



December 11, 2023

International Finance Corporation (IFC)
 Office of the Compliance Advisor Ombudsman (CAO)
 Attn: Janine Ferretti, Director General
 2121 Pennsylvania Avenue, NW, Washington, DC 20433 USA
 Via Email: jferretti@worldbankgroup.org

Re: Cover Letter to CSOs' Request for CAO to Issue a Written Advisory Report and Initiate a Programmatic Compliance Appraisal to Addresses the IFC's Systematic Failures to Adhere to its Policies Applicable to Climate Change and Greenhouse Gas Emissions and Mitigation

Dear Ms. Ferretti:

Bank Climate Advocates' (BCA's) extensive and thoroughly documented analysis of approximately 350 IFC investments from 2012-present demonstrates the IFC is systematically failing to ensure it adheres to the requirements of its board adopted policies pertaining to greenhouse gas (GHG) emissions quantification, disclosure, alternatives analysis, mitigation, and affected communities impact assessment before it finances a project. For instance, in most cases and contrary to its requirements, the IFC passes over ensuring quantification of the largest sources, or sometimes all of, the GHG emissions for projects

it finances. It also impermissibly never secures adequate analysis for, or ensures adoption of, project alternatives and mitigation measures that could avoid a project's significant GHG emissions to the furthest extent economically and technically feasible.

Resolution of the IFC's failures is urgent and critical. Such a step is needed to help IFC come into alignment with the Paris Agreement, and for its direct, financial intermediary, and advisory service financing activities to avoid causing irreversible significant harms to people and the environment. As the largest global private sector financial institution for developing countries whose billions in investments and mobilization of other capital spans dozens of countries, the frequency and magnitude of IFC's failures greatly impact global warming and continue to cause severe harm to communities and millions of people all over the world, especially those who are differentially or disproportionately affected by changing climate.

For instance, BCA's analysis documents that IFC's direct financing of 233 projects from 2012 to the present are alone responsible for approximately 129,800,000 tCO₂-eq (GHG emissions) per year. 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), 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 Jawa 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.

Just this sample of IFC direct and FI investments 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. Had the IFC adhered to the plain meaning requirements of its board adopted policies – all or most of these emissions could have been avoided. Meanwhile, 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 can be avoided.

IFC Management's responses to our concerns have made clear IFC's systematic and negligent failures will continue without CAO intervention. This is because Management is cursorily dismissing the clear applicability of the most pertinent IFC policies needed to avoid GHG emissions, while severely discounting the critical role adhering to its board adopted policies must play in addition to its Paris methodologies to come into alignment with the Paris Agreement. Management has also signaled intervention from a neutral third party is needed because it conflates its duties, abilities, and requirements to comply with its own policies and its obligations under international law with those of its clients and private banks. Further it is unwilling to ensure use of readily available and necessary methods to adequately quantify, avoid, and mitigate GHG emissions from the projects it finances. IFC

Directors apparent need for an independent mechanism to aid in resolution – to at least verify the IFC policies’ plain meaning requirements applicable to GHGs – confirms the need for CAO action.

The enclosed request from 26 civil society organizations (CSOs) and CSO alliances, collectively encompassing over 150 CSOs from the Global South and North, thus asks the CAO to take the following actions needed to remedy IFC failures as expeditiously as possible: (1) issue an advisory report through its advisory function and (2) initiate a compliance appraisal through its compliance function. Such actions, which are within the CAO’s authority and mandate, are needed to direct IFC as to the plain meaning requirements of its board adopted policies, and to ensure IFC’s adherence. Should the CAO take such actions, we suggest the CAO also inform the IFC of its due diligence obligations under international law prior to financing approvals. This would further help prevent IFC’s financing activities from imparting climate change harms and help significantly reduce the occasions where remedial action is required.

These actions the CAO has the authority to pursue at its own discretion are not only critical to preventing global warming harms to communities. They are appropriate in other regards. IFC’s failures are creating an increasing risk for the institution, and assistance from the CAO in clarifying the requirements of IFC’s policies applicable to climate change presents an important opportunity for IFC’s learning and improving its systemic performance on environmental and social sustainability. They are also appropriate because, like the risks associated with financial intermediary lending identified in the CAO initiated compliance appraisal for the IFC’s Investment Projects in the Financial Sector,¹ project-impacted communities face immense barriers to bringing complaints to the CAO based on IFC’s failures to adhere to its policies applicable to GHG emissions and associated climate change-related harm. And further, it is unreasonable and unrealistic to expect community complainants to file complaints about GHG emissions and analysis that are not even disclosed. Importantly however, the enclosed request cannot, and should not, be dismissed as an abstract effort to enforce global public goods: the IFC has committed itself to specific, project-level and systemic GHG policies, and is flagrantly violating them at communities’ severe expense because no one is holding them accountable. Worse, IFC seems to be actively trying to avoid that accountability by impermissibly hiding and obscuring the data and analysis.

Thank you for considering our request to issue a written advisory report and initiate a compliance appraisal to address IFC’s systematic failures to adhere to its policies applicable to climate change emissions and mitigation. As detailed herein, such CAO actions are critical to IFC’s Paris alignment and to prevent avoidable climate change harms to communities in IFC’s investment regions. We look forward to your timely response. Please let us know if we can provide any additional information.

Sincerely,



Jason Weiner (he/him/his)
Bank Climate Advocates
Executive Director & Legal Director

¹ For this CAO VP initiated FI audit see: <https://www.cao-ombudsman.org/cases/multi-regional-cao-compliance-audit-ifcs-financial-sector-investments> (last visited Nov. 29, 2023).

303 Sacramento Street, Floor 2, San Francisco, CA 94111
+1 (310) 439-8702
jason@bankclimateadvocates.org
www.bankclimateadvocates.org

Co-Signatory Civil Society Organizations:

Power Shift Africa - *Bhekumuzi Dean Bhebhe, Campaigns Lead*, bbhebhe@powershiftafrica.org

Indus Consortium - *Hussain Jarwar, Chief Executive Officer*, hussain.jarwar@indusconsortium.pk

The Big Shift Global - *Sophie Richmond, Global Lead*, srichmond@climatenetwork.org

Don't Gas Africa - *Lorraine Chiponda*, lorchips@gmail.com

Alliance for Climate Justice and Clean Energy (ACJCE) - *Zain Moulvi*, zainmoulvi@gmail.com

Sustentarse - *Maia Seeger Pfeiffer, Directora Ejecutiva*, mseeger@sustentarse.cl

Trend Asia - *Ahmad Ashov Birry, Program Director*, ashov@trendasia.org; *Novita Indri, Energy Campaigner*, novita.pratiwi@trendasia.org

MenaFem Movement for Economic, Development and Ecological Justice - *Shereen Talaat, Founder/Director*, Shereen@menafemmovement.org

Caribbean Policy Development Centre - *Geneva Oliverie, Development Specialist*, geneva.oliverie@cpdcngo.org

Caribbean Youth Environment Network (CYEN) - *Reginald I. Burke, Executive Coordinator in the Caribbean*, reginald.burke@cyen.org

Wishtoyo Chumash Foundation - *Mati Waiya, President & Executive Director, Chumash Ceremonial Elder*, matiwaiya@wishtoyo.org

Senik Centre Asia - *Andri Prasetyo, Senior Researcher*, info@senikcentre.org

AICED (The Support for Community Initiatives for Environmental Conservation and Sustainable Development) - *Nyebone Faustin, National Executive Director*, aicedrdc@gmail.com

Associação Utchessa – Moçambique - *Jamal Eugénio Esteves, Executive Director*, jamaleugenio2@gmail.com

Centre for Citizens Conserving Environment & Management (CECIC) - *Edwin Mumbere, Director*, info@cecicug.org

Foundation for Environmental Management and Campaign Against Poverty (FEMAPO) - *Mathias Lyamunda, Executive Director*, mathiaslyamunda@femapo.org

Sinergia Animal - *Merel van der Mark, Animal Welfare Finance Program Manager*, mvandermark@sinergiaanimal.org

Alternative Law Collective (ALC) - *Zain Moulvi, Research Director*, zainmoulvi@gmail.com

Recourse - *Kate Geary, Co-Director*, kate@re-course.org; *Daniel Willis, Finance Campaign Manager*, dan@re-course.org

Oxfam - *Christian V. Donaldson, Senior Policy Advisor*, Christian.Donaldson@oxfam.org

The Bretton Woods Project - *Jon Sword, Environment Project Manager*, jsward@brettonwoodsproject.org

Adfree Cities - *Veronica Wignall, Codirector*, veronica@adfreecities.org.uk

Oil Change International - *María Alejandra Vesga Correa, Legal Officer, Global Public Finance Team*, maria@priceofoil.org

Friends of the Earth US – *Luisa Abbott Galvao, Senior International Policy Campaigner*, labbottgalvao@foe.org

Center for International Environmental Law (CIEL) - *Carla García Zendejas, Director, People, Land and Resources*, cgarcia@ciel.org

Enclosures: December 11, 2023 Request to IFC CAO attaching Exhibit 1 and Exhibit 2; CSOs' May 1, 2023 Request to IFC Management for Corrective Action; IFC Management's July 7, 2023 Response; CSOs' September 1, 2023 Reply to IFC Management's Response.

cc: Irum Ahsan, CAO Advisory Manager, iahsan@worldbankgroup.org

Gabriela Stocks, CAO Compliance Manager, gstocks@worldbankgroup.org



December 11, 2023

International Finance Corporation
 Office of the Compliance Advisor Ombudsman (CAO)
 Attn: Janine Ferretti, Director General
 2121 Pennsylvania Avenue, NW, Washington, DC 20433 USA
 Via Email: jferretti@worldbankgroup.org

Re: Request to Compliance Advisor Ombudsman (CAO) for the International Finance Corporation (IFC) to Issue a Written Advisory Report and Initiate a Programmatic Compliance Appraisal to Addresses the IFC’s Systematic Failures to Adhere to its Policies Applicable to Climate Change and Greenhouse Gas Emissions and Mitigation (CAO Request)

Dear Ms. Ferretti:

As documented in Civil Society Organizations’ (CSOs’) May 1, 2023 Request to IFC Management for Corrective Action (Request) analyzing approximately 300 category A & B direct investments by IFC from 2012-2023, IFC is systematically failing to ensure it adheres to the requirements of its board

adopted policies¹ pertaining to greenhouse gas (GHG) emissions quantification, disclosure, alternatives analysis, mitigation, and affected communities impact assessment before it finances a project.² BCA’s supplemental analysis of 50 additional IFC’s direct investments from April 2023 to the present demonstrate these severe and negligent failures are on-going and continuous.³ For instance, in most cases the IFC passes over ensuring quantification of the largest sources, or sometimes all of, the GHG emissions for projects it finances. It also never secures adequate analysis for, or ensures adoption of, project alternatives and mitigation measures that could avoid a project’s significant GHG emissions to the furthest extent economically and technically feasible (see Appendix A for a summary detailing all of IFC’s systematic failures with their frequency of occurrence).

IFC Management’s July 7, 2023 Response (Management’s Response) and its response to CSOs’ September 1, 2023 Reply (CSOs’ Reply), along with IFC Director’s apparent need for an independent mechanism to aid in resolution, confirm IFC’s systematic failures will continue without IFC Compliance Advisor Ombudsman (CAO) intervention. See Part IV., *post*. Such resolution is both urgent and critical. Without it, IFC cannot come into alignment with the Paris Agreement’s warming limitation objectives. See Part III., *post*. Moreover, it will continue to cause and contribute to avoidable climate change harms to affected communities. As the largest global private sector financial institution for developing countries whose billions in investments and mobilization of other capital spans dozens of countries, the frequency and magnitude of IFC’s failures greatly impact global warming. They also continue to cause severe harm to communities and millions of people all over the world, especially those who are differentially or disproportionately affected by changing climate.

Therefore, and for the all the reasons herein, the 26 undersigned CSOs and CSO alliances, collectively encompassing over 150 CSOs from the Global South and North, ask the CAO to take the following actions:

1. **Issue a Report Through its Advisory Function:** IFC’s systematic failures rest in significant part on IFC Management’s erroneous interpretation of the plain meaning⁴ of its board adopted policies. See Part I., *post*. Thus, we first ask the CAO utilize its advisory function to issue a written report as expeditiously as possible that sets to rest IFC’s board adopted policies’ requirements applicable to climate change and GHGs. IFC/MIGA Independent Accountability Mechanism (CAO) Policy, June 28, 2021 (hereinafter “CAO Policy”) at Section III. ¶¶ 7, 8.c, Section XI. ¶¶ 147, 148.b., 149, 151. We suggest the CAO could do so in the context of a sample of IFC’s financed projects that represent its systematic failures. *Id.* As documented herein, this CAO initiated work is consistent with and contributes to CAO’s mandate, appropriate, and needed, as it is critical to:

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).

² See Exhibit 1 for dataset analyzing over 200 category A & B direct investments by the IFC from 2020-March 2023, and approximately 300 over the last 10 years. Exhibit 1 is substantially the same to Exhibit 1 to the May 1 Request. Thus, Exhibit 1 to the May 1, 2023 Request is not attached herein.

³ See Exhibit 2 for dataset analyzing 50 category A & B direct investments by the IFC from April 2023 through November 25, 2023.

⁴ “Plain meaning” is herein defined as “[t]he obvious meaning, intent, or implication of any clause / statement or any legal paper, which can be understood by just reading it.” *Black’s Law Dictionary, 2nd Ed.*

- improving IFC’s systemic performance on environmental and social sustainability, and reducing the risk of climate change harms to the environment, people, and communities resulting from its financing activities that individually and cumulatively result in significant GHG emissions;
- enhancing the environmental and social outcomes of IFC financed projects or sub-projects;
- and fostering public accountability and learning to enhance the environmental and social performance of IFC.

