To:
Mr. CHEN Siqing, Chairman
Members of the Board of Directors
Industrial and Commercial Bank of China Limited
No.55 FuXingMenNei Street,
Xicheng District, Beijing, P.R.C.
100140

cc:
China Banking and Insurance Regulatory Commission (CBIRC)
China Banking Association (CBA)

November 1 2022

**Significant risks to ICBC from East African Crude Oil Pipeline (EACOP) project**

Dear Chairman Chen Siqing and Members of the Board of Directors,

We, the undersigned organizations, with extensive legal and financial expertise as well as local knowledge of the situation in Uganda,[1] write to express our serious concerns with the reported role played by Industrial and Commercial Bank of China (ICBC) in advising and potentially financing the highly controversial East African Crude Oil Pipeline (EACOP) and associated upstream oil projects (hereinafter collectively referred to as "EACOP and associated projects"). With this letter, we urge the ICBC Board to cease ICBC's involvement in this large-scale fossil fuel project that will only worsen the global climate emergency and cause irreparable damage to local communities and biodiversity. We note that a similar request has been made of Japanese bank Sumitomo Mitsui Financial Group (SMBC Group), which is advising TotalEnergies on the EACOP.

As Board members of ICBC, you are responsible for overseeing risk management processes and disclosures by your institution,[2] and for ensuring that ICBC acts in compliance with

[1] This letter is authored by the Africa Institute for Energy Governance (Uganda); BankTrack (Netherlands); Center for International Environmental Law (International); and Inclusive Development International (International). Please refer to the organizational descriptions at the end of this letter.

[2] ICBC, 2021 Corporate Social Responsibility Report (ESG) Report, p.75 (March 30, 2022) [Hereinafter, "ICBC, 2021 ESG Report"] (stating the Board is responsible for "formulating basic management systems of the Bank such as risk management system and internal control system, and supervising the implementation of such systems; [and] ...managing information disclosure of the Bank..."); ICBC, 2021 Special Report on Green Finance (TCFD), p.6 (stating the Board is responsible for "reviewing… major overall strategic risk matters (such as ESG risk and climate risk)" as well as "reviewing and revising the Bank's risk strategy [and] risk management policy…[and] supervising and evaluating their implementation and results."); ICBC Rules of Procedures for the Board of Directors, p.2 (stating that the Board is responsible for overseeing the Strategy Committee which is responsible for "examining green credit

applicable laws and its corporate policies.[3] ICBC is reported to be advising the China National Offshore Oil Corporation Ltd (CNOOC Ltd),[4] which owns 8% of the EACOP, operates the Kingfisher oil field, and is a partner in the Tilenga oil field–two fields where oil will be extracted for export through the EACOP.[5] This reported involvement is in addition to ICBC's issuance of $647 million and $300 million in fossil fuel-related loans and underwriting to CNOOC and TotalEnergies (the EACOP operator), respectively, between 2016-2020.[6] We also note ICBC's role as controlling shareholder in Standard Bank, which is reported to be serving as a financial advisor and joint lead arranger for the EACOP through its Ugandan subsidiary.[7]

As outlined below, the reported role played by ICBC in the EACOP and associated projects and any future provision of financial support expose ICBC to significant reputational and financial risks. Supporting the EACOP and associated projects would constitute supporting a major fossil fuel expansion project, and would undermine your institution's commitments to green finance and corporate social responsibility, and ICBC's efforts to be a leader in sustainable finance.[8] Moreover, a failure to assess and manage the foreseeable risks and impacts posed by the EACOP and associated projects, described below and in letters and publications previously shared with ICBC and your Board,[9] could be contrary to relevant international standards and

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strategy, consumer protection strategy and performance of social responsibility in respect of environment, society and governance" and "examining and assessing whether the corporate governance structure is sound so as to ensure that the financial reporting, risk management and internal control of the Bank meet the Bank's standards for corporate governance.") *See also* Green Finance Guidelines (CBIRC [2022] #15) unofficial translation, s.6 (stating that the board assumes the entity's green finance responsibilities)

[3] Company Law of the People's Republic of China 2018, Article 5 ("When conducting business operations, a company shall comply with the laws and administrative regulations, social morality, and business morality. It shall act in good faith, accept the supervision of the government and general public, and bear social responsibilities."); Article 147 ("The directors, supervisors and senior managers shall comply with the laws, administrative regulations, and bylaw. They shall bear the obligations of fidelity and diligence to the company'); Article 148(8) (A director…shall not commit… (8) other acts committed in violation of the duty of loyalty to the company." See generally, Guangdong Xu et al, *Directors' Duties in China*, European Business Organization Law Rev. 14: 57-95 (2013); Cynthia A. Williams et al, Directors' Fiduciary Duties and Climate Change: Emerging Risks, Harvard Law School Forum on Corporate Governance (December 8, 2021).

