

October 17<sup>th</sup>, 2023

Mr. Li Yunze  
Party Chief and Director  
National Financial Regulatory Administration (NFRA)

**Subject: “One-year anniversary of issuing the Green Finance Guidelines for the Banking and Insurance Industries”**

Dear Mr. Yunze,

Please receive our sincere regards from the undersigned civil society organizations, from Latin America. We acknowledge that as part of the modernization of the financial supervision system, the National Financial Regulatory Administration (NFRA) was established as China’s new financial regulator in May 2023. Knowing that the NFRA is taking up the functions of the China Banking and Insurance Regulatory Commission - an institution that this past June would be celebrating the Green Finance Guideline’s one-year anniversary - we reach out as we consider this is an important moment for the re-prioritization of the Guidelines’ implementation. In particular we hope to see progress in the establishment of grievance response mechanisms mentioned in these Guidelines.

Over the past two decades, China has grown to become a major financier of global development projects. Many of these projects are in sectors and areas that come with high environmental and social risks. The Green Finance Guidelines are therefore an important addition to China’s developing policy in this area. They include provisions that, if properly implemented, will help financial institutions better manage these risks. This includes requirements for banks and insurers to: establish functional channels to communicate with stakeholders; make their “green” policies public; build their environmental and social governance (ESG) capacities and disclose the results of their implementation; and conduct investigations where violations are found to determine who should be held accountable. The elevated socio-environmental due diligence requisites for Chinese banking and insurance institutions that the Green Finance Guidelines call for are an important step forward in realizing China’s green finance commitments.

Importantly, the Guidelines encourage both policy and commercial banks to establish Grievance Response Mechanisms (GRM) for project-affected communities. The Guidelines state that in cases where finance and investment supports projects with high ESG risk, banks and insurers shall: “establish a grievance response mechanism; disclose relevant information proactively, timely, accurately, and completely [...] and accept monitoring and supervision from the market and stakeholders” (Article 28). Earlier, it states that these institutions should maintain lists of customers with high ESG risks and “actively exercise their legal rights as creditors or shareholders to require these customers to adopt risk mitigation measures including [...] implementing major risk response plans, having in place unobstructed stakeholder complaint channels, establishing a sufficient, timely and effective communication mechanism, and seeking third party audit or risk sharing” (Article 14). Implementation of these measures can potentially alleviate the most pressing environmental and social risks associated with their financing.

Disclosure of information to project-affected people and effective grievance mechanisms are requirements also found in international instruments such as the Equator Principles, the Indigenous and Tribal Peoples Convention (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples, The Principles for Responsible Investment, The United Nations Guiding Principles on Business and Human Rights, among others. Effective GRMs at institutional level in particular can help to avoid risks or resolve them before they escalate, or address harms and provide remedy for harms already caused. As such they are a vital element of the Green Finance Guidelines, and if adopted by Chinese financial institutions will support NFRA as the banking regulator to ensure that green finance policies are realized at the project level.

In the case of Latin America and the Caribbean, Chinese policy banks were the main source of financing of energy projects between 2005-2018; in parallel, the majority of Chinese commercial bank lending in the region was also devoted to the energy and infrastructure sectors in the 2007-2021 period, with 85 percent of their regional loans flowing to these

sectors.<sup>1</sup> Worryingly, extractive and large infrastructure projects financed by Chinese policy and commercial banks are often located within or close to areas that are highly biodiverse, ecologically vulnerable, culturally sensitive, indigenous lands, and/or areas susceptible to social conflict.<sup>2</sup> Many also present issues such as precarious working conditions, the absence of measures to ensure minimum health and safety standards, and/or irregularities with environmental management and impact assessments,<sup>3</sup> all of which have led to escalated consequences that could have been prevented with effective ESG management systems, including GRMs that create platforms for dialogue and conflict resolution.

For example, the C6ndor Cliff-Barrancosa Hydroelectric Complex in Santa Cruz, Argentina, has encompassed judicial, and technical issues. The absence of a proper environmental and impact assessment and the lack of public hearing in front of the immense potential impacts on a glacier in Los Glaciares National Park, led the Supreme Court of Argentina to suspend construction of the dams in 2016.<sup>4</sup> Civil society groups had alerted national authorities about their concerns around this project financed by Bank of China, China Development Bank, and Industrial and Commercial Bank of China ever since information was available about the project site and the plans for environmental risk management. Although the environmental and technical issues remain unaddressed, the project is advancing.