See pages 3-8, post; CAO Policy at Section XI. ¶¶147, 149; Sections III. ¶¶ 8, 8.c., 7, 7.b.c. (setting forth that the CAO can initiate advisory work at its own discretion; that use of its advisory function is appropriate to improve IFC’s systemic performance on environmental and social sustainability and reducing the risk of harm to people and the environment; and detailing the aspects of the CAO’s mandate its advisory function contributes to).

2. **Initiate a Compliance Appraisal, Followed by a Compliance Investigation:** In addition, and as soon as its resources allow, we ask the CAO Director General request the CAO, and for the CAO, to initiate a compliance appraisal followed by an investigation to further help resolve the IFC’s systematic failures. This request and CAO initiation of a compliance appraisal (and potentially an investigation pending the results of the compliance appraisal), is also within the CAO Director General’s and CAO’s mandate, appropriate, and needed. CAO Policy at Section X, ¶¶ 76, 81, 82 and 78, 91, 92, 96, 112-129. This is because (i) an appraisal is necessary to review environmental and social compliance issues of systemic importance to IFC, and (ii) concerns exist regarding particularly severe harm from the IFC’s failures to adhere to its board adopted policies applicable to climate change and GHG emissions. CAO Policy at Section X, ¶¶ 76, 81, and 82 (providing only one of these two factors must be satisfied for the CAO to initiate a compliance appraisal).

The IFC’s ongoing and continuous failures to adhere to its board adopted policies applicable to climate change and GHG emissions documented in this request are clearly “environmental and social compliance issues of systemic importance to IFC” for the following reasons:

- IFC’s climate change practices are the definition of an issue of “systemic importance to IFC”. This is because IFC’s mandates are to achieve sustainable development, end extreme poverty, and boost shared prosperity on a livable planet,⁵ and IFC recognizes its 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.⁶ If IFC continues to not

⁵ 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.

⁶ 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

adhere to what its board adopted policies applicable to climate change require, it will keep working against its own mandates. As documented herein, these alarming practices and lack of accountability result in substantial GHG emissions that contribute to an unlivable planet and harms to communities in its investment regions. See pages 4-6, *post*.

- The World Bank Group itself recognizes the centrality and urgency of the climate crisis, updating its mission earlier this year to seek to “eradicate poverty *on a livable planet*.”⁷ As President Banga himself said “the truth is: We cannot endure another period of emission heavy growth.”⁸ 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 2100.⁹ 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.¹⁰ 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 well-being, water, agriculture, cities, settlements, and infrastructure.¹¹ 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.¹² 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

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.

⁷ See fn. 5, *ante*.

⁸ See fn. 6, *ante*.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² Banking on Climate Chaos, Fossil Fuel Finance Report 2023 (<https://www.bankingonclimatechaos.org/>).

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 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/).

The IFC’s financing activities, and its decisions to adhere to its board adopted policies have no small impact on these devastating irreversible climate change impacts, and on GHG emissions growth.

BCA’s analysis documents that IFC’s direct financing of 233 projects from 2012 to the present are alone responsible for approximately 129,800,000 tCO₂-eq (GHG emissions) per year. 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), 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.¹³ 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 Jawa 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.¹⁴

Just this sample of IFC direct and FI investments 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.¹⁵ 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.

- 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.¹⁶ President Banga himself recognizes that the bank “must change to make good on that promise and deliver on what is being demanded.”¹⁷ From our engagement with IFC Management, what we have seen however, is that Management has not yet course corrected to meet this

¹³ For methodology used for this approximation, see Appendix B, *post*. For calculations for this approximation, see Exhibits 1 and 2 (summary tab, items IV).

¹⁴ 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.).

¹⁵ 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).

¹⁶ COP28 Multilateral Development Banks (MDB) Joint Statement (available at <https://www.ifc.org/en/statements/2023/cop28-mdb-joint-statement>).

¹⁷ See fn. 6, *ante*.

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.¹⁸ 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."¹⁹

As detailed herein, concerns from the undersigned 26 CSOs and CSO alliances, collectively encompassing over 150 CSOs from the Global South and North, exist regarding particularly severe harm from the IFC's failures to adhere to its board adopted policies applicable to climate change and GHG emissions. This also more than supports CAO issuance of an advisory report and initiation of a compliance appraisal. The undersigned CSOs collectively have technical and on the ground expertise regarding the severe harms IFC's failures are causing. Equipped with knowledge of all disciplines necessary to assess climate change harms from IFC's failures to adhere to its policies, we work, and or support climate affected communities and or their climate affected members, in: Indonesia, Kenya, Tanzania, Democratic Republic of Congo, Mozambique, Uganda, Morocco, the Philippines, Egypt, Pakistan, Brazil, Chile, Barbados, Pakistan, United States (including Chumash Native American Communities), Canada, United Kingdom, and many other states within Asia, the Caribbean, Africa, and all over the world.

Although we are in contact with IFC project-impacted communities and additional organizations that support them, while not procedurally necessary, it is also not practical to expect a request of this nature to be initiated by specific communities. Some of these communities are within a project's region, but geographically too far removed from a project to be on notice of its funding source and impacts from its significant GHG emissions. Moreover, most are never made aware of the individually and cumulatively significant GHG emissions resulting from IFC's financing activities. A large part of this, can be attributed to IFC not currently meeting foundational GHG quantification, information-disclosure, and consultation obligations documented herein, that would allow communities to engage with these issues on a project-by-project basis.

The CAO must find a comprehensive way to address the issues herein to support IFC, as climate change is the most serious environmental and social crisis of our time. Initiating a compliance appraisal after issuing an advisory report is essential to hold the IFC to account to its policies and

¹⁸ 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>).

¹⁹ See fn. 16, *ante*.

resolve the IFC’s systematic failures, as IFC Management appears unwilling to commit the necessary resources to take corrective action on its own despite the undersigned bringing the plain meaning requirements of its board adopted policies to its attention. See Parts I., IV., *post*.

Should the CAO issue a written report through its advisory function and or initiate a compliance appraisal through its compliance function, we suggest the CAO inform the IFC of its due diligence obligations under international law prior to financing approvals. This would further help prevent IFC’s directly and indirectly financed projects from imparting climate change harms and help significantly reduce the occasions where remedial action is required.

If the CAO initiates work on a report through its advisory function and or a compliance appraisal, Part I of this request provides a list of questions along with guidance the CAO should consider in setting forth the requirements in the IFC board adopted policies. This Part specifically sets forth the plain meaning requirements of the IFC’s board adopted policies applicable to climate change, and refutes IFC Management’s clearly erroneous interpretations. Part II suggests the CAO detail the IFC’s due diligence obligations under international law at the environmental and social impact assessment stage prior to project financing to help the IFC further prevent climate change harms. Part III summarizes why correcting the IFC’s systematic failures to adhere to its Board Adopted Policies is critical. Part IV details why IFC’s systematic failures will continue without CAO intervention.

I. Questions Presented to CAO for Resolution Regarding IFC Board Adopted Policy Requirements Applicable to Climate Change and GHG Emissions Prior to Financing Approvals, with Brief Answers Based on Plain Meaning Interpretations of IFC’s Policies

The following is a list of questions along with guidance the CAO should consider in setting forth the requirements in the IFC board adopted policies:

1.) Does the E&S and Access to Info Policy require that the IFC ensure adherence to the requirements of the Performance Standards (PS) prior to financing approvals, and if so, what measures must the IFC take to ensure such adherence?

Brief Answer: Yes. See CSOs’ May 1, 2023 Request, Section III.A at 7-8. IFC has the duty, capabilities, and control - independent of its clients - to ensure adherence to its policies, including the PS, prior to financing approvals to prevent harm from climate change, even when its clients may not have the resources to. These IFC obligations and the IFC’s ability to address them through financing requisite analysis, or advancing funds for this analysis as part of a project’s costs that could be forgiven if the project is not financed, respect client capacity and principles of “common but differentiated responsibilities” at the project assessment, diligence, and planning stages.

2.) Do PS 1’s requirements apply to GHG emissions and climate change impacts?

Brief Answer: Yes. But to the contrary, IFC Management’s July 7, 2023 Response asserts PS 1, which sets forth the assessment and mitigation hierarchy requirements for all social and

environmental impacts, does not apply to GHG emissions, but rather only PS 3 does.²⁰ This is in direct contrast to Management’s admissions during an in-person April 13, 2023 meeting with many of the undersigned CSOs present, and its Chief Environmental Specialist’s comments at the World Bank Group Annual Board Meetings on October 13, 2023.²¹ Moreover, it is contrary to the PS’s plain meaning. This is perhaps why Management’s Response provides no citations to or analysis of the PS to support its interpretation.

The PS’s plain meaning clearly evidences PS 1’s assessment and mitigation requirements apply to all environmental and social impacts, including GHGs. The first listed objective of PS 1 is “to identify and evaluate environmental and social risks and impacts of the project.” PS 1 Objectives, Bullet Point No. 1 at page 6. As such, PS 1 provides that its impact assessment and mitigation requirements apply to all environmental and social impacts unless noted in specific limitations within the PS, and specifically that the risks and impacts identification process in PS 1 will consider the emissions of GHGs. PS Overview at ¶3; PS 1 at Title, Objectives, Bullet Point No. 1, ¶¶ 1 (fn. 3), 4, 5, 7. While PS 1 indicates the risks and impacts identification process will consider the issues identified in PS 3, which includes GHGs, it does not provide PS 3’s requirements replace PS 1’s. PS 1 at ¶¶ 4, 7; PS Overview at ¶¶ 3, 4.

Likewise, PS 3 does not provide its requirements replace any of PS 1’s. PS 3 at ¶¶ 6-8; PS 1 at ¶4. To the contrary, PS 3 explicitly states its applicability is defined during the risks and impacts identification process. PS 3 at ¶ 3. And the process for “Assessment and Management of Environmental and Social Risks and Impacts” is set forth under PS 1. *Id.*; PS Overview; PS 1. As such, if the identification of impacts conducted under PS 1 identifies that a project will emit over 25,000 tCO₂-eq/year, then PS 3’s annual monitoring and reporting requirement for GHG emissions kick in. PS 3 at ¶ 8. PS 3 also requires the client to implement financially feasible and cost-effective options, including efficiency measures, to reduce project-related GHG emissions during the design and operation of the project. PS 3 at ¶¶ 6-7. This captures components of, but does not undermine or substitute for, PS 1’s full mitigation hierarchy requirements. *Id.*; PS 1 at page 6 (Objectives), ¶¶ 14, 15; E&S Policy at ¶ 6; *see also* Request at 8-11. PS 3, by its mention of consideration and potential implementation of alternatives for GHGs, also reinforces and makes certain that the alternatives analysis PS 1 requires applies specifically to a project’s GHG emissions. PS 3 at ¶ 7; PS 1 ¶ 7.

Further, the human rights due diligence requirements enumerated in the Performance Standards and IFC’s E&S Policy do not permit the IFC to allow a requirement in PS 3 to obstruct the identification of the risks and impacts from GHG emissions, or the implementation of mitigation for GHG impacts, needed to prevent harm to human rights from climate change. The E&S Policy, which requires the IFC ensure that the PS requirements are met, provides that “IFC recognizes the responsibility of business to respect human rights, independently of the state duties to respect,

²⁰ IFC Management’s Response at 2.

²¹ Greenhouse Gas Emissions and Climate Change Alternatives Analysis: Ensuring World Bank Group Paris Agreement Alignment, World Bank Civil Society Policy Forum, October 13, 2023 (2023 WBG CSPF GHG Alternatives Analysis Session) at minutes 62:54-64:07 (Panelist Paolo Lombardo, Chief Environmental Specialist stating “we need to improve presentation of the alternatives analysis we do for projects in compliance with PS 1 and 3.” (avail at: <https://www.worldbank.org/en/events/2023/06/12/civil-society-policy-forum-2023-annual-meetings-2023#7>).

protect, and fulfill human rights,” and that “consistent with this responsibility, IFC undertakes due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards.” E&S Policy at ¶ 12. PS 1 specifically provides businesses should “avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to,” and that “[d]ue diligence against these Performance Standards will enable the client to address many relevant human rights issues in its project.” PS 1 at ¶3.

It is firmly established “[c]limate change is one of the greatest threats to human rights.”²² Due diligence is defined as the care that a reasonable person exercises to avoid harm to other persons or their property.²³ Thus, the PS cannot be reasonably interpreted to allow one element of the PS with lesser due diligence requirements (PS 3 as IFC Management argues) to prevent the due diligence needed, and required by PS 1, to assess and mitigate the true extent of GHG emissions and their human rights impacts.

In sum, the position in Management’s Response that PS 1’s environmental and social impact assessment and mitigation hierarchy requirements do not apply to GHG emissions, but rather that only PS 3 does, is contrary to the PS’ and E&S Policy’s plain meaning, including their due diligence requirements to prevent human rights harms from climate change. The IFC is thus required to ensure prior to financing approval, as consistent with PS 1’s requirements, a full and supported: quantification of the totality of a project’s scope 1, 2, and 3 emissions over its lifecycle; assessment of and mitigation for the impacts of GHG emissions on affected communities that includes affected community consultation; a GHG emissions alternatives analysis; and mitigation hierarchy for GHG emissions that is adopted.

3.) Do PS 1’s requirements to adopt the mitigation hierarchy PS 1 specifies apply to GHG emissions and climate change impacts? If so, what does this mitigation hierarchy require and what analysis is needed to support it?