[4] Pipe dreams: Inside the Uganda - Tanzania oil pipeline talks, The Citizen (March 18, 2019); Uganda to raise Shs300b for crude oil pipeline, Monitor (December 11, 2017, updated February 1, 2021).

[5] Journal of Petroleum Technology, TotalEnergies and CNOOC Announce FID for $10-Billion Uganda and Tanzania Project (February 2, 2022); Pipe dreams: Inside the Uganda - Tanzania oil pipeline talks, The Citizen (March 18, 2019); Uganda to raise Shs300b for crude oil pipeline, Monitor (December 11, 2017, updated February 1, 2021); Uganda National Oil Company, Tilenga Project.

[6] BankTrack, Indigenous Environmental Network, Oil Change International, Rainforest Action Network, ReClaim Finance, Sierra Club, Urgewald, Banking on Climate Chaos: Fossil Fuel Finance Report 2022 (March 2022). Loan totals referenced above are based on financing data acquired from the Bloomberg Terminal using the league table (LEAG) function, which aggregates lending and underwriting led by a given bank. For more information, see the Methodology explanation of the Banking on Climate Chaos report.

[7] *See supra* note 4 and Stanbic sees June 2019 close for $2.5 bln debt deal for Uganda's oil pipeline, Reuters (November 21, 2018)

[8] *See, e.g.* UN Environment Programme Finance Initiative (UNEP-FI), Members, ICBC (last visited October 13, 2022) (ICBC is a Founding Signatory of UNEP-FI's Principles for Responsible Banking and Member of the UNEP FI Banking Board); Green Investment Principles, Signatories (last visited August 11, 2022); ICBC, 2021 Corporate Social Responsibility Report, p.133 (noting its commitment to abide by international conventions or practices signed or recognized by China, and reporting on the principles in the UN Global Compact); ICBC, ICBC Starts in Full Gear to Become a Green Financial Institution (June 8, 2012).

[9] Petition from EACOP and other Oil-Affected People to CEOs or Executive Directors of a number of banks and institutions including ICBC (May 31, 2022); Letter from Banktrack to ICBC Chairman Chen Siqing and President Liao Lin (February 24, 2022); Open letter from African CSOs to ICBC Chairman Chen Siqing and President Liao Lin on EACOP (October 29, 2021) (translated into Chinese); Cover letter from Banktrack's risk briefing to ICBC Chairman Chen Siqing and President Liao Lin (September 27, 2021); Letter from 40 African CSOs to ICBC Chairman Chen

could give rise to potential legal liability for ICBC, as well as potential liability for ICBC Board members for breach of fiduciary duties, as elaborated below.[10] We therefore urge you to: promptly examine and disclose the risks associated with any ICBC support for the EACOP and associated projects to date; cease any ongoing contributions and prevent any future contributions to foreseeable, adverse environmental and social impacts, including human rights impacts from the projects, and mitigate those that have occurred to date; and ultimately withdraw or refrain from any involvement in the EACOP and associated projects. A more detailed set of recommendations is provided at the end of this letter.

**The EACOP and associated projects pose significant environmental, social and governance (ESG) risks.** EACOP is a proposed 1,443 km crude oil pipeline from Hoima, Uganda, to the port of Tanga in Tanzania. If completed, it would be the longest heated crude oil pipeline in the world. As outlined in previous communications, referenced above, as well as in the accompanying analysis of the project's compliance with the Equator Principles (and the materials cited therein), there are numerous reports of adverse environmental and social impacts due to the pipeline project and associated oil development projects (Tilenga and Kingfisher), and foreseeable risks to people, nature, and the climate.[11] Reported impacts and risks include:

- potential irreparable harm to water, biodiversity and natural habitats, including threats to Ramsar-designated wetlands and the Murchison Falls National Park - Uganda's oldest and largest nature reserve; some 500 $km^2$ of wildlife corridors for the Eastern Chimpanzee and African Elephant; as well as the critical Lake Victoria basin and marine protected areas on the Tanzanian coast;[12]
- physical and economic displacement of project-affected people, without adequate consultation and compensation, threatening their incomes and livelihoods; and
- significant contribution to climate change, by unlocking a new source of fossil fuels that would emit, when burned, the equivalent of nearly nine coal-fired power plants.

