and climate change impact and mitigation analysis, alternatives analysis, and mitigation measures in the FI Clients' possession.

Paragraph 35 of IFC's E&S Policy requires that during the appraisal process and prior to approving financing for financial intermediary (FI) investments, IFC is required to ensure that the FI client develops and operates an Environmental and Social Management System (ESMS) that incorporates the relevant principles of PS 1. Paragraph 34 of the E&S Policy further reinforces this. It provides that at the appraisal phase, “IFC reviews the implementation capacity of FIs as well as their ESMS, as required by Performance Standard 1.” PS 1 provides the *ESMS is developed under the procedures and requirements provided by PS 1*, which necessarily means that when read with paragraphs 34 and 35 of the E&S Policy, FI clients are required to have an ESMS for their investments that ensures consistency with PS 1's

⁹⁶ UNEP EIA Report at 50, 53, 55, 60-61.

⁹⁷ IFC's Guidance Notes: Performance Standards, Guidance Note 1 at GN23, 25, 58 at 10-11, 19, 49 (updated June 14, 2021) (directing readers to the Guidance Note 1 bibliography listing (1) NEPA and (2) EU's Environmental Impact Assessment (EIA) Directive (European Commission. 2011, Environmental Impact Assessment, Directorate-General for the Environment, European Commission, Brussels, available at: <http://ec.europa.eu/environment/eia/eia-support.htm>).

⁹⁸ See 'Espoo' Convention on Environmental Impact Assessment in a Transboundary Context (adopted 25 February 1991, entered into force 10 September 1997) 1989 UNTS 309 (The member states of the UN Economic Commission for Europe that are party to this treaty comprise of 56 States located in Europe, Northern America and Central Asia); Protocol on Environmental Protection to the Antarctic Treaty, Annex I arts 3.2, 3.3, 3.6, 6; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1988 (Aarhus Convention), Art. 6 (see also Art. 1, 3, 5); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, Costa Rica, 4 March 2018 (Escazú Agreement), Art. 7 (see also Art. 1, 5, 6).

environmental and social impact assessment, mitigation hierarchy, consultation, and other requirements. PS at ii., Section I ¶¶ 4, 5.

Further and moreover, PS 1 clearly states the IFC is required to ensure, prior to providing financing to FIs, that PS 1's requirements apply to FIs:

In the case of its direct investments (including project and corporate finance provided through financial intermediaries), IFC requires its clients to apply the Performance Standards to manage environmental and social risks and impacts so that development opportunities are enhanced. PS at i., Section 1, ¶ 1.

Read alone, this PS requirement binds IFC to ensure its FI clients apply PS 1 prior to FI financing approvals. IFC's E&S and Access to Info Policy further oblige IFC to ensure adherence to this PS requirement. See [CSOs' May 1, 2023 Request to IFC Management](#) at 7-8.

As detailed in the CAO Opinion and section I. to this Appendix D, PS 1 requires adherence to "good international industry practice" in the assessment of environmental and social impacts prior to approval of project financing. In the context of climate change impacts, this requires amongst other things, public disclosure, and opportunity for public review, of the full GHG emissions and climate change impact and mitigation analysis, alternatives analysis, and mitigation measures for a contemplated investment.

Because the IFC, prior to financing FIs, is required to ensure that the FI will adhere to PS 1's impact assessment and mitigation requirements before the FI makes investments of its own, IFC is required to ensure the FI understands, and agrees in its financing agreement with the IFC, that the FI is required to publicly disclose its contemplated investments and their environmental impact assessments (including for GHG emissions and climate change) well prior to its financing decisions. This would provide the public and IFC, with notice and opportunity for review prior to the FI's financing decision. In addition to ensuring quantification and reduction of GHG emissions from FI projects in line with the IFC's policies, IFC ensuring such FI disclosures and release of impact assessments prior to FI financing commitments could substantially help IFC prevent its FI clients from impermissibly using IFC funds to finance fossil fuel projects without public or IFC knowledge. See e.g., IFC FI investments resulting in financing of coal powerplants: CAO, *Compliance Investigation Report, IFC Investments in Rizal Commercial Banking Corporation (RCBC)*, The Philippines, November 19, 2021 (RCBC case); see also Complaint to the CAO for FI financing of Java 9 and 10 coal fossil fuel projects "Complaint concerning IFC investment KEB Hana Indonesia Rights Issue IV, Project No 42034" (Java 9 and 10 case). In the RCBC and Java 9 and 10 cases, if the IFC required its FI client to disclose its contemplated investments in coal powerplants and their impact assessment documents prior to FI financing, the IFC and public could have been made aware of, and prevented, IFC's FI client from impermissibly investing in these projects in the first instance.