Brief Answer: Yes, PS 1’s mitigation hierarchy requirements apply to GHG emissions and climate change impacts. Contrary to its positions during an in-person meeting with BCA and many CSOs on April 13th, IFC Management’s Response asserts that PS 1’s mitigation hierarchy requirements do not apply to GHG emissions because only the mitigation requirements in PS 3 do.²⁴ As detailed above and at pages 8-11 of the Request, the PS and E&S Policy’s human rights due diligence requirements, and the plain meaning of PS 1 and PS 3, do not support the IFC’s position that PS 3’s requirements replace or eliminate PS 1’s mitigation hierarchy requirements as applied to GHG emissions.

²² 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.”

²³ See Section II, *post* defining the requirements for human rights due diligence for climate change impacts under international law; see Merriam Webster Dictionary definition of due diligence, available at: <https://www.merriam-webster.com/dictionary/due%20diligence>.

²⁴ IFC Management’s Response at 2.

Analysis of PS 1's and the E&S Policy's plain meaning specific to the mitigation hierarchy requirements further affirm the applicability of the mitigation hierarchy to GHG emissions. PS 1 lists adoption of a mitigation hierarchy for all impacts to the environment and affected communities as one of its objectives. PS 1 Objectives at page 6. Further, PS 1's mitigation hierarchy requirements require that prior to approval of project financing, the IFC ensures measures are adopted that avoid environmental and social impacts as far as economically and technically feasible, and if full avoidance is not economically and technically feasible, that measures are adopted to minimize and offset these impacts as far as economically and technically feasible. *Id.*; PS 1 at ¶¶ 14, 15; *see also* Request at 9-11. As such, considering GHG emissions are an environmental and social impact, PS 1's mitigation hierarchy requirements provide that before the IFC approves financing for a project, mitigation measures are adopted to avoid (as a 1st priority), minimize, and offset GHG emissions to the furthest extent technically and economically feasible. *Id.* Furthermore, and not addressed by IFC Management's Response, the IFC's E&S Policy provides that "[c]entral to [Performance Standard] requirements is the application of a mitigation hierarchy" that applies to all adverse risks to and impacts on communities and the environment.²⁵ E&S Policy at ¶ 6. The IFC thus cannot permissibly read out the applicability of its PS's mitigation hierarchy requirements to impacts from GHG emissions. Not only is adoption of a mitigation hierarchy for GHG emissions and climate change impacts required. The economic and technical feasibility limitations of the mitigation hierarchy requirements ensure respect client capacity and principles of "common but differentiated responsibilities" at the project planning, assessment, and implementation stages.

As the Request details, contrary to the requirements of the E&S and Access to Info Policies, for approximately 100% of projects the IFC has failed, and continues to fail, to ensure and secure adoption of a mitigation hierarchy set forth under PS 1 for GHG emissions, and the analysis needed to inform and support it. This needed analysis includes assessment of (1) the technical and financial feasibility of GHG emissions avoidance, minimization, and offset measures, and (2) the full extent of a project's scope 1, 2, and 3 GHG emissions to assess the avoidance, minimization, and or offsets needed. Request at 9-11. The mitigation hierarchy requirement in PS 1 and the E&S Policy thus also require the IFC ensure quantification of scope 1, 2, and 3 GHG emissions for each project prior to financing approval. *Id.*

- a. **Sub-Question:** Does PS 1's mitigation hierarchy requirements include analyzing, and providing supporting analysis to document, (i) measures that can be taken to avoid GHG emissions to the furthest extent technically and economically feasible as a first priority; (ii) after implementation of the avoidance measures, additional measures that can be taken to minimize any remaining GHG emissions to the furthest extent economically and technically feasible; and (iii) after implementation of the avoidance and minimization measures, additional measures that can be taken to offset any remaining GHG emissions?

Brief Answer: Yes. See above; See also, CSO's May 1, 2023 Request at 8-13.

²⁵ The E&S Policy provides that "[c]entral to [Performance Standard] requirements is the application of a mitigation hierarchy to anticipate and avoid adverse impacts on workers, communities, and the environment, or where avoidance is not possible, to minimize, and where residual impacts remain, compensate/offset for the risks and impacts, as appropriate." E&S Policy at ¶ 6.

- b. **Sub-Question:** Must any GHG emissions offsets, if adopted as a part of the GHG emissions and climate change mitigation hierarchy, meet environmental integrity requirements accepted as good international practice (including include additionality, permanence, not overestimated, not claimed by another entity, and not associated with significant social and environmental harms), and respect and protect the ecosystem services Indigenous Peoples and Affected Communities depend upon, and their full rights, territories, sovereignty, and jurisprudence over the land, air, water, and biodiversity?

Brief Answer: Yes. See CSO's May 1, 2023 Request at 13-14, fn.2, fn.6, fn.11.

- c. **Sub-Question:** Does PS 1 allow deferring adoption of a mitigation hierarchy for GHG emissions and climate change impacts until after project approval when the project has clearly defined components?

Brief Answer: No. See CSO's May 1, 2023 Request at 14-15.

4.) Does PS 1 and the Access to Information Policy require quantification with supporting analysis, and public disclosure, of a project's reasonably foreseeable Scope 1, 2, and 3 GHG emissions over a projects' lifecycle and annually during its operation?

Brief Answer: Yes. However, IFC's Response incorrectly asserts that estimates of scope 1, 2, and 3 emissions over a project's lifecycle are not required prior to approval of financing for a project, but rather only the annual scope 1 and 2 GHG emissions reporting requirements in PS 3 apply if a project's emissions will exceed 25,000 tCO₂-eq.²⁶ This runs contrary to both the Access to Info Policy's and PS's plain meaning, as well as the E&S Policy's mitigation hierarchy requirements.

IFC's Access to Info Policy plainly states that prior to project financing, a project's GHG emissions must be publicly disclosed when these amounts will exceed 25,000 tCO₂-eq *over a project's life cycle, not just per year*. Access to Info Policy at ¶ 31 (a)(v). This also necessarily requires the IFC to quantify or ensure quantification of all of a project's scope 1, 2, and 3 emissions over its lifecycle prior to financing approval, and not just quantify a project's scope 1 and 2 emissions when a project is expected to emit more than 25,000 tCO₂-eq per year.

In addition, and as detailed above, the plain meaning of PS 1 and PS 3, the PS and E&S Policy's human rights due diligence requirements, and the E&S Policy's and PS 1's mitigation hierarchy requirements do not support the IFC's interpretation. *See also* Request at 7-11, 15-21.

Analysis of PS 1's and 3's plain meaning specifically applicable to quantification of GHG emissions, further refute the IFC's position and affirm IFC is required to ensure, secure, and publicly disclose estimates of scope 1, 2, and 3 emissions over a project's lifecycle prior to approval of financing for a project. PS 3 only requires annual monitoring and reporting for scope 1 and 2

²⁶ IFC Management's Response at 2.

emissions after it is established a project will *emit more than* 25,000 tCO₂-eq per year.²⁷ PS 3 at ¶ 8. It does not address fully quantifying a project’s GHG emissions (scope 1, 2, and 3) in the first place to determine whether this annual monitoring and reporting threshold will be crossed. Rather, PS 1 does. PS1 provides that the process of risks and impact identification will consider the emissions of GHGs, and that “[t]he scope of the risks and impacts identification process will be consistent with good international industry practice” and span a project’s lifecycle. PS 1 at ¶¶ 7, 4. It is well established that good international industry practice includes the estimated calculations and analysis for a project’s direct and indirect (scope 1, 2, and 3) GHG emissions at the environmental assessment stage so the impact of a project’s GHG emissions can be assessed and mitigation can be pursued during design and prior to implementation. Indeed, the IFC CAO 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.” Office of the Compliance Advisor Ombudsman (CAO), *Compliance Investigation Report, IFC Investments in Rizal Commercial Banking Corporation (RCBC), The Philippines*, November 19, 2021 (CAO RCBC Report).²⁸ By extension, this applies to all projects with estimated GHG emissions IFC funds directly as well. In addition, and as detailed above, the PS 1 and E&S Policy mitigation hierarchy requirements also require adequate analysis and quantification of scope 1, 2, and 3 GHG emissions in order to inform the extent of mitigation required. E&S Policy at ¶ 6; PS 1 Objectives at 6; PS 1 at ¶¶ 14, 15. In sum, and as already affirmed by the CAO, a reading of PS 1 and 3 together makes clear that P1’s requirements to assess all environmental and social impacts apply to the quantification of GHG emissions.

As the Request details, contrary to PS 1’s, its E&S Policy’s, and its Access to Info Policy’s requirements, IFC has failed and continues to fail to ensure and secure for *all* projects prior to financing approvals, quantification of GHG emissions that includes all of a project’s clearly recognized and quantifiable scope 1, 2, and 3 GHG emissions over its lifecycle. Request at 7-11, 15-21. Also contrary to IFC’s board adopted policies, approximately: over 21% of projects fail to quantify any GHG emissions; approximately 59% of projects where the project is an expansion fail to quantify GHG emissions from the expansion; over 95% of projects fail to analyze or quantify scope 3 emissions; and over 84% of applicable projects fail to quantify GHGs that will be emitted from their construction. *Id.*; see Appendix A, *ante*.

For almost all of its financed projects, as the Request documents, the IFC has violated and continues to violate its Access to Info Policy for failing to first quantify then publicly disclose a project’s expected GHG emissions amounts when these amounts will exceed 25,000 tCO₂-eq *over a project’s life cycle, not just per year* (for approximately 76% of these projects, IFC at least discloses some of a project’s apparent GHG emissions). Request at 28; Access to Info Policy at ¶ 31 (a)(v); see Appendix A, *ante*; see Exhibits 1 and 2. Management’s Response omits addressing any of the disclosure failures highlighted in the above paragraphs that violate the Access to Info Policy.

²⁷ IFC is not even securing full quantification of GHG emissions as Performance Standard 1 and its Access to Info Policy require to determine whether PS 3’s reporting threshold after project implementation applies.

²⁸ For the Greenhouse Gas Protocol referenced in the CAO RCBC Report see: Task Force on Climate-related Financial Disclosure, 2017, Recommendations and Implementation Guidance available at <https://bit.ly/3D0FvdR> and Greenhouse Gas Protocol, *Technical Guidance for Calculating Scope 3 Emissions* available at <https://bit.ly/3mSchby>.

IFC's failure to ensure quantification of scope 1, 2, and 3 GHG emissions prior to financing approvals as its board adopted policies require, has additional adverse consequences. It precludes IFC from quantifying and reporting the carbon footprint of its Portfolio despite its means to do so²⁹ and as required by its Access to Info Policy adopted 11 years ago. And as mentioned above, IFC not securing full quantification of GHG emissions in accordance with PS 1's requirements, preclude it from determining the applicability of PS 3's monitoring and reporting requirements after project implementation, and thus from ensuring monitoring and further mitigation of project GHG emissions in accordance with the PS.

- a. **Sub-Question:** Does PS 1 allow deferral of such emissions quantification until after financing approval?

Brief Answer: No, except for the case in which assets to be developed, acquired or financed have yet to be defined. See CSO's May 1, 2023 Request at 17.

- b. **Sub-Question:** Where a significant portion of the project funded is an addition to or expansion of an existing activity / operation / facility, does PS 1 require quantification of GHG emissions figures for the expansion or addition?

Brief Answer: Yes. See CSO's May 1, 2023 Request at 16-17.

- c. **Sub-Question:** Does PS 1 require quantification and analysis of the complete scope of a project's GHG emissions including all clearly recognized sources of GHG emissions, such as from: (i) aspects of projects well known to emit significant GHG emissions; (ii) the loss of carbon sequestration due to the Project; (iii) scope 3 indirect emissions; (iv) construction activities; and (v) unplanned but predictable developments caused by the project that may occur later in time or at a different location and or caused by associated facilities.

Brief Answer: Yes. See CSO's May 1, 2023 Request at 17-20; See Part I., 4.), *ante*;

5.) Does PS 1 require a GHG emissions and climate change alternatives analysis, and if so, what is required?

Brief Answer: Yes, PS 1 requires a GHG emissions and climate change alternatives analysis. As the Request documents, contrary to PS 1's, its E&S Policy's, and its Access to Info Policy's requirements, the IFC has failed and continues to fail to ensure and secure for at least 53% of applicable projects, a GHG emissions alternatives analysis prior to approving financing for a project. Request at 7-8, 11-12. In addition, as the Request documents, over 94% of the GHG alternatives analysis conducted are facially inadequate, as their contents fail to meet PS 1's good international industry practice (GIIP) requirement. *Id.*

²⁹ This can be achieved by IFC ensuring implementation of PS 1 to obtain estimates of scope 1, 2, and 3 GHG emissions over its lifecycle, and implementation of PS 3's annual monitoring and reporting requirements to continuously monitor a project's emissions when they will exceed 25,000 tCO₂-eq per year.

The U.S. National Environmental Policy Act (NEPA) is widely regarded as GIIP for environmental assessments. NEPA’s GHG Emissions and Climate Change alternatives analysis requirements contain a plethora of elements,³⁰ 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 region’s energy demand. Performance of this analysis can also significantly reduce GHG emissions from projects the IFC finances in other sectors. Alarming and inconsistent with its own PS Guidance Notes,³¹ Management’s Response asserts it does not have to ensure NEPA’s requirements are met because NEPA is “best” and not “good” international industry practice. This position also runs afoul of its international legal obligations (see Part II, *post*).

- a. **Sub-Question:** For contemplated fossil fuel projects or those with fossil fuel energy components, does PS 1 require that a GHG emissions and climate change alternatives analysis is conducted accompanied by analysis/study sufficient to support findings, which includes: (1) *comparison of the proposed fossil fuel project to a no project alternative and all renewables with a thorough assessment of the energy demand to be met and whether renewable and other clean energy options could be used to provide this demand*; (2) technical and economic feasibility analysis for renewable energy; (3) full quantification of scope 1, 2, and 3 GHG emissions for the proposed project over its lifetime in comparison to all renewable options; (4) *for the proposed project and renewable alternatives, best available social cost of GHG 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. sea-level rise, fire, drought, health impacts, etc.).