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Siqing and President Liao Lin on "Notifying Industrial and Commercial Bank of China of our concerns regarding Chinese finance for the East African Crude Oil Pipeline" (July 7, 2021); Letter from 263 CSOs to ICBC Chairman Chen Siqing (March 1, 2021); Cover letter for the Risk Briefing from BankTrack, AFIEGO and IDI to ICBC Chairman Chen Siqing (November, 2020); Letter from BankTrack, Inclusive Development International, 350Africa.org and Guild Presidents' Forum on Governance to ICBC Chairman Chen Siqing (May 19, 2020); Letter from 23 African CSOs to ICBC Chairman Chen Shiqing and President Gu Shu on "Notifying Industrial and Commercial Bank of China of our concerns regarding Chinese investment in the East African Crude Oil Pipeline (EACOP)" (November 27, 2019).

[10] *See supra* note 3. *See also* Company Law of the People's Republic of China 2018, Article 149 ("Where any director, supervisor or senior manager violates any law, administrative regulation, or the bylaw during the course of performing his duties, if any loss is caused to the company, he shall be liable for compensation"); Code of Corporate Governance for Listed Companies in China, Article 21 ("The Duties and Responsibilities of Directors: "Directors shall faithfully, honestly and diligently perform their duties for the best interests of the company and all the shareholders.")

[11] *See* correspondence cited in note 9 (and sources cited therein); AFIEGO, Inclusive Development International, BankTrack, Assessment of EACOP and Associated Facilities Compliance with Equator Principles and IFC Performance Standards (June 2022); *See also, e.g.*, Les Amis de la Terre France & Survie, Serious Breaches of the Duty of Vigilance Law: the Case of Total in Uganda (June 2019); AFIEGO, Black Gold or Poverty Trap? High Risks and Low Prospects for Uganda's Oil Sector (March 2021); AFIEGO, Center for International Environmental Law (CIEL), and Les Amis de la Terre France, Joint Parallel Report to Human Rights Committee (May 2, 2022);

[12] Stockholm Environment Institute, The East African Crude Oil Pipeline – EACOP a spatial risk perspective (April 7, 2021)

(Emissions across the project's full value chain are estimated at 379 million metric tons of $CO_2$ over the course of the pipeline's projected 25-year operation.)[13]

Recently, the EU Parliament adopted a resolution denouncing the major environmental and climate risks and human rights violations associated with the EACOP and associated projects.[14] In addition, U.N. Special Rapporteurs have expressed concerns over reports of intimidation, arrests, and detention of environmental and human rights defenders who are working with and advocating on behalf of communities impacted by the EACOP and associated projects.[15] The safety of the surrounding communities is an important context for the project.

**Project-related litigation is ongoing.** The social and environmental impacts and risks associated with the EACOP and associated projects have resulted in lawsuits concerning the EACOP, upstream oil field developments, and/or the operator, TotalEnergies. Three separate lawsuits are currently pending in different jurisdictions, namely France, Uganda, and the East African Court of Justice.[16] The lawsuits allege violations of domestic, regional, and international laws, including the EACOP and associated projects' impact on climate change. One of the lawsuits seeks to enjoin the projects. These pending cases could result in delay or even cancellation of the EACOP and associated projects, adding to the already substantial risk of stranded assets (see below) and inability to repay loans. Findings of fact or law in these cases could also have bearing on a financier's responsibilities with respect to the projects' impacts.

**Other financiers have pledged not to support the EACOP.** The EACOP and associated oil field projects are estimated to cost $10 billion, of which $2~3 billion in debt financing is required for the EACOP.[17] However, given the extensive ESG risks and resulting reputational risks

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[13] Climate Accountability Institute, East Africa Crude Oil Pipeline: EACOP lifetimeemissions from pipeline construction and operations, and crude oil shipping, refining, and end use (October 2022), p. 6. AFIEGO, Natural Justice, CEFROHT, EACOP Court Case at the East African Court of Justice: Fact Sheet, p.5 (2022).

[14] EU Parliament, *Joint Motion For A Resolution on violations of human rights in Uganda and Tanzania linked to investments in fossil fuels projects* (September 14, 2022) (2022/2826(RSP))