Over half of IFC's long-term financial commitments are to FIs such as commercial banks or private equity funds.⁹⁹ From May 2019 – April 2023 alone, the IFC made \$1.5 billion of high risk FI investments (FI-1),

⁹⁹ "Paris aligned? The IFC's financial intermediary investments, fossil fuels and the climate crisis," Recourse et. al., April 2023 (documenting since May 2019, 55% of the IFC's investments have been FI investments and FI lending remains a particular risk in terms of channeling funds to fossil fuels, calculations by Recourse, data from the IFC Project Information and Data Portal: <https://disclosures.ifc.org/>).

and \$25 billion of medium risk FI investments (FI-2).¹⁰⁰ Even beyond the RCBC and Java 9 and 10 cases, it is well documented IFC's financing of FIs remains a particular risk in terms of channeling funds to coal and other fossil fuel projects.¹⁰¹ As such, the recent External Review of IFC/MIGA emphasized the need for IFC to "further clarify how it will assure itself of FI E&S performance, and strengthen its due diligence and supervision of FI clients," as "significant gaps remain in IFC's ability to ensure that FI clients are adequately assessing E&S risks in their portfolios and ensuring the application of the IFC Performance Standards in their higher-risk investments." External Review Report ¶ 8. Specifying in its financing agreement with FIs that public disclosure of its investments and their environmental and social impact assessments in accordance with the disclosure timeliness in IFC's board adopted policies is required as part of FI's requisite adherence to PS 1, would go a long way towards helping to achieve these objectives. Moreover, the IFC's own board adopted policies require it take this measure.

III. IFC's Access to Information Policy and E&S Policy also Require IFC publicly disclose *all* GHG emissions, mitigation, impact, and alternatives analysis and supporting study in IFC Management's Possession prior to IFC financing decisions .

Prior to approval of project financing, IFC's Access to Info Policy requires complete disclosure of all of the GHG emissions and mitigation figures and analysis for a project, including a full scope 1, 2, and 3 quantification, alternatives, mitigation hierarchy, and affected communities impact analysis. Access to Info Policy at ¶ 31 (a)(iii-v); [CSOs' May 1, 2023 Request to IFC Management](#) at 26-29, 32-3

Further, paragraphs 31(a)(vi) and 8 of IFC's Access to Information Policy requires IFC to publicly provide any type of, and all, GHG environmental and social impact assessment ("ESIA") documents to the public 30-60 days before consideration by the IFC for financing that contain GHG emissions and mitigation analysis and figures. This includes all analysis and information that contains GHG emissions and mitigation analysis and figures in IFC Management's possession and or that Management provides to Directors. See detailed analysis in [CSOs' May 1, 2023 Request to IFC Management](#) at 26-29.

In addition, if supplemental analysis is performed, or additional mitigation is considered or adopted, after and or in addition to the information disclosed on the IFC public data portal, this additional information must also be disclosed on the IFC public data portal for public review 30-60 days before consideration by the IFC for financing. This additional information, which completes the environmental and social impact assessment and mitigation measures, is part of the GHG environmental and social impact assessment ("ESIA") documents that the IFC Access to Info Policy requires be disclosed to the public. See detailed analysis in [CSOs' May 1, 2023 Request to IFC Management](#) at 26-28.

As BCA's data documents, for approximately 78% of projects, the IFC has violated and continues to violate its Access to Info Policy for its failure to publicly disclose GHG environmental and social impact assessment documents, and all documents with GHG emissions and mitigation analysis, for projects prior to financing approval. See data in Exhibit 2; see also, [CSOs' December 11, 2023 Request to the CAO](#) at Appendix A, page 48; see also, [CSOs' May 1, 2023 Request to IFC Management](#) at 7-8, 26-29, 32-33. The IFC has further violated its Access to Info Policy, as it has still not disclosed this information, or

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

responded at all – nor within the requisite 30 day window from receipt - to specific requests for this information submitted on February 7, 2023 and May 1, 2023, and September 7, 2023.¹⁰² Access to Info Policy at ¶¶ 8, 11, 31, 52, 57, 58. As indicated in paragraph 31(a) and footnote 14 of the IFC Access to Info Policy, the IFC must disclose this requested information and associated documents, as (1) they are included in, part of, and or pertain to the information in environmental and social impact assessments referred to in paragraph 31 (a) of the Access to Info Policy, and (2) the information and documents requested are not confidential or otherwise shielded from disclosure by the Access to Info Policy or other IFC policies. Access to Info Policy at ¶¶ 7(b), 11(a)-(l), 42.