Brief Answer: Yes. These are central components of a GHG / climate change alternatives analysis required by NEPA, implementation of which satisfies the good international industry practice standard required by PS 1 for environmental and social impact assessments. Implementation of these NEPA requirements is also needed to adhere to the PS’ requirements for human rights due diligence. For contemplated fossil fuel and other GHG emissions intensive projects certain to inflict human rights harms,³² the human rights due diligence standard demands use of best reasonably practiced and available methods for diligence and alternatives analysis, such as those implemented prior to project approvals under NEPA. See Part I. 2., *ante* (PS

³⁰ 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>.

³¹ IFC’s Guidance Notes: Performance Standards, Guidance Note 1 at GN23, 25, 58 at 10-11, 19, 49 (directing readers to the Guidance Note 1 bibliography listing NEPA for further guidance on GIIP (updated June 14, 2021)).

³² See fn. 22, *ante* and Part II, *post* (detailing how climate change impacts are human rights harms).

human rights due diligence requirements); see Part II, *post* (detailing human rights due diligence obligations for the IFC).

- b. **Sub-Question:** For all other Category A and B projects with GHG emissions estimated to be over 25,000 tCO₂-eq /yr. over the project’s lifecycle, does PS 1 require that a GHG emissions and climate change alternatives analysis is conducted examining reduction in a project’s Scope 1, 2, and 3 emissions accompanied by analysis/study sufficient to support findings, which includes the applicable elements in Part I., 5.a.) above and an analysis of alternatives to the project and its components that could avoid and reduce GHG emissions as far as economically and technically feasible.

Brief Answer: Yes. See Part I., 5.a., *ante*.

- 6.) **Does PS 1 and PS 4 require assessment of and mitigation for the impacts of GHG emissions on affected communities within the geographic region of a project, that includes affected community consultation as to a project’s indirect climate change impacts?**

Brief Answer: Yes. See CSO’s May 1, 2023 Request at 22-25. As documented in the Request, contrary to the requirements of its board adopted policies, prior to approving financing for a project the IFC has failed and continues to fail to ensure for approximately 90% and 100% of projects respectively, analysis and adoption of a mitigation hierarchy for a project’s GHG emissions’ contribution to global warming impacts on biodiversity and on ecosystem services upon which affected communities’ livelihoods are dependent. Request at 7-8, 22-25. Also contrary to its board adopted policies, as the Request documents, for over 97% of its financed projects, the IFC fails to ensure analysis as to whether individuals or groups may be directly and differentially or disproportionately affected by a project’s GHG emissions’ contribution to global warming because of their disadvantaged or vulnerable status. *Id.* Perhaps in large part due to these violations, consultation with and mitigation for affected communities to address a project’s indirect climate change impacts on them almost never occurs. *Id.* Management’s Response fails to address any of these failures.

- 7.) **Does PS 1 require a GHG emissions and climate change cumulative impacts assessment is conducted that account not only for a country’s National Determined Contributions (NDCs), but also the Paris Agreement’s warming objectives and other applicable regional, national and global GHG emission plans?**

Brief Answer: Yes. See CSO’s May 1, 2023 Request at 21-22. See also Part 1.5., *ante* (detailing how the PS 1’s good international industry practice requirement for environmental assessments and human rights due diligence require, as a component of alternatives analysis and like required under NEPA, an analysis 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).

- 8.) **Does PS 1’s requirement to use “good international industry practice” in the assessment of environmental and social impacts require, prior to approval of project financing, public**

disclosure, and opportunity for public review, of the full GHG emissions and climate change impact and mitigation analysis, alternatives analysis, and mitigation measures?

Brief Answer: Yes. 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.³³ 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.³⁴

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.*³⁵

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 prior to project approval.³⁶ 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

³³ 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.

³⁴ See UNEP EIA Report at 50-66.

³⁵ UNEP EIA Report at 50-51, 65-66

³⁶ UNEP EIA Report at 50, 53, 55, 60-61.

studies in IFC's Guidance Notes to PS 1),³⁷ these requirements are common place in international environmental treaties.³⁸

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, CSO's 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.

9.) Must the IFC 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 as detailed in Part I. 8?

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

³⁷ 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>).

³⁸ 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).

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* Request at 7-8.

As detailed in Part I.8. immediately above, 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 Jawa 9 and 10 coal fossil fuel projects “Complaint concerning IFC investment KEB Hana Indonesia Rights Issue IV, Project No 42034” (Jawa 9 and 10 case).* In the RCBC and Jawa 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.³⁹ From May 2019 – April 2023 alone, the IFC made \$1.5 billion of high risk FI

³⁹ “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/>).

investments (FI-1), and \$25 billion of medium risk FI investments (FI-2).⁴⁰ Even beyond the RCBC and Jawa 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.⁴¹ 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.

10.) Does IFC’s E&S Policy require that the IFC ensure that in providing its Advisory Services, that IFC adheres, or ensures adherence, to PS 1’s requirements applicable to GHG emissions and climate change impacts?

Brief Answer: Yes. The E&S Policy provides “[s]hould the [IFC’s] review of the proposed advisory activity result in the identification of environmental and/or social risks, the advice provided to clients *shall* be consistent with the Performance Standards as a framework of good international industry practice (GIIP) in environmental and social risk management.” E&S Policy at ¶ 39; See also E&S Policy at ¶ 38. This means the IFC is required to ensure that when it advises on a project, it provides its client with, or ensures: quantification of scope 1, 2, and 3 emissions from the project, a GHG alternatives analysis for the project consistent with NEPA’s requirements, a GHG cumulative impacts analysis, an analysis as to indirect impacts of the contemplated project’s GHG emissions on affected communities, and a mitigation hierarchy analysis for the project’s GHG emissions and their impacts. See Parts I. 2-7, *ante* (detailing these PS 1 requirements).

On August 29, 2023, IFC disclosed project number 607416, which is provision of IFC’s advisory services to the Moroccan government from June 30, 2023 – June 30, 2026 for a contemplated LNG import terminal with associated distribution infrastructure in Morocco. During the World Bank Group CSPF forum GHG alternatives analysis panel on October 13, 2023, Bank Climate Advocates asked the IFC panelists whether IFC would ensure a GHG/climate change alternatives analysis is conducted for this project consistent with NEPA and GIIP as PS 1 requires.⁴² IFC did not, and has yet to, respond. As detailed in Part I.5. above, this would entail, amongst other study, an analysis as to whether it would be technically and economically feasible for renewable energy to meet Morocco’s energy demand instead of the contemplated LNG project and a SC-GHG study monetizing the societal costs of GHG emissions from the project to Morocco’s people (global warming harms from drought, fire, floods, sea level rise, heat). Such analysis consistent with PS 1’s requirements could result in renewables being pursued instead, and thus result in avoidance of significant reductions in local and global environmental and social climate change harms.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See fn. 21, *ante*: 2023 WBG CSPF GHG Alternatives Analysis Session at minutes 14:49 – 15:24.

By facilitating financing for energy projects and providing guidance and expertise, IFC's advisory services have a significant impact on many other countries' long term energy supply plans, projects, and policies as well. In FY21, IFC's advisory portfolio stood at \$1.4 billion, encompassing just over 800 advisory projects in more than 100 countries [, and IFC's] ... transaction advisory work mobilized \$3.2 billion of private capital.”⁴³ A significant amount of this work is specifically directed toward studying contemplated fossil fuel and other energy projects. For example, following the Paris Agreement, between 2016 - August 2023, the World Bank Group allocated almost \$200m in technical assistance across 14 countries for the gas related sector predominantly focusing on extraction, supply, decision-making and governance, and the IFC undertook 6 of these 16 advisory service projects.⁴⁴ Thus, IFC ensuring adherence to PS 1's requirements has tremendous implications for IFC's Alignment with the Paris Agreement, and limiting climate change harms from its financing activities. It can help and is needed to avoid fossil fuel infrastructure lock-ins that threaten the 1.5°C warming limitation objective, and to expedite regional and global energy transition efforts to renewable energy.

11.) Does IFC's Access to Information Policy and or E&S Policy require IFC publicly disclose all GHG emissions, mitigation, impact, and alternatives analysis and supporting study?

Brief Answer: Yes. 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); Request at 26-29, 32-33.

As the Request 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 Request at 7-8, 26-29, 32-33; *see* Appendix A, *ante*. The IFC has further violated its Access to Info Policy, as it has still not disclosed this information, or 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, 2023.⁴⁵ 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.

⁴³ See: <https://www.ifc.org/en/what-we-do/products-and-services/advisory-services#:~:text=IFC's%20advisory%20platform%20consists%20of,in%20more%20than%20100%20countries> (last visited 11/27/23).

⁴⁴ *The Technical Assistance Paradox, How World Bank and ADB advisory services are 'assisting' dependency on fossil gas*, Recourse, Senik Centre Asia, Trend Asia, and Indus Consortium, November 2023.

⁴⁵ BCA's February 7, 2023 request for information with proof of IFC's receipt is attached to Exhibit 1 to CSO's September 7, 2023 Reply. See Request at 32-33 for the May 1, 2023 request to the IFC for information. See CSO's Reply at 9 for September 7, 2023 request to IFC for information.

12.) Does paragraphs 31(a)(vi) and 8 of IFC’s Access to Information Policy require 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?

Brief Answer: Yes, 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 CSO’s May 1, 2023 Request at 26-29.

a. Sub-Question: 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, must this additional information also be disclosed on the IFC public data portal for public review 30-60 days before consideration by the IFC for financing?

Brief Answer: Yes. 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 CSO’s May 1, 2023 Request at 26-28.

b. Sub-Question: Do any of the confidentiality provisions in the IFC Access to Info Policy allow the IFC to not disclose this information, including supplemental information in Part I.12.a. prior to financing approvals?

Brief Answer: No. 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 CSO’s May 1, 2023 Request at 26-29. In addition, the IFC’s E&S Policy and Access to Info Policy specifies IFC must ensure adherence to PS 1, which requires public disclosure and opportunity for review of this information as part of meeting P’s good international practice standard for environmental and social impact assessments. See Part I.8., *ante*.

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 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.⁴⁶ 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 world⁴⁷ - 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 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.

13.) Does the E&S Policy require the IFC to assign an A risk categorization for all projects forecasted to emit over 25,000 tons of tCO₂-eq/yr.?

⁴⁶ 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.

⁴⁷ See Part I.8, *ante*; See UNEP EIA Report at 50-66.

Brief Answer: Yes. See CSO’s May 1, 2023 Request at 25-26. The E&S Policy defines Category A projects as those “with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible or unprecedented.” E&S Policy at ¶ 40. The E&S Policy defines Category B projects as those “with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site specific, largely reversible and readily addressed through mitigation measures.” E&S Policy at ¶ 40. Where the use of proceeds of IFC financing and the associated environmental and social footprint of the business activity are known at the time of the decision to invest, as part of the review of environmental and social risks and impacts prior to IFC consideration for financing, the “IFC [is required to] determine the business activity’s environmental and social category based on its potential environmental and social risks and/or impacts.” E&S Policy at ¶¶ 42, 40. It is also required to publicly disclose a project’s social and environmental categorization prior to IFC consideration for financing. Access to Info Policy at ¶¶ 30(j), 31.

Based on current trajectories to meet the 1.5°C warming limitation objective needed to avoid the most catastrophic impacts of climate change, it is well accepted that a project that will emit net GHGs to the atmosphere after mitigation will impart an incremental irreversible adverse environmental and social impact.⁴⁸ For approximately 91% and 96% of the Category A and B projects it financed with net GHG emissions after mitigation from 2012 - March 2023 and April 2023 - November 2023 respectively, the IFC violated its E&S Policy by (i) failing to factor the project’s net GHG emissions in its risk categorization and disclose these GHG emissions as part of the risk categorization; and (ii) mis-categorizing projects with estimated net GHG emissions after mitigation as Category B projects instead of Category A projects (see Exhibits 1 and 2). Curing these violations of its E&S Policy to account for and identify GHG emissions in its risk categorization for projects is essential to alert affected communities, the general public, and the IFC when attention to a project is needed to ensure measures are committed prior to financing that avoid and mitigate GHG emissions to the furthest extent feasible.

14.) What are IFC’s requirements to comply with section 26 of its Access to Information Policy in regards to quantifying and reporting on the carbon footprint of its portfolio?

Brief Answer: See CSO’s May 1, 2023 Request at 29-31.

15.) What are IFC’s requirement in paragraph 28 of its E&S Policy to ensure that a project’s non-compliance with the PS’ GHG emissions analysis and mitigation requirements are addressed in an ESMS (via an amendment, Action Plan, or other action) prior to financing?

Brief Answer: See CSO’s May 1, 2023 Request at 25.

II. Suggested CAO Guidance Regarding IFC’s Due Diligence Obligations Under International Law

The IFC and its member states must adhere to their due diligence obligations arising under the Paris Agreement, international environmental principles, human rights and customary international law.

⁴⁸ See, United Nations Environment Programme (2022), Emissions Gap Report 2022: The Closing Window - Climate crisis calls for rapid transformation of societies (<https://www.unep.org/emissions-gap-report-2022>).

Because funded projects pose a severe risk of climate harm, these due diligence obligations require IFC and its member states to ensure climate impacts are assessed prior to financing approvals using best reasonably available methods.⁴⁹ Those methods include the processes required and 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.⁵⁰ 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 have the duty, capabilities, and control - independent of IFC's clients - 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*.