[15] *See, e.g* Joint Communication by U.N. Special Rapporteurs, Communication to Uganda, Ref. AL UGA 1/2022 (January 24, 2022). The same Special Rapporteurs (a.k.a. "Special Procedures") also wrote to Total Headquarters and Total E&P Uganda: *see* Communication to Total Headquarters, Ref. AL OTH 205/2021 (July 6, 2021); Communication to Total E&P Uganda, Ref. AL OTH 204/2021 (July 6, 2021). Total has responded: Letter from Aurelien Hammele to U.N. Special Rapporteurs on the situation of human rights defenders, healthy environment, freedom of opinion and expression, re Joint Communication from Special Procedures (August 23, 2021); Letter from Pierre Jessua to U.N. Special Rapporteurs on the situation of human rights defenders, healthy environment, freedom of opinion and expression, re Joint Communication from Special Procedures (August 23, 2021). *See also* Joint Communication by U.N. Special Rapporteurs and the Working Group on the issue of human rights and transnational corporations and other business enterprises, Communication to Uganda, Ref. AL UGA 1/2020 (April 20, 2021); Joint Communication by U.N. Special Rapporteurs, Communication to Uganda, Ref. AL UGA 3/2021 (July 6, 2021); Joint Communication by U.N. Special Rapporteurs, Communication to Uganda, Ref. A UGA 4/2021 (September 24, 2021).

[16] [France] Friends of the Earth France, Survie, AFIEGO, CRED, NAPE/Friends of the Earth Uganda, and NAVODA vs TotalEnergies; [Uganda] High Court of Uganda, AFIEGO v. NEMA & PAU, Miscellaneous Case No. 140 of 2019; [EACJ] Center for Food and Adequate Living Rights (CEFROHT) Limited and 3 Others v. the Attorney General of the Republic of Uganda & 2 Others, EACJ Reference No. 39 of 2020.

[17] Uganda-Tanzania Crude Oil Pipeline Final Investment Decision Signed, TanzaniaInvest (February 8, 2022). According to statements made by Total and Uganda's Ministry of Energy and Mineral Development in 2021, the overall financing required for the EACOP is projected to be US$ 5 billion, to be financed with a debt-to-equity ratio of 60:40. For the debt component, the project sponsors have been seeking a project finance loan of US$3 billion, with the remaining US$ 2 billion being provided by the project's shareholders. This financing requirement was reported by Total in its response to questions at its May 2021 AGM (p.37), and the ratio was confirmed in a statement to

associated with the EACOP and associated projects, an increasing number of financiers have publicly dissociated themselves from the projects. Their actions have elevated the risks of ICBC's reported association with the EACOP and associated projects. Controversy surrounding the EACOP and associated projects have already mobilized international response from civil society, as exemplified by the StopEACOP campaign endorsed by over 260 organizations.[18] To date, at least twenty four major banks, eighteen re/insurers, and four export credit agencies have publicly stated they will not fund the EACOP—including Japanese megabank Mizuho Financial Group, which has declared that it will not "commit our financing to EACOP unless the on-going E&S issues [are] resolved and amicable solutions [are] prepared."[19]

**These ESG risks have financial implications.** Because of mounting reputational and litigation risks, ICBC's reported involvement in the EACOP and associated projects could result in significant financial liabilities. In particular, the project is susceptible to the risk of asset stranding due to its long-term climate impacts. EACOP and associated projects are being developed despite the clear conclusion of the International Energy Agency (IEA)'s "Net Zero by 2050" scenario that there must be no investments in new fossil fuel supply projects if the world is to stay within the 1.5°C limit.[20] As the Intergovernmental Panel on Climate Change (IPCC) stated in its latest report, "Limiting warming requires shifting energy investments away from fossil fuels and towards low carbon technologies."[21] From untapped reserves to abandoned infrastructure, an energy transition consistent with climate science will necessarily leave fossil fuel assets stranded, leading to trillions of dollars in losses.[22] ICBC has made progress in addressing these risks, having pledged to gradually withdraw coal financing, increase the balance of green loans, and double renewable energy investments by 2030 compared with 2020 figures."[23] However, a withdrawal from all fossil energy is needed in order to align with a 1.5°C pathway, support China's carbon neutrality goals, and the low-carbon development envisioned by the Chinese Government,[24] including through its Belt and Road Initiative,[25] and avoid the inevitable risks associated with carbon-intensive financing.

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Uganda's parliament on April 28, 2021. According to Total's statements at its most recent AGM in 2022, the debt amount appears to have been revised to "$2-3 billion."

18 *See* StopEACOP Homepage (Last visited: October 17, 2022).

19 *See* StopEACOP, Don't Bank on EACOP (Last visited: October 17, 2022).

20 Stéphanie Bouckaert et al., Net Zero by 2050, International Energy Agency (May 2021).

21 Intergovernmental Panel on Climate Change (IPCC), Climate Change 2022: Mitigation of Climate Change (2022), TS-47, Ch. 3, 3-7.