IV. None of the Provisions in the IFC Access to Information Policy allow the IFC to not disclose this information, including supplemental information, in Sections I-III. above prior to financing approvals.

Prior to approval of project financing, the IFC’s Access to Info Policy requires complete disclosure of all of the GHG emissions and mitigation figures and analysis for a project, including a full scope 1, 2, and 3 quantification, alternatives, mitigation hierarchy, and affected communities impact analysis. Access to Info Policy at ¶ 29, 31 (a)(iii-vi); see detailed analysis in [CSOs’ May 1, 2023 Request to IFC Management](#) at 26-29. In addition, the IFC’s E&S Policy and Access to Info Policy specifies IFC must ensure client adherence to PS 1, which requires public disclosure and opportunity for review of this information as part of meeting the PS’ good international practice standard for environmental and social impact assessments. See section I. of this Appendix D, *ante*; [CSOs’ May 1, 2023 Request to IFC Management](#) at 7-8.

Further, Access to Info Policy Paragraph 29 requires IFC to “make[] publicly available certain information, including relevant project, environmental and social, and development impact information” while the investment is under consideration by the IFC. And Paragraph 31(a) of the Access to Info Policy specifies the “IFC make[] publicly available the following environmental and social information, *in addition to other information*:

- (iv) key measures identified to mitigate those risks and impacts, specifying any supplemental actions that will need to be implemented to undertake the project in a manner consistent with the Performance Standards, or where required by IFC, the Environmental and Social Action Plan;
- (v) where greater than 25,000 MT CO₂ equivalent, the expected GHG emissions of the project;
- (vi) electronic copies or web links, where available, to any relevant Environmental and Social Impact Assessment (ESIA) documents prepared by or on behalf of the client;”

IFC’s board adopted policies provide policy justifications to support these disclosure requirements as well. As recognized by the IFC, the opportunity for public review of, and input on, environmental and social impact assessments before IFC project approval is central to informed decision making, important to managing environmental, social, and governance risks, and “fundamental to fulfilling its development mandate.” Access to Info Policy at ¶¶ 3, 8, E&S Policy at ¶¶ 13, 14. It is a necessary

¹⁰² BCA’s February 7, 2023 request for information with proof of IFC’s receipt is attached to Exhibit 1 to [CSOs’ September 7, 2023 Reply to IFC Management](#). See [Request to IFC Management](#) at 32-33 for the May 1, 2023 request to IFC for information. See [CSOs’ Reply to IFC Management](#) at 9 for the September 7, 2023 request to IFC for information.

check to best ensure a project meets the Performance Standards' requirements and thus avoids or mitigates a project's GHG emissions as much as economically and technically feasible. *Id.*

But contrary to these disclosure requirements, and compelling justifications for them, IFC management frequently cites the commercial sensitivity and confidentiality provisions of IFC's Access to Info Policy to excuse not disclosing GHG emissions analysis and mitigation measures.¹⁰³ The Access to Info Policy does not allow for withholding of this information central to implementation of the E&S Policy, Access to Info Policy, PS, and IFC's development mandate.

Access to Info Policy Section 11(a) provides the IFC "does not disclose to the public financial, business, proprietary or other non-public information about its clients, its member countries or other third parties." However, the IFC has never articulated, nor justified, how the components of a GHG impact and mitigation analysis - that is routinely fully disclosed to the public for review as required by environmental assessment laws all over the world¹⁰⁴ - could be shielded from public disclosure. Moreover, as long as there is no confidentiality or sensitivity justifications, Access to Info Policy Section 11(i)'s deliberative information exception to public disclosure explicitly allows for IFC disclosure of ESIA studies, reports, documents, and assessments referred to in Access to Info Policy paragraph 31 (a) that are prepared to inform IFC's internal decision-making. See Access to Info Policy at Section (11)(i) and fn. 14. IFC has no basis, and has never supported one, to justifiably claim the commercial sensitivity and confidentiality provisions of IFC's Access to Info Policy shields disclosure of GHG emissions and mitigation analysis. Its failure to disclose this information plainly violates its board adopted policies. It also thwarts its development mandate.

¹⁰³ We observe this occurs mainly in the context of when the GHG impact assessment information initially posted on the IFC data portal contains facially inadequate GHG emissions analysis or mitigation, and or when a contemplated project will have significant GHG emissions, and at the request of the public or IFC directors, IFC management conducts or secures supplemental analysis from the client, its staff, or its own consultants. Conversation with IFC Management, member state directors, and member state agencies that provide direction to directors, reveals this supplemental analysis still falls well short of what the IFC's board adopted policies and its due diligence obligations under international law require. This further highlights the need for and importance of disclosure prior to project financing.