As such, we request that the CAO inform the IFC and its Directors of their due diligence obligations under international law prior to its financing decisions and commitments. And specifically, we request that the CAO confirm that NEPA's requirements for climate change and GHG impact assessments, which are frequently practiced and implemented, constitute an example of reasonably best available methods that the IFC must meet if it is to adhere to its due diligence obligations under international law. Such guidance would further help prevent IFC directly and indirectly financed projects from imparting climate change harms and help it significantly reduce the occasions remedial action is required as a result of its financing activities. A more detailed overview of IFC's due diligence obligations under the Paris Agreement and customary international law is provided here with supporting citations.

A. IFC's and its Member States' International Legal Obligations

i. IFC 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.⁵¹ Courts have found that “when member States participate in [an] international

⁴⁹ 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 (see e.g., Cook and Viñuales at fn. 69, *post* as applied to the IFC's financing of fossil fuels). This request to the IFC CAO only examines IFC's due diligence obligations pertaining to IFC's duties to ensure climate impacts, and avoidance measures for these impacts, are adequately assessed prior to financing approvals.

⁵⁰ See fn. 30, *ante*: Interim (CEQ) NEPA guidance effective January 8, 2023 for GHG emissions and climate change assessments, alternatives analysis and mitigation in environmental impact statements.

⁵¹ 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*

organization’s decision-making processes, they are [] carrying out state acts that have to comport with their international obligations.”⁵² The International Court of Justice made this finding in *FYROM v. Greece*.⁵³ 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.⁵⁴ “[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.”⁵⁵ 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.⁵⁶ 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.⁵⁷

ii. IFC’s General Obligations Under International Law

International organizations,⁵⁸ including the IFC, can also be held responsible for breaching their obligations, including those established by a treaty or customary international law.⁵⁹ This has

Review, 14(4) (hereinafter “Kerr, ICAO”) at 3; Kerr, *Legal Accountability Int. Carbon Markets*, at 152, 157-159 (Section 3.2). For examples, see fn. 53-57, 61, 96-103 *post*.

⁵² Kerr, B. (Accepted/In press). *All Necessary Measures: Climate Law for International Shipping*, *Virginia Journal of International Law*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4549961 (hereinafter “Kerr, All Necessary Measures”) at 50-51, and fn. 254 citing 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 55.

⁵³ Kerr, *All Necessary Measures* at 50-51, and fn. 255 citing *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*];

⁵⁴ Kerr, *All Necessary Measures* at 51, and fn. 261 (citing: *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).)

⁵⁵ Kerr, *All Necessary Measures* at 9, and fn. 32, 53 (citing *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>).

⁵⁶ Kerr, *All Necessary Measures* at 53-54, and fn.275 (citing 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) (accord)).

⁵⁷ Kerr, *All Necessary Measures* at 54, and fn. 278 citing Barros at 94.

⁵⁸ 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.

⁵⁹ 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.

happened numerous times, in various domestic courts.⁶⁰ The ILC DARIO Articles⁶¹ 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”).⁶² 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.’⁶³ In addition, “the ICJ found long ago that international organizations are bound by ‘obligations incumbent upon them under general rules of international law.’”⁶⁴ 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.⁶⁵ 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.

B. IFC’s and its Member State’s Due Diligence Obligations under the Paris Agreement

As detailed in Section II.A., 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 II.A., *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

⁶⁰ 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.).

⁶¹ 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”).

⁶² Kerr, ICAO at 3.

⁶³ Kerr, ICAO at 4; ILC DARIO Articles, Art. 10.

⁶⁴ 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.)

⁶⁵ Kerr, *Clear Skies* at 112, and fn. 138 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.

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.

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.⁶⁶ They do not permit members state parties to follow different, less ambitious goals.⁶⁷ “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).⁶⁸ 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.⁶⁹ 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.⁷⁰

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.⁷¹ 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,⁷² 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.⁷³ 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

⁶⁶ 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/> (hereinafter “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>).

⁶⁷ Cook and Viñuales at ¶60

⁶⁸ Cook and Viñuales at ¶70

⁶⁹ Cook and Viñuales at ¶72

⁷⁰ *Id.*; See also, Cook and Viñuales at ¶108

⁷¹ Cook and Viñuales at ¶ 75.

⁷² 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”).

⁷³ Cook and Viñuales at ¶ 80.

Paris Agreement’s objectives.⁷⁴ 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 global carbon budget.⁷⁵ 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 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, in the context of contemplating financing fossil fuel projects, if an alternatives analysis shows it would be technically and economically feasible for renewable energy infrastructure to meet a region’s energy demand, also considering the monetary value of the societal costs to the region from each ton of GHGs emitted from the proposed fossil fuel project (e.g. from future flooding, fire, drought, famine, sea level rise) in comparison to the renewable options, 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.”⁷⁶ This further supports that prior to IFC approving financing for a project, the 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 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.⁷⁷ “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).”⁷⁸ 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.

⁷⁴ Paris Agreement, Article 3; Cook and Viñuales at ¶¶ 75, 76, 103-105.

⁷⁵ 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.”).

⁷⁶ Cook and Viñuales at ¶ 104.

⁷⁷ Cook and Viñuales at ¶ 98.

⁷⁸ Cook and Viñuales at ¶ 100.

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 determined contributions under Article 4.”⁷⁹ “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.”⁸⁰ 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.”⁸¹ 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.”⁸² The 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.”⁸³

C. IFC’s and its Member State’s Due Diligence Obligations under Customary International Law

In addition to the Paris Agreement, other sources of law that apply to the IFC’s and its member state’s 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.⁸⁴

“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

⁷⁹ Paris Agreement, Article 13(5).

⁸⁰ Cook and Viñuales at ¶¶ 113-114.

⁸¹ Cook and Viñuales at ¶¶ 78-79.

⁸² Cook and Viñuales at ¶¶ 56-57.

⁸³ Cook and Viñuales at ¶¶ 56-57, 75.

⁸⁴ Kerr, All Necessary Measures at 4 and note 16 citing: 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”); see also Mayer, *supra* note 11; Benoit Mayer Climate Change Mitigation as an Obligation under Customary International Law, 48(1) *YALE J. INT’L L.* 105 (2023); see fn. 20, *ante* (Kerr, All Necessary Measures at 53-54, and fn.275 citing Barros, Section III).

environment.”⁸⁵ The cumulative climate impacts from GHG emissions resulting from IFC’s financing activities cross those risk thresholds. See pages 4-7, *ante*; Exhibits 1, 2. Moreover, international environmental principles indicate that the Paris Agreement’s 1.5°C warming limitation objective should guide states in their actions related to the climate impacts of IFC’s financing activities. “Under 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.”⁸⁶ 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 measures even in the absence of scientific certainty as to significant harm.”⁸⁷ Climate change poses a risk of significant harm, and “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.”⁸⁸ Accordingly, harm prevention and precautionary customary principles clearly apply to climate change.⁸⁹

Human rights law continues to evolve to encompass protection of the environment.⁹⁰ The UN General Assembly recognized the right to a clean, healthy, and sustainable environment as a human right in 2022.⁹¹ Moreover, “international human rights treaties guarantee rights to life and property—rights that international and domestic courts have found implicate a due diligence obligation to protect the environment.”⁹² “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

⁸⁵ Kerr, *All Necessary Measures* at 4, and fn. 16 (citing: 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 (2023)).

⁸⁶ Kerr, *All Necessary Measures* at 25-26, and fn. 119 (citing 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).

⁸⁷ Kerr, *All Necessary Measures* at 26, and fn. 120 (citing 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 [hereinafter *Seabed Advisory Opinion*])).

⁸⁸ Kerr, *All Necessary Measures* at 26, and fn 121 citing Benoit Mayer *Climate Change Mitigation as an Obligation under Customary International Law*, 48(1) *YALE J. INT’L L.* 105 (2023) at 134.

⁸⁹ Kerr, *All Necessary Measures* at 25-26, and fn. 122.

⁹⁰ Kerr, *All Necessary Measures* at 38-39.

⁹¹ Kerr, *All Necessary Measures* at 38, and fn. 186 citing. G.A. Res. 76/300, *The Human Right to a Clean, Healthy and Sustainable Environment*, at 3 (July 28, 2022).

⁹² Kerr, *All Necessary Measures* at 5, and fn. 20 (citing: See, e.g., *Budayeva v. Russia*, App. No. 15339/02, ¶ 116 (Mar. 20, 2008), <https://hudoc.echr.coe.int/eng?i=001-85436>; *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda (Urgenda)* [2019] Dutch Supreme Court 19/00135 (Engels) [hereinafter *Urgenda*]. 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 McNerney-Lankford, *Climate Change and Human Rights: an Introduction to Legal Issues*, 33 *HARVARD ENVTL. L. REV.* 431 (2009). Other courts have recognized the right to a healthy environment as an autonomous right. See, e.g., *The Environment and Human Rights* (Art. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser.A) No. 23 (Nov. 24, 2017) [hereinafter *Colombia Advisory Opinion*], ¶¶ 62–63; 101–103.).

international organization, they must adhere to their human rights due diligence obligations and substantive obligations related to the organization’s area of competence.”⁹³

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 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.”^{94 95 96}

“Due diligence requires states to ‘employ all means reasonably available to them’ to prevent a violation ‘so far as possible’.”⁹⁷ The types of conduct that could breach a due diligence obligation include action, inaction, or deficient action.⁹⁸ 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.”⁹⁹ The same reasoning applies to states’ climate decision-making within the IFC. Accepting

⁹³ Kerr, *All Necessary Measures* at 9, and fn. 32 citing numerous cases and scholarly articles in support.

⁹⁴ Kerr, *All Necessary Measures* at 5, 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) [hereinafter *Billy et. al.*], ¶ 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) [hereinafter *Saachi*]. 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); Violi, *supra* note 14 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.”)).

⁹⁵ 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 38, and fn. 187 (citing: European Court of Human Rights, Press Release, Grand Chamber Procedural Meeting in Climate Cases (Feb. 3, 2023) <https://hudoc.echr.coe.int/eng-press> (describing cases). G.A. Res. A/77/L.58 (Mar. 29, 2023); Order on Request for Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Order 2023/4 of June 30, 2023, <https://www.itlos.org/en/main/resources/media-room/calendar-of-events/#ar542>; 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_opinion_consultivas.cfm?lang=en).

⁹⁶ 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.

⁹⁷ Kerr, *All Necessary Measures* at 48, and fn. 241 (citing: 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) [hereinafter *Genocide*]; SRFC Advisory Opinion, *supra* note 203, ¶ 129 (accord). 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 157, n. 916).

⁹⁸ Kerr, *All Necessary Measures* at 48, and fn. 242 citing Barros at 121-122, 124.

⁹⁹ Kerr, *All Necessary Measures* at 53-54, and fn. 275 (citing 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)).

that climate change harms human rights,¹⁰⁰ 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.¹⁰¹ Applying the harm prevention principle and precautionary principle yields the same due diligence obligations.¹⁰²

Accordingly, in light of the climate risks and impacts from IFC's financing activities (see pages 4-7, *ante*), customary international principles and human rights law impose an equivalent obligation mandating that the IFC and its member states use best efforts and take all measures to diligently account for, prevent, and mitigate the GHG emissions. This means that the IFC and its member states must diligently assess and prevent the risk of climate harm from IFC investments to extent of their capacities prior to financing approvals.

“As with other international environmental obligations, the required degree of diligence differs based on states' development and individual circumstances.”¹⁰³ 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.¹⁰⁴ 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 further 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.¹⁰⁵ 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 does account for equitable principles and the right to develop.

¹⁰⁰ Kerr, *All Necessary Measures* at 32-39.

¹⁰¹ See fn. 97-104; 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.

¹⁰² Kerr, *All Necessary Measures* at 25-26, 56; Cook and Viñuales at ¶¶ 41, 44, 46, 47, 48 (PDF at 29-34).

¹⁰³ Kerr, *All Necessary Measures* at 8, and fn. 29 (citing Viñuales at 125-126; 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) at 1033).

¹⁰⁴ Kerr, *All Necessary Measures* at 8, and fn. 30 citing 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.

¹⁰⁵ Kerr, *All Necessary Measures* at 9-10; 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) (hereinafter “Kerr, IMO”).

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.¹⁰⁶ 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 Part II.B, *ante*) or the IFC's own board adopted policies (see Part II.D., *post*), general obligations imposed by human rights treaties and customary law demand that the IFC and its member states do more.¹⁰⁷

D. IFC's and its Member State's Obligations to Adhere and Ensure Adherence to IFC's Board Adopted Policies Applicable to Climate Change and GHG Emissions

International organization's 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.¹⁰⁸ 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.'¹⁰⁹ 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.¹¹⁰

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

¹⁰⁶ See Kerr, All Necessary Measures at 4, and fn. 15 citing Neil McDonald, The Role of Due Diligence in International Law, 68 INT'L & COMP. L.Q. 1041 (2019).

¹⁰⁷ Kerr, All Necessary Measures at 7-8, 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".)

¹⁰⁸ 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.

¹⁰⁹ Kerr, ICAO at 4, and fn. 25 citing ILC DARIO Articles, Art. 10.

¹¹⁰ 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 61citing 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.

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 Part I.1., *ante*. The Policies further contain a plethora of requirements requiring disclosure and reporting of GHG emissions prior to and after project financing. See Part I., *ante*.

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 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.¹¹¹

III. Importance of Correcting the IFC’s Systematic Failures to Adhere to its Board Adopted Policies

Curing the IFC’s systematic failures to adhere to its Board adopted policies applicable to climate change prior to its financing decisions is critical (A) to the IFC coming into alignment with the Paris Agreement, (B) to protect and provide redress for affected communities from climate change impacts resulting from IFC’s financing activities, (C) to the IFC’s accountability, and (D) to significantly reduce the occasions IFC remedial action is required.