22 IPCC, Climate Change 2022: Mitigation of Climate Change, SPM-36-37.

23 Is Chinese bank ICBC's coal exit a power move for a greener belt and road? South China Morning Post (June 13, 2021)

24 Guiding Opinions on Promoting Investment and Financing to Address Climate Change, Art. 6; Green Credit Guidelines (CBRC [2012] #. 4), Art. 3 ("Banks shall promote green credit as a strategy, support economy to grow in a green, low-carbon and recycled model through business innovation, manage environmental and social (E&S) risks, improve banks' own E&S performances, and in doing so optimize credit structure, improve services and contribute to the
transformation of economic growth pattern.")

25 National Development and Reform Commission 'Opinions on Promoting the Green Development of the Belt and Road initiative' (March, 2022) (stating "We will strictly abide by the laws, regulations and rules of the host country, and attach great importance to the green development and eco-environmental protection demands of the local people.")

**Presenting the EACOP and associated projects as consistent with ICBC's ESG commitments may amount to greenwashing.** Supporting the EACOP and associated projects while maintaining public commitments on climate, environment, and human rights could put ICBC at risk of engaging in greenwashing. For example, ICBC prides itself for being "first to establish the 'green credit' concept as a long-term development strategy to build a world-class and leading green financial institution" in China[26] and has committed to "becoming a leading bank in green development."[27] However, supporting the EACOP and associated projects would not constitute green finance, as defined by the Chinese Government.[28] ICBC has also signed the "Banking Sector Financial Institution Joint Declaration for the Support for the Protection of Biodiversity"[29] in 2021, and pledged to not "serve oil and gas projects that have a significant negative impact on the environment and society."[30] Yet the EACOP and associated projects plan to develop oil extraction wells and pipelines in and around Ramsar-designated sites and may negatively impact nearly 2000 $km^2$ of protected wildlife habitat. Additionally, your bank's commitment under the Principles for Responsible Banking to align your business strategy with the Sustainable Development Goals and the Paris Climate Agreement[31] is at odds with supporting the EACOP and associated projects, a new oil supply project that flies in the face of the IEA- and IPCC-recognized need to end all fossil fuel expansion projects in order to stay within 1.5ºC. Should ICBC provide financing for the EACOP and associated projects, its claims to be applying and abiding by the commitments above could therefore constitute a material misstatement, omission, or misrepresentation to investors.

**Financial actors like ICBC and their Boards face mounting pressure for accountability.** Multinational companies and their directors are increasingly being scrutinized and held accountable for their contributions to the climate crisis and for greenwashing practices that mask that contribution or otherwise misconstrue the environmental impacts of their conduct. These trends are evidenced by the rapid increase in climate litigation, including against Total[32] and financial institutions[33]; shareholder resolutions demanding more robust climate-related disclosures and targets, including the recent resolutions filed at SMBC Group[34] and Standard

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[26] ICBC, ICBC Starts in Full Gear to Become a Green Financial Institution (June 8, 2012)

[27] 2021 Special Report on Green Finance (TCFD), *supra* note 2, p14.

[28] *See* The People's Bank of China et al, Guidelines for Establishing the Green Financial System (2016) (defining "green finance" as "financial services provided for economic activities that are supportive of environmental improvement, climate change mitigation, and resource efficiency promotion.")

[29] Joint Declaration of Banking Sector to Support Biodiversity Conservation. See also Financial sector plays a role in biodiversity conservation, CGTN (October 27, 2021)

[30] ICBC, 2021 Interim ESG Special Report of ICBC, p. 12. *See also* TCFD report p. 22 (stating that "The Bank … strictly observed the environmental protection regulations on pollution and waste treatment methods and greenhouse gas emissions, mainly supported clean fuel production, …and strictly controlled the financing of and investment in the enterprises which purely specialize in refined oil products with high environmental protection risk, and have no space for transformation and upgrading of energy conservation and environmental protection.")

[31] *See* UN Environment Programme - Finance Initiative, Principles for Responsible Banking: Principle 1 (last visited October 25, 2022).

[32] Greenpeace France, Amis de la Terre, Notre Affaire à Tous vs TotalEnergies SE and TotalEnergies Electricité et Gaz France (2022); Notre Affaire à Tous, Sherpa, Zea, Les Eco Maires, et al. vs Total (2019).

[33] Subodh Mishra, The Rise of Climate Litigation, Harvard Law School Forum on Corporate Governance (March 3, 2022).