¹⁰⁴ See section I. of this Appendix D, *ante*; See fn. 93, UNEP EIA Report at 50-66.

Appendix E: Excerpts of the full GHG emissions alternatives analysis from the environmental assessment (EIA) documents from the Central Termica de Temane in Mozambique, Project # 43099, approved by IFC 12/7/21 and Yerevan CGT in Armenia, Project # 39630

Excerpt 1 - Yerevan CGT in Armenia, IFC Project # 39630

Renewable energy

Special regard is taken on the renewable energy sources, because they are considered as the basis for a sustainable future power system development. Nonetheless, they face several constraints:

In order to produce the same amount of electricity as the YCCPP-2 using hydropower, a large dam would need to be build. The environmental and social impacts of large dams may be difficult to mitigate and manage. Alternatively, a cascade of medium sized dams would need to be build, or the energy production of several independent hydropower plants would need to be combined. This would spread the environmental impacts through several locations, making them more difficult to handle and control. In addition, according to SREP (2014), the identified potential for HPP investment in Armenia is of only up to 90 MW. This is not sufficient to compete with the energy output of the YCCPP-2.

In the dry climate of Armenia, solar energy is quite favorable. The potential for development of the photovoltaic industry in Armenia has been studied in the framework of the project “Assistance for Development of Actual Solar PV Energy in Armenia”. Based on this, a Renewable Energy Investment Plan for Armenia was approved, in accordance to which resources are being allocated to develop up to 110 MW utility-scale photovoltaic plants.³ However, some constraints are imposed: high land consumption, the need for great investments and, based on SREP (2014), the limited capacity for equipment acquisition and installation, together with a lack of experience with the technology in Armenia. Given the above, solar energy is not considered at this stage to be an alternative to thermal generation in Armenia, but instead a complementary energy source which is being planned under parallel programs, and which faces different challenges to be overcome in the right instances.

Wind is an unsteady energy resource. Both its varying direction and intensity do not allow guarantying that energy is always produced, which would be a disadvantage in comparison to thermal production, especially at a time when the pressing need to replace the nuclear power generation emerged in Armenia. Besides, the Ministry of Energy and Natural Resources plans to develop up to 500 MW of its wind energy potential by the year 2025. 500 MW is the amount that can be economically feasible for commercial utility scale presently (US AID, 2010). This implies that further investments in this technology are presently not feasible.

In the field of geothermal energy, big advances were made to spread these technologies. They are generally considered as reliable, cost effective and sustainable. Nonetheless, there are still serious and long-term researches required for the arrangement of geothermal energy production, making it a

³ <http://www.minenergy.am/en/page/416>

disadvantageous source for the case at hand, where a pressing energy demand requires a solution which is readily and easily implementable.

Nuclear energy

Nuclear power is electric power generated in a nuclear reactor. Nuclear power stations generally work in a similar way as conventional fossil fuel-burning stations. The main difference is the fuel. Nuclear fuel is typically uranium-based rods, instead of coal or gas. Nuclear Power plants do not create smoke or carbon dioxide and are more reliable compared to above mentioned renewables. Although power generation does not produce much waste, the residual radiation of the waste is very dangerous and requires sophisticated handling for years and centuries to come. Nuclear reactors are discussed controversial, with many people categorizing them as inherently unsafe. Despite laying in a seismically active zone, Armenia has one operating nuclear reactor (Metsamor) and there are plans to build another. There are many controversies and concerns about its security. Given the environmental, health and safety risks derived from an eventual failure of the power plant, as well as the difficulties in the management of the waste, this is considered a disadvantageous alternative.

Thermal energy

Thermal energy uses organic fossils for energy production, therefore releasing formerly stored greenhouse gases which contribute to climate change. This makes it generally unfavorable from an environmental point of view. It has to be considered that power stations working on the basis of natural gas have far less impact on the environment than stations working on the basis of other fuel types. Besides, they are less capital-intensive. Modern gas turbines allow to significantly increase the efficiency and to reduce the generation of combustion outcome.

Conclusion

Given these considerations the option of gas and steam combined cycle power plant was chosen. The new YCCPP-2 is part of the strategic plan for energy production of the Government of Armenia⁴ in order to improve the total output capacity of its electric energy production with a most modern and efficient power plant. The Government of RA considers this project to be of outmost significance with highest priority for execution (fast-track project), due to the fact that the energy sector development has a critical impact on the economic development of the entire country.