A. Paris Alignment

Correcting IFC’s failures to adhere to its policies applicable to climate change must be accomplished as soon as possible to help IFC meet its objectives and obligations of coming into alignment with the Paris Agreement’s 1.5°C warming limitation goal.

¹¹¹ 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).

In response to CSO’s May 1, 2023 Request for Corrective Action, Management reiterates IFC’s pledge that as of July 1, 2023, 85 percent of all new IFC investments in all sectors will be aligned with the Paris Agreement’s goals, and 100 percent will be aligned starting July 1, 2025. Management’s Response at 1. However, Management only refers to implementation of its Paris methodologies to achieve these objectives, and further indicates that its approach to Paris Alignment “goes beyond, and is separate from,” implementation of its board adopted policies applicable to GHGs. *Id.* Management confirmed this person during an in person meeting on October 12, 2023.¹¹² Thus, Management considers that focusing on implementation of its Paris Methodologies, and not also its board adopted policies, is its path to Paris Alignment.

This approach is problematic in multiple regards. First and foremost, IFC Management must adhere to its board adopted policies now – not by 2025, including those applicable to GHG emissions and climate change. Failure to do so runs afoul of its obligations and results in the IFC systematically working against its own mandate for sustainable development, to end extreme poverty, and boost shared prosperity on a livable planet.¹¹³ Second, contrary to what can be ascertained from Management’s Response, IFC’s Paris methodologies cannot and do not replace the more stringent and comprehensive GHG emissions disclosure, quantification, impact assessment, alternative analysis and mitigation hierarchy requirements set in place by existing board adopted IFC policies.

And perhaps of equal concern, Management ignores that proper *implementation* of IFC board adopted policies in accordance with their plain meaning as applied to both its direct and financial intermediary (FI) investments is immediately needed for the IFC to come into alignment with the Paris Agreement *in addition to* full implementation of its Paris methodologies. Without doing so, gaping holes in the IFC’s Paris methodologies needed to achieve Paris alignment will be left unfilled.

For instance, IFC’s board adopted policies require that prior to project financing decisions, IFC ensure quantification and disclosure of all of a project’s anticipated scope 1, 2, and 3 emissions over its lifecycle, that a GHG alternatives analysis is conducted in line with “good international industry practice”, and that a mitigation hierarchy is adopted that results in avoidance of individually and cumulatively substantial GHG emissions and associated impacts from a project as far as economically and technically feasible. See Part I, *ante*. However, without implementation of the policies the IFC has in place, application of its Paris methodologies alone would allow for project financing without: (1) a GHG alternatives analysis for contemplated fossil fuel and other GHG emissions intensive projects held to a standard such as “good international industry practice” (GIIP). See Part I.5., *ante*. For contemplated fossil fuel projects, an alternatives analysis in line with GIIP could result in IFC instead financing economically and technically feasible renewable energy infrastructure that can meet a region’s energy demand;¹¹⁴ (2) quantification of scope 1, 2, and 3 GHG emissions needed for feasible avoidance of

¹¹² Position affirmed by Jamie Fergusson, Director, Climate Business, IFC on October 12, 2023, during conversation with Jason Weiner after CSO meeting with World Bank (WB) and IFC climate and energy staff in Marrakech at the WB 2023 Annual Board Meeting.

¹¹³ See fn. 5, *ante*.

¹¹⁴ How the alternatives analysis is conducted, is critical to ensuring that the high-emitting activity is credibly assessed against the low-carbon alternative or avoids stranded assets. Unlike Performance Standard 1, which provides “good international industry practice” is a standard for GHG/climate change environmental and social impact assessments, including for the alternatives analysis component, the Paris Methodologies and its various

substantial GHG emissions from all financed projects, including for “universally aligned” projects such as poultry and swine farming; (3) consultation and redress for local communities affected by climate change when a project in their geographic proximity will result in significant GHG emissions; (4) adoption of a mitigation hierarchy that will result in greater avoidance of GHG emissions;¹¹⁵ and (5) disclosure of the GHG/climate change environmental and social impact assessment for public review prior to project financing – which is a central quality assurance and accountability component of “good international industry practice” required by the PS for environmental and social impact assessments.

B. Affected Communities

The IFC only adhering to its Paris methodologies, and not its board adopted policy requirements applicable to GHG emissions and climate change, harms affected communities in multiple regards. First, adherence to its board adopted policies is needed to prevent IFC projects from harming affected communities. The Paris methodologies contain none of the requirements in PS 1 and PS 4 for consultation to address the indirect impacts of climate change on affected communities from a project in their region with significant GHG emissions. See Parts I.6, III.A., *ante*. They also contain far less stringent GHG emissions analysis and impact avoidance and mitigation requirements. See Part III.A., *ante*. Without this consultation, impact analysis, and mitigation, communities will suffer avoidable, and in some instances mitigatable, adverse climate change impacts resulting from IFC’s financing activities.

Second, ensuring IFC is held to account for its board adopted policies is needed for communities to be able to obtain redress through the IFC for climate harms resulting from IFC’s financing activities. Because the Paris methodologies are not adopted by the IFC Directors, if the IFC fails to adhere to these methodologies, affected communities cannot bring requests for corrective action or redress to the IFC CAO to resolve these harms. They can however file complaints for redress with the CAO for violations of IFC board adopted policies. Thus, if IFC is allowed to continue to violate its board adopted policies by only ensuring PS 3’s minimal climate change analysis, mitigation, and post financing reporting requirements are adhered to (see Part I., *ante*.), affected communities will have little to no recourse available through the CAO for climate change harms caused to them from IFC investments.

C. Accountability

sector notes make reference to the need for alternatives analysis without providing a standard for this analysis or requiring its public disclosure (see Energy and Extractives, Sector Note on Applying the World Bank Group Paris Alignment, Assessment Methods, World Bank, Report Number 181246, April 7, 2023 at 2-3 (providing: The risk assessment includes consideration of feasible lower-GHG-emissions alternatives, whether the operation could prevent or slow down the transition to lower-carbon alternatives, and the operation’s economic viability in the face of the energy transition...“Feasible” means “commercially available and technically and financially viable” for IFC and MIGA and “technically feasible and economically viable” for the World Bank.)).

¹¹⁵ IFC’s Paris methodologies allow for considering mitigation options that are commercially available and technically and financially viable. However, unlike the PS mitigation hierarchy requirement, this requirement does not apply to all projects the IFC finances. Further, adoption of the mitigation hierarchy requirement in the PS results in avoidance of GHG emissions to a significantly greater extent, as it requires reducing GHG emissions as far as economically and technically feasible through avoidance, and after avoidance measures as a first priority, then further reducing GHG emissions and their impacts as far as economically and technically feasible through minimization measures and securing offsets.

IFC's adherence to its board adopted requirements applicable to climate change is needed to hold it to account to its obligations and publicly stated commitments, and to ensure its financing flows are consistent with the Paris Agreement's warming limitation objectives. This is because these board adopted policies require disclosure of a project's GHG emissions impact and avoidance analysis. The Paris methodologies contain no such disclosure requirements, even for the results from their implementation. Thus, if the IFC is allowed to only adhere to its Paris methodologies, and to continue to violate its board adopted policies by only ensuring PS 3's minimal climate change analysis, mitigation, and post financing reporting requirements are adhered to, the IFC can continue to fail to disclose information needed to assess adherence to its policies and the climate change impacts from its financing activities. See Part I., *ante*. Further, if IFC is allowed to continue on this path, affected communities will have little to no ability to hold the IFC to account or achieve recourse through the CAO for climate change harms caused from IFC investments. See Section III.B, *ante*. Without proper and complete implementation of the IFC board adopted policies' requirements, insufficient disclosures and no dispute resolution mechanism within the IFC exists to ensure IFC accountability to its requirements needed to help it come into alignment with the Paris Agreement.

D. Remedial Action Implications

The IFC curing its systematic failures to adhere to its Board adopted policies, and securing adequate due diligence in line with its obligations under international law (see Part II, *ante*), are critical to preventing IFC's financing activities from causing climate change impacts to affected communities. This is consistent with IFC's 'do no harm mandate', as it would help significantly reduce the occasions where IFC remedial action is required by preventing climate change harms the IFC causes and or contributes to in the first instance. Not only is this critical to IFC's stated goals and mission to achieve sustainable development, ending extreme poverty, boosting shared prosperity on a livable planet, and not harming communities in its investment regions.¹¹⁶ IFC adhering to its board adopted policies and ensuring adequate due diligence is, and will be, exponentially less costly to the IFC and its member states than providing remedial action to affected communities from climate change harm it would otherwise cause or contribute to.

As detailed in Earthrights' International's comments on the Draft IFC/MIGA Approach to Remedial Action, there is international consensus that financial institutions must contribute to remedy where they have directly or indirectly caused or contributed to harm, or are linked to this harm.¹¹⁷ IFC contributing to harm occurs when it finances a project, and fails to undertake adequate or effective due diligence, or if it fails "to act to prevent or mitigate a harm it knew or should have known would result."¹¹⁸ "That the borrower or another actor has also contributed to harm does not absolve IFC[] of [its] own responsibility to directly contribute to remedy."¹¹⁹

¹¹⁶ See fn. 5, *ante*; E&S Policy at Section II, ¶ 9 at page 2 (providing "Central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to "do no harm" to people and the environment.").

¹¹⁷ Submission of EarthRights International on the Draft IFC /MIGA Approach to Remedial Action, April 2023 at 8-11 (hereinafter "Earthrights Remedial Action Comments").

¹¹⁸ Earthrights Remedial Action Comments at 9.

¹¹⁹ Earthrights Remedial Action Comments at 9.

The United Nations Human Rights Office of the High Commissioner (OHCHR) has also opined that the IFC is responsible for contributing to harm, and should contribute to remedy, if its financing activities result in harm and it is not conducting adequate or effective due diligence.¹²⁰ In doing so, it provides guidance that:

[u]nder the UNGPs [United Nation Guiding Principles] and other RBC [Responsible Business Conduct] standards, the extent to which a given actor incentivizes harms, facilitates harms, and conducts human rights due diligence, are relevant for determining whether that actor has “contributed” to those harms. A bank contributing to adverse impacts should provide for remediation appropriate to its share in the responsibility for the harm.¹²¹

The 2020 External Review of IFC’s/MIGA’s Environmental and Social Accountability recognized this as well. It emphasized that IFC/MIGA “have responsibilities to contribute to remedy in situations where their non-compliance has contributed to harm.”¹²²

One thing *Jam v. IFC* showed us is IFC and its member states are not immune to lawsuits in various domestic and international jurisdictions for harms IFC causes.¹²³ Instead, IFC and or its member states may be liable for their own negligence in not securing adequate due diligence and adhering to / ensuring adherence to IFC’s own policies’ climate change analysis and mitigation requirements prior to financing decisions.¹²⁴ As supported by Earthrights International:

Both common law and civil law jurisdictions impose duties of reasonable care on all actors – including financial institutions. IFC/MIGA’s own tortious conduct, [such as negligence in financing projects that cause foreseeable harm due to lack of adequate due diligence or failure to follow its own policies’ GHG requirements], constitutes an actionable breach of legal duty to project-affected communities that IFC/MIGA cannot contract themselves out of through disclaimers in their policies or loan agreements.[] Under general negligence principles, financial institutions – like any other party – have a duty to avoid causing or contributing to foreseeable harm;[] that is, to exercise reasonable care to protect others against an unreasonable risk of harm.[] Where the injury that results was reasonably foreseeable to the defendant, courts typically conclude that the defendant owed the plaintiff a duty to avoid causing that injury.[] Financial institutions’ duty, like any other party’s, includes a duty to avoid harms created by third parties, and both actions and omissions –

¹²⁰ IFC/MIGA draft Approach to Remedial Action, Comments and recommendations of the UN Human Rights Office, 13 April 2023 at 8-9.

¹²¹ IFC/MIGA draft Approach to Remedial Action, Comments and recommendations of the UN Human Rights Office, 13 April 2023 at 8-9, and fn. 27-29 (citing OHCHR, Response to BankTrack on the Application of the UNGPs to the Banking Sector (2017), pp. 5-11; OECD, Responsible Business Conduct Due Diligence for Project and Asset Finance Transactions (2022), pp.31-34, and the examples therein, and the discussion in the Annex to this memorandum; UNGPs, Principle 22.

¹²² Earthrights Remedial Action Comments at 7-8, and fn. 19, 20, and 21 citing External Review of IFC’s/MIGA’s Environmental and Social Accountability including the CAO’s Effectiveness Review Report (2020) (hereinafter “2020 IFC External Review Report”) at ¶¶ 328, 60, 62.

¹²³ See Parts II.A.,C. and fn. 53-66, *ante*; Kerr, All Necessary Measures at 64-67; Kerr, ICAO at 151-159; Earthrights Remedial Action Comments at 11-15.

¹²⁴ See Parts I, II.A-D, *ante*; See Appendix A, *post*; Earthrights Remedial Action Comments at 11-15.

*such as failure to conduct adequate due diligence or failure to follow its own policies' GHG requirements - can constitute a breach of this duty.[]*¹²⁵

As highlighted by the 2020 IFC/MIGA External Review Report, a key “way [for IFC] to mitigate litigation risk is to be able to demonstrate the integrity and efficacy of its governance and accountability mechanisms with respect to E&S principles and sustainability outcomes.”¹²⁶ The United Nations Guiding Principles (UNGPs) similarly provide, “[c]onducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse.”¹²⁷ The IFC, by both failing to adhere to its board adopted policies and secure adequate due diligence applicable to climate change impacts from the project’s it directly and indirectly finances, is not mitigating its litigation risk.