[34] Fossil Free Japan, Resolution Results and Quotes from Co-filers for Mitsubishi Corporation, TEPCO, Chubu, and SMBC Climate shareholder proposals

Bank[35]; and financial regulation aimed at ensuring accurate disclosure of climate-related risks.[36] In particular, the Network for Greening the Financial System (NGFS) has identified climate-related litigation as a growing source of risk, and one that can have significant material impact on financial actors: these include increasing financing costs; holding financial actors liable for failing to appropriately disclose and manage climate-related risks; and breach of fiduciary duties "if a bank's directors continue to decide to finance highly greenhouse gas emitting projects."[37] For example, in March 2022, a legal action was lodged against the Board of Directors of Shell under English law, arguing that its failure to properly prepare the company for the net zero transition puts them in breach of their legal duties.[38]

**Supporting the EACOP and associated projects and the project operators may violate your duties as directors.** ICBC Board members have responsibilities to oversee the management of risk and ensure the accuracy of disclosures.[39] The failure to do so could constitute a litigable breach of fiduciary duty under the PRC Company Law,[40] which stipulates that "Directors, supervisors and senior management executives shall abide by laws, administrative regulations and the corporate charter, and have a duty of loyalty (*zhongshi yiwu*) and duty of care (*qinmian yiwu*) to the company."[41] As directors of ICBC, you shoulder a duty of loyalty to act in the best interests of the bank, which should encompass the long-term sustainability of your company, and a duty to report any information that is likely to harm your company.

**ICBC's reported involvement in the EACOP and associated projects is at odds with ICBC's commitment to green finance, and international standards and treaties which it has committed to follow.[42]** In its 2021 Corporate Social Responsibility report, ICBC states that it abides by international conventions or practices signed or recognized by China, including the

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[35] Kristin Engel, Climate Activists Call for Action Following Protests Outside Standard Bank's AGM (June 3, 2022); Just Share, 2022 AGM Roundup 1 (15 February - 3 June).

[36] *See, e.g.* US Securities and Exchange Commission, "SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors" Press Release (March 21, 2022). *See also* Beijing Institute of Finance and Sustainability and the Modern Finance Research Institute of the Industrial and Commercial Bank of China, Environmental Information Disclosure of Financial Institutions Against the Backdrop of China's Carbon Peaking and Neutrality Goals (2021 Edition)

[37] Network for Greening the Financial System, Climate-related litigation: Raising awareness about a growing source of risk (November 2021), p.7.

[38] ClientEarth, ClientEarth Shareholder Litigation against Shell's Board FAQ (March 15, 2022); Sam Meredith, Shell's Board of Directors Sued for 'Failing to Properly Prepare' for the Energy Transition (March 15, 2022).

[39] *See supra* note 10. See also Securities Law of the People's Republic of China, Article 56 ("No entity and individual shall disrupt the securities market by fabricating or disseminating false or misleading information…Where fabrication and dissemination of false or misleading information has disrupted the securities market and caused losses to investors, the parties concerned shall bear compensatory liability according to law."); China Securities Regulatory Commission, *Guidelines for the Articles of Association of Listed Companies* (stating that ensuring that disclosed information is authentic, accurate and integrated is a component of the duty of diligence.); Guangdong Xu, Tianshu Zhou, Bin Zeng and Jin Shi. "Directors' Duties in China." (2013) 14 Eur Bus Organ Law Rev., 57-95, at 81.

[40] PRC Company Law, Articles 148, 150, 152, and 153. *See also* Directors' Duties in China, *supra* note 39; Jiangyu Wang, Enforcing Fiduciary Duties as Tort Liability in Chinese Courts, in R. Huang & N. Howson (Eds.), Enforcement of Corporate and Securities Law: China and the World (pp. 162-184).

[41] PRC Company Law, Article 148.

[42] *See* ICBC, Special Report on Green Finance 2020; ICBC, ICBC Starts in Full Gear to Become a Green Financial Institution (June 8, 2012). *See infra* notes 43-47 and 54 for *ICBC's commitment to international standards and treaties, and relevant practices and standards.*

Universal Declaration of Human Rights.[43] China is a party to several U.N. human rights treaties,[44] was a member of the U.N. Human Rights Council when it unanimously adopted the U.N. Guiding Principles on Business and Human Rights[45] and adopted resolutions recognizing climate change's adverse impact on human rights,[46] and has committed to the principles in the United Nations Global Compact.[47]

To comply with the U.N. Global Compact and U.N. Guiding Principles, ICBC must avoid contributing to (which includes assisting or facilitating) adverse human rights impacts, perform ongoing human rights due diligence (including consultation with potentially affected stakeholders), cease or prevent any such contributions, and address adverse human rights impacts with which they are involved.[48] If ICBC is directly linked to the adverse impact through its business relationships, it should utilize its leverage to prevent or mitigate the impact.[49] The above responsibilities are also in line with China's Green Finance Guidelines for Banking and Insurance Industries, and the former Green Credit Guidelines which stipulate that banks should effectively identify, monitor, and prevent ESG risks in their business activities, including by incorporating ESG risks into a comprehensive risk management system with assessment standards for clients, and strengthening due diligence, and ESG risk management of overseas projects.[50] Moreover, as the Green Finance Guidelines provide, "for customers with serious violations of laws and regulations and major risks in environmental, social, and governance aspects, the credit extension and investment shall be strictly restricted."[51] The Green Finance Guidelines also provide that the Bank shall require project sponsors to abide by the host country

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[43] ICBC, 2021 ESG Report, supra note 2,at p.134.