4.2.3 Design alternatives

The initial design of the new YCCPP-2 had foreseen a stack height of 35 meters. The results of the air dispersion calculation (Annex 12.6 to this report) show, however, that a stack height of 66 meters is more adequate because this corresponds to the Good Engineering Practice (GEP) stack height.

⁴ <http://minenergy.am/en/page/493>

Excerpt 2 - Central Termica de Temane in Mozambique, IFC Project # 43099

3.0 ANALYSIS OF ALTERNATIVES

3.1 No-go Alternative

The no-go alternative to the proposed gas to power plant would result in the future demand for electricity further exceeding supply. Hence the lack of a secure and reliable electricity generation and distribution system would constrain existing and future economic development and restrict socio-economic development. As a result, the no-go option would have a negative socio-economic impact on Mozambique and therefore is not considered to be a viable or acceptable alternative to the proposed project being developed.

3.2 Alternative Technologies and Fuels

Alternative power generation technologies were considered but found unfavourable for a number of reasons, which are briefly listed below:



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- **Coal fired power:** This technology was not considered as it is not suitable to the variable power demand of Mozambique. Plans to build coal fired power stations in Tete Province (Benga and Moatize) have been shelved. Coal power generation thus does not provide complimentary power generation projects to technologies such as hydropower, solar PV, Wind and gas power generation. Importantly, it is an unlikely alternative as production from coal power is not flexible and cannot be easily flexed to balance power generated from other sources or demand variations;
- **Hydropower:** Small to medium scale Hydropower is relatively expensive to construct when compared to gas to power plants, and have long construction timeframes, extensive environmental and social impacts when large areas are inundated by the dam which is typically required for such projects. These projects are also highly dependent on the local site conditions, and maybe susceptible to climate change through prolonged drought;
- **Nuclear power:** This option was not considered due to the high costs involved with this technology and the long construction period;
- **Renewable power (wind & solar):** The prevailing climate in Mozambique is understood to be unfavourable for very large-scale deployment (>150 MW) of wind energy generation at a single site. Solar projects typically require vast areas of land in order to generate electricity. For a comparable size power generation development from solar, large areas of land would be required and this may entail a considerable amount of resettlement of locals and loss of access to agricultural fields with associated socio-economic consequences which may prove unsustainable. Renewable energy projects are also compounded by the high costs per unit of electricity generated when compared to gas power technology (although as technology improves the costs for implementing solar and wind projects are declining but are directly related to the quality of the resource in country). Renewables are intermittent with capacity factors generally ranging from 20% (Solar PV) up to 50% (Wind) which does not offer dispatchable bulk power. In addition deployment of large scale wind and solar PV is also constrained by grid availability as the resource for wind and solar is wide spread and the high resource areas where large scale renewables deployment may be economically feasible do not overlap with locations where high voltage grid exists. Thus, the economic viability of delivering 450 MW of renewable power accounting for the transmission costs and network stability makes this option unfeasible. Therefore, renewable energy such as wind and solar energy were not considered a viable alternative; and
- **Importing power from neighbouring countries:** In the past Mozambique depended on neighbouring countries for power and imported electricity from countries such as South Africa during peak demand periods. However, since 2015 Mozambique has been a net exporter of power (without considering Cahora Bassa Hydropower). EDM currently on average exports about 100 MW to neighbouring countries. There is occasional import of power but only in cases of outages/disruption of Mozambique's generating plants. It is estimated that Mozambique will need additional electricity supply from 2023 onwards, mainly for its own use as demand grows and to meet opportunities of regional supply. The flexibility that gas power generation provides in balancing this power demand in Mozambique is advantageous as it will allow greater independence in managing its own power demand locally.

The decision to implement a gas to power plant was largely driven by the fact that natural gas is readily available in the Temane and Pande area gas and the existence of the Central Processing Facility (CPF). Gas supply to CTT will be coming from the PSA License, covering gas deposits in the Temane and Inhassoro areas. The short timeframes involved with constructing and commissioning a gas to power plant is more favourable than many of the above technologies, as it also offers the advantages of being a readily utilisable peak power supplier.



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The gas to power technology also assists in diversifying Mozambique's energy mix (by technology and geography), as currently as Hydropower is provided from Cahora Basa and other sites, as well as other gas to power plants that currently operate at the Ressano Garcia site as well as a smaller unit in Maputo City with another project under consideration near Inhambane. The gas to power technology is also a cleaner form of fossil fuel derived power generation when compared to coal, diesel and oil generated electricity. The preferred gas power technology has not yet been determined at this stage and the options being considered and evaluated further in the ESIA are:

- Open Cycle Gas Engines (OCGE); or
- Combined Cycle Gas Turbines (CCGT).