IV. Why IFC’s Systematic Failures will Continue without CAO Intervention.

IFC Management’s response to CSOs’ September 1, 2023 Reply remains unchanged from IFC Management’s July 7, 2023 Response to CSOs’ May 1, 2023 Request for corrective action. Without CAO intervention, it is thus clear IFC’s systematic failures will continue for five reasons.

First, most of IFC’s systematic failures result from its wholesale failures to ensure adherence to PS 1’s requirements. However, Management’s position is PS 1 has never and does not apply to GHGs.¹²⁸ Contrary to CSO’s plain meaning reading of the PS that evidence PS 1’s requirements apply to GHG emissions and climate change, Management cursorily dismisses CSO’s interpretation of the PS as “expansive”.¹²⁹ Without any supporting analysis, Management’s position is that only PS 3’s limited requirements apply to evaluate and mitigate GHG emissions impacts at the environmental and social impact stage prior to financing decisions.¹³⁰ Management’s insistence on maintaining a clearly erroneous interpretation of the PS without offering any analysis in support, indicates a plain meaning analysis of its IFC board adopted policies applicable to climate change from an independent arbitrator is a necessary first step to curing IFC’s failures. The need for resolution of the plain meaning requirements of the IFC’s board adopted policies is further supported considering Management does not challenge or dispute BCA’s data or methodology documenting IFC’s systematic failures using the plain meaning interpretation of IFC’s board adopted policies in the May 1, 2023 Request.¹³¹

¹²⁵ Earthrights Remedial Action Comments at 11-12.

¹²⁶ Earthrights Remedial Action Comments at 21, and fn 94 citing 2020 IFC External Review Report at ¶¶ 143, 148.

¹²⁷ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations Human Rights Office of the High Commissioner, U.N. Doc. A/HRC/Res/17/4 (June 16, 2011) [hereinafter UNGPs] at 19.

¹²⁸ IFC Management Response at 2; After IFC Management received and considered CSOs’ September 1, 2023 Reply, this position was affirmed by Jamie Fergusson, Director, Climate Business, IFC on October 12, 2023, during conversation with Jason Weiner after CSOs’ meeting with WB and IFC climate and energy staff at the WB Annual Board Meetings in Marrakech.

¹²⁹ IFC Management Response at 2.

¹³⁰ *Id.*

¹³¹ Position relayed by IFC Management during an in person meeting at the World Bank Spring Meetings on April 13, 2023 in Washington D.C. with many CSOs party to the Request present; see *also*, IFC Management July 7, 2023 Response.

Second, Management’s Response gives the impression that it does not think adherence to its board adopted policies is urgent or necessary for the IFC to come into alignment with the Paris Agreement – but rather only implementation of its Paris methodologies is. Management has expressly indicated it plans on focusing its Paris alignment efforts on implementation of its Paris methodologies, rather than its board adopted policies.¹³² And moreover, Management confirmed it plans on continuing its longstanding practices of ensuring adherence to PS 3’s and the 2008 EHS efficiency guidelines requirements to assess and mitigate climate change impacts, but not PS 1’s.¹³³ These positions demonstrate that without intervention, management will not accept or ensure adherence to PS 1’s and other board adopted policy requirements applicable to climate change. As detailed in Part III, adherence to these requirements, in addition to IFC’s Paris Methodologies, is critical to IFC’s Paris alignment. IFC’s Paris methodologies cannot and do not replace any more stringent GHG emissions disclosure, quantification, impact assessment, alternative analysis and mitigation hierarchy requirements set in place by existing board adopted IFC policies.¹³⁴ And perhaps of equal concern, Management ignores that proper *implementation* of IFC board adopted policies in accordance with their plain meaning as applied to both its direct and financial intermediary (FI) investments is immediately needed for the IFC to come into alignment with the Paris Agreement *in addition to* full implementation of its Paris methodologies. IFC Management must adhere to its board adopted policies now – not by 2025, including those applicable to GHG emissions and climate change. Failure to do so runs afoul of its obligations and results in the IFC systematically working against its own mandate for sustainable development, to end extreme poverty, and boost shared prosperity on a livable planet by causing harm to communities in its investment regions.

Third, Management conflates its duties, abilities, and obligations to comply with its own policies and obligations under international law with those of its clients and private banks. This signals it is not willing or ready to fulfil its obligations without intervention.

Management’s Response (1) asserts that its Paris alignment approach considers client capacity and is well ahead of the practice of commercial investors operating in the same markets as IFC, (2) provides that its private sector clients often do not have the capacity to either design or implement Paris

¹³² Position affirmed by Jamie Fergusson, Director, Climate Business, IFC October 12, 2023 after IFC Management review of CSOs’ September 1, 2023 Reply during conversation with Jason Weiner after CSOs’ meeting with WB and IFC climate staff in Marrakech during the WB Annual Meetings. This is consistent with, Management’s July 7, 2023 Response, which leans on IFC’s pledge that as of July 1, 2023, 85 percent of all new IFC investments in all sectors will be aligned with the Paris Agreement’s goals, and 100 percent will be aligned starting July 1, 2025. Management Response at 1. However, Management only refers to implementation of its Paris methodologies to achieve these objectives, and further indicates that its approach to Paris Alignment “goes beyond, and is separate from,” implementation of its board adopted policies applicable to GHGs. *Id.*

¹³³ Provided by Jamie Fergusson, Director, Climate Business, IFC October 12, 2023 during conversation with Jason Weiner after CSOs’ meeting with WB and IFC climate staff in Marrakech at WB Annual Meetings.

¹³⁴ For instance, as IFC points out, its Paris methodologies allow for client capacity by considering options that are commercially available and technically and financially viable. Management Response at 1. However, unlike the PS mitigation hierarchy requirement, this requirement does not apply to all projects the IFC finances. Further, adoption of the mitigation hierarchy requirement in the PS results in avoidance of GHG emissions to a significantly greater extent, as it requires reducing GHG emissions as far as economically and technically feasible through avoidance, and after adoption of avoidance measures as a first priority, then further reducing GHG emissions and their impacts as far as economically and technically feasible through minimization measures and securing offsets.

Alignment approaches to projects, and (3) mentions only that its clients are bound to the implementation of Performance Standards (PS) without addressing its own obligations under its E&S and Access to Info Policies to ensure PS compliance. Management Response at 1-2. In doing so, Management is impermissibly ignoring its own duties. It is also conflating IFC's and its member state's abilities and obligations to comply with IFC's own policies and international legal obligations, with those of IFC's clients and private sector financial institutions. Thus, the IFC is misguided to compare itself to private sector financial institutions and its clients. IFC as an independent public institution, has its own unique due diligence obligations at the environmental and social impact assessment stage prior to project financing.

It is also wrong to excuse IFC non-compliance with its board adopted policies due to client capability. The IFC has the duty, capabilities, and control - independent of its clients - to ensure adherence to its policies prior to financing approvals to prevent harm from climate change when its clients may not have the resources to. And not only are the IFC's clients bound to follow the PS. The IFC's E&S and Access to Info Policies require IFC ensure adherence to the PS as well. These IFC obligations and the IFC's ability to address them through ensuring adequate due diligence prior to financing approval, squarely address the concerns raised in Management's response regarding respect for client capacity and principles of "common but differentiated responsibilities" at the project assessment and implementation stages. This is because IFC is obligated to fund the adequate due diligence when clients do not have the resources to do so, and also because adequate due diligence in line with the IFC's policies will ensure alternatives and mitigation measures to avoid GHG emissions and their impacts are *economically and technically feasible*.

Fourth, despite their availability, management denies that tools and methods to perform the GHG accounting and emissions impact analysis its board adopted policies require are available and readily accessible to the IFC. This signals unwillingness to commit resources available at the IFC's and its member state's disposal needed to implement its board adopted policies without CAO intervention.

IFC Management's Response seemingly aims to excuse its systematic failures to ensure quantification and avoidance of GHG emissions as its policies require by asserting "GHG accounting in general is an evolving space with significant evolution still occurring on measurement, tracking and attribution" ...and that "[t]he potential environmental impacts associated with the emission of GHGs are considered to be among the most complex to predict and mitigate due to their global nature." Management's Response at 2. In addition, Management's Response signals that it need not ensure environmental assessments performed under PS 1 adhere to the requirements of NEPA in the United States, because it asserts NEPA constitutes best international practice, but not the good international industry practice for environmental and social impact assessments that the PS require it to adhere to. *Id.*

It is true GHG accounting practices are improving. However, since 2012, the IFC has and continues to fail to ensure implementation of methods that have been and are available to quantify, assess the impacts of, avoid, and mitigate GHG emissions. For instance, despite methodologies to estimate scope 1, 2, and 3 emissions being used and available for over a decade, prior to financing decisions the IFC is still failing to quantify scope 3 emissions for approximately 95% of its investments, to not quantify GHG emissions at all for approximately 21% of projects, and continues to omit recognizable and significant

sources of scope 1 emissions for various GHG intensive projects. See Appendix A, *ante*; Request at 8-11, 15-21.

While the IFC is obligated under international law to use best reasonably available methods – like those required and performed under NEPA in the United States, it is also falling short of implementing the good international industry practice (GIIP) its Performance Standards require. Its PS Guidance Notes even direct readers to NEPA as an example of GIIP.¹³⁵ Regardless as to whether the IFC claims NEPA is GIIP one day and best international practice the next, the IFC cannot reasonably argue it does not have the resources to provide or contract for the skill, or cannot exercise the diligence, prudence, or foresight considering all of the available GHG assessment tools, to ensure NEPA’s GHG analysis requirements are implemented prior to investment decisions.

And Fifth, IFC Directors appear to require CAO guidance to take measures to cure IFC’s Systematic Failures. The IFC directors have been formally alerted about the CSO community’s concerns about IFC’s management’s misreading and misapplication of the PS’s plain meaning requirements, and intentions to only focus on applying the Paris methodologies to align itself with the Paris Agreement. However, while concerned, they appear unable to propose or mandate corrective action without a neutral third-party arbiter setting to rest the PS and other board adopted policy requirements. It also appears clarification of IFC’s and its member states due diligence obligations under international law applicable to climate change impacts prior to IFC financing decisions, may be needed to aid directors in taking necessary measures that compel management to adhere to IFC’s board adopted policies and to align IFC’s financing activities with the Paris Agreement.

V. Conclusion

Thank you for considering our request to issue a written advisory report and initiate a compliance appraisal to address IFC’s systematic failures to adhere to its policies applicable to climate change emissions and mitigation. As detailed herein, such CAO actions are critical to IFC’s Paris alignment and to prevent avoidable climate change harm to communities in IFC’s investment regions. We look forward to your timely response. Please let us know if we can provide any additional information.

Sincerely,



Jason Weiner (he/him/his)
Executive Director & Legal Director
Bank Climate Advocates
303 Sacramento Street, Floor 2, San Francisco, CA 94111
+1 (310) 439-8702
jason@bankclimateadvocates.org
www.bankclimateadvocates.org

¹³⁵ IFC’s Guidance Notes: Performance Standards, Guidance Note 1 at GN23, 25, 58 at 10-11, 19, 49 (directing readers to the Guidance Note 1 bibliography listing NEPA for further guidance on GIIP (updated June 14, 2021).

Co-Signatory Civil Society Organizations:

Power Shift Africa - *Bhekumuzi Dean Bhebhe, Campaigns Lead*, bbhebhe@powershiftafrica.org

Indus Consortium - *Hussain Jarwar, Chief Executive Officer*, hussain.jarwar@indusconsortium.pk

The Big Shift Global - *Sophie Richmond, Global Lead*, srichmond@climatenetwork.org

Don't Gas Africa - *Lorraine Chiponda*, lorchips@gmail.com

Alliance for Climate Justice and Clean Energy (ACJCE) - *Zain Moulvi*, zainmoulvi@gmail.com

Sustentarse - *Maia Seeger Pfeiffer, Directora Ejecutiva*, mseeger@sustentarse.cl

Trend Asia - *Ahmad Ashov Birry, Program Director*, ashov@trendasia.org; *Novita Indri, Energy Campaigner*, novita.pratiwi@trendasia.org

MenaFem Movement for Economic, Development and Ecological Justice - *Shereen Talaat, Founder / Director*, Shereen@menafemmovement.org

Caribbean Policy Development Centre - *Geneva Oliverie, Development Specialist*, geneva.oliverie@cpdcngo.org

Caribbean Youth Environment Network (CYEN) - *Reginald I. Burke, Executive Coordinator in the Caribbean*, reginald.burke@cyen.org

Wishtoyo Chumash Foundation - *Mati Waiya, President & Executive Director, Chumash Ceremonial Elder*, matiwaiya@wishtoyo.org

Senik Centre Asia - *Andri Prasetyo, Senior Researcher*, info@senikcentre.org

AICED (The Support for Community Initiatives for Environmental Conservation and Sustainable Development) - *Nyebone Faustin, National Executive Director*, aicedrdc@gmail.com

Associação Utchessa – Moçambique - *Jamal Eugénio Esteves, Executive Director*, jamaleugenio2@gmail.com

Centre for Citizens Conserving Environment & Management (CECIC) - *Edwin Mumbere, Director*, info@cecicug.org

Foundation for Environmental Management and Campaign Against Poverty (FEMAPO) - *Mathias Lyamunda, Executive Director*, mathiaslyamunda@femapo.org

Sinergia Animal - *Merel van der Mark, Animal Welfare Finance Program Manager*, mvandermark@sinergiaanimal.org

Alternative Law Collective (ALC) - *Zain Moulvi, Research Director*, zainmoulvi@gmail.com

Oxfam - *Christian V. Donaldson, Senior Policy Advisor*, Christian.Donaldson@oxfam.org

Recourse - *Kate Geary, Co-Director*, kate@re-course.org; *Daniel Willis, Finance Campaign Manager*, dan@re-course.org