[44] *See* U.N. Human Rights Office of the High Commissioner, Ratification Status for China (last visited August 11, 2022).

[45] U.N. Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights (2011), adopted by the UN Human Rights Council, A/HRC/RES/17/4, July 6, 2011 (adopted June 16, 2011) [Hereinafter, UNGP]; U.N. Human Rights Council, Membership of the Human Rights Council 19 June 2010 - 18 June 2011 by regional groups (last visited Sept. 7, 2022).

[46] *See e.g.* U.N.Human Rights Council, Res. 10/4, U.N. Doc. A/HRC/RES/10/4 (March 25, 2009) (" Noting that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence,"); U.N. Human Rights Council, Res. 50/9, U.N. Doc. A/HRC/RES/50/9 (July 14, 2022) ("Reaffirms its commitment to advocate for combating climate change and addressing its adverse impact on the full and effective enjoyment of human rights …"). *See also* U.N. Human Rights Council, Membership of the Human Rights Council for the 16th cycle, 1 January - 31 December 2022 (last visited September 8, 2022); U.N. Human Rights Council, Membership of the Human Rights Council 19 June 2008 - 18 June 2009 by regional groups (last visited September 8, 2022).

[47] United Nations Global Compact, ICBC (last visited September 9, 2022) (ICBC has been a participant since May 16, 2012. While ICBC is currently delisted (which means it has not filed its reports), it continues to use the Principles as a reference in preparing its ESG Report. *See* ICBC, 2021 ESG Report, *supra* note 2, at pp. 124-25, 133).

[48] UNGP, princ. 13(a), 17-19, 22 (and associated commentary); OHCHR, OHCHR Response to Request from BankTrack for Advice Regarding the Application of the UNGP in the Context of the Banking Sector, pp, 5-6, 8, 10-11 (June 12, 2017) [Hereinafter, "OHCHR Response to BankTrack"];United Nations Global Compact, *The Ten Principles*, at princs. 1, 2 (last visited June 21, 2022); UN Global Compact, Principle One: Human Rights (last visited September 8, 2022) [Hereinafter, "UNGC, Principle One"]; UN Global Compact, Principle Two: Human Rights (last visited August 12, 2022) [Hereinafter, "UNGC, Principle Two"]. *See also* Chinese Banking Association, Guidelines for Corporate Social Responsibility of Chinese Banking and Financial Institutions, Article XX.

[49] UNGP, princ.13(b), 19; UNGC, Principle One; OHCR Response to BankTrack, pp. 13-14.

[50] *See e.g.* Green Finance Guidelines for the Banking and Insurance Industries, arts. 4, 14, 15, 18, 25 (in Chinese); Green Credit Guidelines, arts. 4, 11, 15, 17, 21 (February 24, 2012) (english translation).

[51] Green Finance Guidelines, art. 20; *see also* Green Credit Guidelines, art. 17.

and region's laws, follow relevant international practices or standards, and ensure that the management of the project is substantially consistent with international good practices.[52]

The reported adverse impacts and foreseeable risks associated with the EACOP and associated projects, described above[53]--including the reports of displacement without proper consultation or compensation; environmental and biodiversity risks; and the inevitable climate change impacts–implicate a range of human rights. The potentially affected human rights include the rights to an adequate standard of living, life, health, environment, water, and property. These rights are protected in the Universal Declaration of Human Rights, international treaties that China has signed or ratified, the African Charter on Human and Peoples Rights, and the Ugandan Constitution. As mentioned above, the litigation surrounding the EACOP and associated projects and reports on associated harms allege violations of domestic law, including the Ugandan Constitution. Moreover, organizations have lodged credible allegations that the EACOP and associated projects violate the IFC Performance Standards, and the Equator Principles–two relevant international standards.[54] Given ICBC's reported role as financial advisor to CNOOC and prospective financier of the EACOP, ICBC may be contributing to and/or risks contributing to a project that foreseeably causes harm, presently or in the future. ICBC may also be directly linked to such adverse impacts through its financing of Total and CNOOC (reported through 2020).[55] Providing financial support or assistance to, or otherwise enabling, facilitating, or contributing to a project that foreseeably causes harm to people and the environment or otherwise violates applicable law may give rise to liability under host or home state law.

In light of the above, we echo the calls made to ICBC and other banks by over 260 civil society organizations in March 2021[56] and over 60 African organizations in October 2021,[57] and the petition signed by over 2000 people affected by EACOP and the associated upstream oil field developments dated May 31, 2022 and submitted to ICBC and other banks,[58] and we urge ICBC and its Board of Directors to take the following actions based on the bank's reported involvement with the EACOP and associated projects:

- **Publicly disclose ICBC's current role with respect to the EACOP and associated projects,** including the reported role of financial advisor to CNOOC, and disclose any decision on whether to provide financing to the EACOP;
- **Investigate and assess** the above outlined credible reports of the EACOP and associated projects' adverse impacts, including through on-site meetings with project-affected communities;

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[52] Green Finance Guidelines*,* art. 25; Green Credit Guidelines, art. 21.

[53] *See* correspondence cited in note 9 (and sources cited therein), sources cited in note 11, and accompanying report on Assessment of EACOP and Associated Facilities with Equator Principles and IFC Performance Standards.

[54] *See* Complaint to Compliance Advisor Ombudsman (CAO): *"Re: Complaint Concerning IFC Investment Britam Holding Plc, Project No 37294*," Inclusive Development International (October 13, 2021)*;* AFIEGO, Inclusive Development International, BankTrack, Assessment of EACOP and Associated Facilities Compliance with Equator Principles and IFC Performance Standards (July 2022)*. See also* Notice on Key Performance Indicators of Green Credit Implementation (CBRC [2014] #186), indicator 4.21.3 (notice provides a link to the indicators).

[55] *See supra* note 6.

[56] Open letter from over 260 civil society organisations to banks on EACOP (March 1, 2021).

[57] *See supra* note 9.

[58] *See supra* note 9.

- **Cease any ICBC involvement** with the EACOP and associated projects as a financial advisor to CNOOC, and publicly commit not to provide financing or other forms of support to the EACOP or associated projects. ICBC should also use its leverage to halt Standard Bank's involvement in the EACOP and associated projects;
- **Cease any contributions and prevent future contributions to adverse human rights, social, and environmental impacts connected with the EACOP and associated projects**, **and participate in the remediation** of any adverse impacts to which ICBC has contributed, including, but not limited to, impacts in connection with land acquisition processes;
- **Publicly report on steps taken** to address the EACOP and associated projects' social, environmental and climate impacts and risks; manage financial and reputational risks associated with the EACOP and associated projects; and explain the consistency of reportedly advising CNOOC and financing the EACOP with your bank's implementation of the Green Finance Guidelines and public commitments on human rights and climate change, most notably by being a founding member of the Principles for Responsible Banking;
- **Use your Group's leverage** to ensure CNOOC acts immediately to provide full, fair and adequate compensation to people already affected by the EACOP for the impacts to their land and livelihood, in accordance with international standards, and otherwise prevents, mitigates, and remediates further adverse impacts; and
- **Engage with the governments of Uganda and Tanzania** and other financiers to promote an energy future for East Africa that does not rely on oil or other fossil fuels, but rather on renewable energy alternatives.

We look forward to your addressing this matter and request a written response to this letter, in Chinese or English, at your earliest convenience and no later than November 30 2022. Alternatively, we would welcome the opportunity to discuss this matter by phone, at your earliest convenience.

Thank you for your consideration,

***Africa Institute for Energy Governance (AFIEGO)***

*AFIEGO is a Ugandan incorporated non-profit organization that works directly with and advocates on behalf of communities impacted by EACOP and its associated projects. It received the renowned Right Livelihood Award in 2022.* https://www.afiego.org

***Center for International Environmental Law (CIEL)***

*CIEL is a nonprofit legal organization. Since 1989 CIEL has used the power of law to protect the environment, promote human rights, and ensure a just and sustainable society.* www.ciel.org

***BankTrack***

*BankTrack is an international organization founded in 2003 and focused on commercial banks and the activities they finance. It supports communities in Uganda affected by EACOP.* https://banktrack.org/

***Inclusive Development International (IDI)***

*IDI is an international organization founded in 2012,supporting communities to make the international economic system more just and inclusive.* https://www.inclusivedevelopment.net

**Contact:**
Africa Institute for Energy Governance
Attn: Ms. Diana Nabiruma
Plot 1288, Space Centre Building,
Buwate off Najjera.
P.O. Box 34913 Kampala, Uganda
Tel: +256 (0) 393 228323
Email : afiego@afiego.org