The Bretton Woods Project - *Jon Sword, Environment Project Manager*, jsward@brettonwoodsproject.org

Adfree Cities - *Veronica Wignall, Codirector*, veronica@adfreecities.org.uk

Oil Change International - *María Alejandra Vesga Correa, Legal Officer, Global Public Finance Team*, maria@priceofoil.org

Friends of the Earth US – *Luisa Abbott Galvao, Senior International Policy Campaigner*, labottgalvao@foe.org

Center for International Environmental Law (CIEL) - *Carla García Zendejas, Director, People, Land and Resources*, cgarcia@ciel.org

Enclosures: Exhibit 1; Exhibit 2; CSOs' May 1, 2023 Request to IFC Management for Corrective Action; IFC Management's July 7, 2023 Response; CSOs' September 1, 2023 Reply to IFC Management's Response.

cc: Irum Ahsan, CAO Advisory Manager, iahsan@worldbankgroup.org

Gabriela Stocks, CAO Compliance Manager, gstocks@worldbankgroup.org

Appendix A

In summary and as further detailed in Exhibits 1 and 2, contrary to the IFC's E&S Policy and or Access to Info Policy, from 2012 to the present at the environmental assessment stage before the IFC board approves financing for a project, *it is apparent the IFC has failed and continues to fail to ensure and secure for approximately:*

Mitigation (% failures)

- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, a mitigation hierarchy analysis and adoption of an adequate mitigation hierarchy as required by Performance Standard (PS) 1;
- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, an analysis of the technical and financial feasibility of mitigation measures to prevent/avoid (as a 1st priority), minimize, and offset GHG emissions the furthest extent technically and economically feasible as required by PS 1;
- at least 82% of projects from 2012 - March 2023 and 90% of projects from April 2023 – Nov. 25, 2023, quantification of the GHG emissions mitigation amounts or reductions in GHG emissions resulting from mitigation measures that PS 1 necessarily requires;
- 90% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, a GHG emissions avoidance analysis that is necessarily required by PS 1 (and almost all avoidance analysis were inadequate or did not result in avoidance of GHG emissions);
- 99% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, as PS 1 requires, the offset of GHG emissions to the furthest extent financially feasible through the purchase or commitment to purchase carbon offsets, when after the application of avoidance and other mitigation to the furthest extent feasible a project still results in net GHG emissions;
- 25% of projects from 2012 - March 2023 and 28% of projects from April 2023 – Nov. 25, 2023, adoption of any GHG emissions mitigation measures required by PS 1 (and for about 4% and 12% of projects during these respective time periods, impermissible deferral of GHG emissions mitigation until after project financing occurred);
- 62% of projects with construction from 2012 - March 2023 and 78% of projects with construction from April 2023 – Nov. 25, 2023, adoption of mitigation measures for GHG emissions from construction activities as required by PS 1;

Alternatives Analysis (% failures)

- 50% - 82% of applicable projects from 2012 - March 2023 and 66% - 93% of applicable projects from April 2023 – Nov. 25, 2023, a GHG emissions alternatives analysis required by PS 1. When a GHG emissions alternatives was conducted, only two of these potentially could be considered consistent with good international industry practice as PS 1 requires, but the full analysis that the IFC may have, but has not disclosed, would need to be reviewed.

Quantification of GHG Emissions (% failures)

- 21% of projects from 2012 - March 2023 and 24% of projects from April 2023 – Nov. 25, 2023, quantification of any GHG emissions (and for about 10% and 18% of projects during these respective time periods, impermissible deferral of GHG emissions quantification until after project financing occurred);
- 57% of projects from 2012 - March 2023 and 69% of projects from April 2023 – Nov. 25, 2023, where a significant portion of the project funded is an addition to or expansion of an existing activity / operation / facility, quantification of GHG emissions figures for the expansion or addition as required by PS 1;
- 100% of projects from 2012 - March 2023 and 98% of projects from April 2023 – Nov. 25, 2023, quantification of GHG emissions that include all of a project’s clearly recognized sources of GHG emissions as necessarily required by PS 1;
- 8% of projects from 2012 - March 2023 and 8% of projects from April 2023 – Nov. 25, 2023, quantification of exact GHG emissions estimates when the ESRS indicates GHG emissions would either be greater than 25,000 tCO₂-eq /yr. as necessarily required by PS 1;
- 27% of projects from 2012 - March 2023 and 48% of projects from April 2023 – Nov. 25, 2023, quantification of exact GHG emissions estimates when the ESRS indicates GHG emissions would either be less than 25,000 tCO₂-eq /yr. as necessarily required by PS 1;
- 98% of projects from 2012 - March 2023 and 94% of projects from April 2023 – Nov. 25, 2023, if prior to the adoption of mitigation an increase in Scope 1 GHGs in the atmosphere from the loss of carbon sequestration due to the Project is foreseeable, a GHG analysis for this as necessarily required by PS 1;
- 95% of projects from 2012 - March 2023 and 98% of projects from April 2023 – Nov. 25, 2023, quantification and analysis of Scope 3 indirect GHG emissions as necessarily required by PS 1;
- almost 100% of projects from 2012 - March 2023 and 94% of projects from April 2023 – Nov. 25, 2023, if transportation related Scope 3 GHG emissions due to project are foreseeable, a GHG analysis for these emissions as necessarily required by PS 1 (e.g., if significant new community or workforce commutes (not counting company vehicle use or 3rd party contracted vehicles) is foreseeable, a GHG analysis was conducted for this);
- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, if local population growth related Scope 3 GHG emissions due to project are foreseeable, a GHG analysis for these emissions as necessarily required by PS 1 (e.g., if deforestation from influx of people due to project is foreseeable, a GHG analysis was conducted for this);
- 84% of projects with construction from 2012 - March 2023 and 91% of projects with construction from April 2023 – Nov. 25, 2023, that a GHG emissions quantification and analysis for the construction activities was conducted as necessarily required by PS 1;

Cumulative Impacts Analysis (% failures)

- 49% - 87% of projects from 2012 - March 2023 and 60% - 92% of projects from April 2023 – Nov. 25, 2023, a cumulative impacts analysis was conducted as necessarily required by PS 1;
- 39% - 84% of projects from 2012 - March 2023 and 40% - 88% of projects from April 2023 – Nov. 25, 2023, that Paris Agreement, Kyoto Protocol, UNFCCC, 1.5°C - 2°C warming objectives, National Determined Contributions (NDCs) or other applicable regional, national and global GHG emission plans were taken into account as necessarily required by PS 1;

Affected Communities Analysis (% failures)

- 90% of projects from 2012 - March 2023 and 90% of projects from April 2023 – Nov. 25, 2023, analysis of a Project's GHG emissions' contribution to global warming impacts on biodiversity or on ecosystem services upon which Affected Communities' livelihoods are dependent as required by PS 1;
- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, adoption of adequate mitigation for project's GHG emissions' contribution to global warming impacts on biodiversity or on ecosystem services upon which Affected Communities' livelihoods are dependent as required by PS 1 (and out of the 8% and 10% of projects in these respective time periods that acknowledged these impacts in an analysis, 80% and 0% respectively of these adopted mitigation measures, but none of these adopted (or analyzed) a mitigation hierarchy as required by PS 1);
- 97% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, analysis was conducted as to whether individuals or groups may be directly and differentially or disproportionately affected by the Project's GHG emissions' contribution to global warming because of their disadvantaged or vulnerable status as required by PS 1;
- 88% of projects from 2012 - March 2023 and 70% of projects from April 2023 – Nov. 25, 2023, identification of risks and potential impacts of the Project on priority ecosystem services (outside of those services on which the project is directly dependent for its operations) that may be exacerbated by climate change as required by PS 1 and 4 (of these risks and potential impacts identified, 87% and 100% respectively failed to adhere to PS 4's requirements for avoidance and redress);

Additional E&S Policy and Access to Info Policy Violations

In addition, and as further detailed in Section I and Exhibits 1 and 2, contrary to the IFC's E&S Policy and or Access to Info Policy, from 2012 to the present at the environmental assessment stage before the IFC board approves financing for a project, *for approximately and as demonstrated by:*

- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, it is apparent the IFC has violated and continues to violate the requirement in paragraph 28 of its E&S Policy to ensure that a project's non-compliance with the PS' GHG emissions analysis and mitigation requirements are addressed in an Environmental and Social Management System (via an amendment, Action Plan, or other action) prior to financing;

- 91% of projects from 2012 - March 2023 and 96% of projects from April 2023 – Nov. 25, 2023, it is apparent the IFC has violated and continues to violate the requirement in paragraph 42 of its E&S Policy to assign a proper risk categorization commensurate with the severity of a project’s GHG emissions risks and impacts, as it appears not to have factored GHG emissions into its risk categorizations;
- 78% of projects from 2012 - March 2023 and 80% of projects from April 2023 – Nov. 25, 2023, it is apparent the IFC has violated and continues to violate section 31(a)(vi) and 8 of its Access to Information Policy for its failure to publicly provide GHG Environmental and Social Impact Assessments and documents with GHG emissions and mitigation analysis and figures for projects;
- 22% -100% of projects from 2012 - March 2023 and 40% - 98% of projects from April 2023 – Nov. 25, 2023, it is apparent the IFC has violated and continues to violate section 31(a)(v) of its Access to Information Policy for its failure to provide and publicly disclose a project’s expected GHG emissions amounts when these amounts will exceed a total 25,000 tCO₂-eq throughout a project’s life cycle (some GHG emissions, but not all, were disclosed for 78% and 60% of these projects in these respective periods); and
- 100% of projects from 2012 - March 2023 and 100% of projects from April 2023 – Nov. 25, 2023, it is apparent the IFC has violated and continues to violate ¶ 31(a)(iv) of its Access to Information Policy for its failure to publicly disclose supplemental actions PS 1 requires to be implemented to mitigate the GHG emissions risks and impacts of projects, including for projects that are expected to emit over 25,000 MT CO₂-equivalent over their life cycle or on an annual basis.

Further, the IFC is not complying with section 26 of its Access to Information Policy, as it is not quantifying and reporting, or collecting the requisite information to quantify and report on, the carbon footprint of its Portfolio 11 years after adoption of its Sustainability Policies.

Appendix B: Methodology for Exhibit 1 & 2 Data Documenting the IFC's Systematic Failures to Adhere to its Board Adopted Policies

The data in Exhibits 1 and 2, that informs and supports the findings and request for redress in this Request, was obtained from review of the Environmental and Social Review Summaries (ESRS) and Summaries of Investment Information (SII) that the IFC publicly discloses on its Project Information & Data Portal website for each project it finances or its Board considers for financing. To obtain relevant results, the ESRSs and SIIs were reviewed for 347 IFC Category A & B Direct Investments¹³⁶ approved by the IFC board for financing between January 1, 2012 and November 25, 2023 that would likely result in GHG emissions (101 of these were Category A projects). To ensure BCA's findings are applicable to the IFC's current day practices, 212 of the 347 projects analyzed were approved for financing by the IFC board between January 2020 and March 2023, and an additional 50 of the 347 projects analyzed were disclosed or approved by the IFC board between April 2023 and November 25, 2023. The review excluded solar, wind, and other projects specifically to reduce/mitigate GHG emissions, and financial intermediary investments.

BCA's analysis acknowledges it is possible that the IFC may not capture or report the requisite GHG emissions and mitigation analysis and figures in these publicly available ESRS and SII summaries that the IFC had in its possession prior to approving financing for each project. To reasonably ensure that all of the assertions and findings herein are sufficiently supported to sound an alarm of IFC apparent non-compliance with its Sustainability Policies, 67 projects approved by the IFC board from 2012 – March 2023 (59 Category A and 8 Category B), and 10 projects approved by the IFC board from April 2023 – November 25, 2023 (2 Category A and 8 Category B), were reviewed where in addition to the SII and ESRS, the environmental impact statements / assessments / studies or documents with similar information and analysis (ESIA) for the project were also available for download on the IFC Project Information and Data Portal. Review of these detailed ESIA documents, most of which contain GHG analysis and mitigation measures for a project with the exception of those projects where it is clear no GHG analysis was conducted, confirm the trends and findings derived from the ESRS and SII for each project. In addition, these ESIA documents highlight the apparent severe ongoing and continuous frequency and magnitude of the IFC's failures to adhere to its Sustainability Policies, including its Access to Info Policy requiring the critical disclosure of GHG emissions and mitigation prior to financing approval that helps ensure projects the IFC funds adequately quantify and mitigate their GHG emissions.

Page 6 of this requests provides: "BCA's analysis documents IFC's direct financing of 233 projects from 2012 to the present are alone responsible for approximately 129,800,000 tCO₂-eq (GHG emissions) per year... [t]his is 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), 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." This approximation of annual emissions was tallied from the data in Exhibits 1 and 2 documenting the GHG emissions/yr., minus the GHG emissions mitigated, IFC disclosed for each project's operations. Where IFC provided a range of estimated GHG emissions for a project, the lowest amount in the range was used. Where IFC did not disclose a project's emissions, or provided a project's emissions would be < 25,000 tCO₂-eq/yr., the project and its emissions were not factored in. Estimates of GHG emissions provided by the IFC for each project's construction were not included. Quantifying the true magnitude of GHG emissions from IFC's investment portfolio, which is expected to be far greater than approximately 129,800,000 tCO₂-eq from 2012 to the present, is not possible given the IFC's failures identified in this request pertaining to quantification and disclosure of GHG emissions, and the lack of GHG emissions data IFC quantifies and discloses resulting from its FI investments, trade finance, and advisory services. See Part I, Appendix A, Exhibits 1 and 2.

¹³⁶ For the definition of IFC Category A and B investments *see* E&S Policy at ¶ 40 and Part I.13, *ante*.