In the case of the Ecuadorian Coca Codo Sinclair Hydroelectric Project, some of the fundamental issues faced are construction and major technical defects, occupational health and security violations, and the irreversible environmental harm. These issues have reached the International Court of Arbitration of the International Chamber of Commerce in an open case against Sinohydro. Ignoring auditing firm warnings, work was not suspended in unsafe areas and this led to the loss of the lives of 13 workers<sup>5</sup>. In addition,

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<sup>1</sup><https://www.bu.edu/gdp/chinas-overseas-development-finance/>  
[https://www.thedialogue.org/map\\_list/](https://www.thedialogue.org/map_list/)

<sup>2</sup><https://ishr.ch/wp-content/uploads/2022/04/Informe-MedTerEPUfinal.pdf>

<sup>3</sup><https://ishr.ch/wp-content/uploads/2022/04/Informe-MedTerEPUfinal.pdf>

<sup>4</sup><https://www.cij.gov.ar/nota-24415-La-Corte-Suprema--por-unanimidad--suspendi--provisoriamente-las-obras-de-las-represas--Kirchner--y--Cepernic--en-Santa-Cruz.html#:~:text=diciembre%20de%202016,-La%20Corte%20Suprema%2C%20por%20unanimidad%2C%20suspendi%C3%B3%20provisoriamente%20las%20obras%20de,la%20provincia%20de%20Santa%20Cruz.>

<sup>5</sup> <https://www.elcomercio.com/actualidad/negocios/13-muertos-12-heridos-cocacodosinclair.html>

the regressive erosion process<sup>6</sup> caused by the construction of the dam, which had no published definitive environmental and impact assessment as the Ecuadorian law demands, induced the disappearance of the whole San Rafael Waterfall. Given the risk of collapse of this large infrastructure, the government of Ecuador alleges it is unfeasible to formally acknowledge the completion and delivery of the project according to the agreed-upon terms.

Another example is the Las Bambas Mining Project in Peru. This project, financed by China Development Bank, Industrial and Commercial Bank of China, Bank of China, and Export-Import Bank of China, is in a permanent state of conflict. Ever since the project began its operations in 2016, the unresolved social issues, which are mainly triggered by the route used for the metal/supply transportation, and disputes over land and resettlement, have resulted in repeated suspension of China Minmetals Corporation operations. The vicious cycle of conflict has resulted in frequent closure of roads, protests, imposition of State Emergency status, injuries on both sides, as well as death of local community members.

The project problems described above reflect a familiar reality to a number of Chinese overseas projects. They can significantly impact local communities' daily life in multiple ways, for instance, unraveling the loss of food and housing security, negative health and safety implications, violence and insecurity. Unfortunately, so far, communities affected by such projects don't have a place to raise concerns, and the Chinese financial institutions lack channels to identify and manage risks in time by listening directly to these communities, who often know best and are impacted most when such risks arise.

While, as the Green Finance Guidelines states, each financial institution shall create a grievance mechanism that is bespoke to its operations and risks, all grievance redress mechanisms must comply with a set of key minimum features to be considered effective. They must be predictable, transparent, legitimate, accessible, equitable, and

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<sup>6</sup>It is the erosion that occurs in the opposite direction to that of the flow of water.

rights-compatible, and they must be a source for continuous learning, according to the United Nations in the Guiding Principles on Business and Human Rights.<sup>7</sup> Fortunately, many examples of GRMs exist to use as models, including at multilateral and bilateral development banks, commercial banks, and private impact investors. The NFRA can assist banks and insurers by issuing criteria on what is required to adequately design and implement a grievance redress mechanism as per the Green Finance Guidelines. The criteria should set out minimum requirements for a GRM's mandate, structure, and function. In addition to learning from existing mechanisms, civil society groups working directly with project-affected communities can also share valuable insights into what has worked and what has not at other institutions, and we would be happy to discuss this with the NFRA further.

Setting structured and clear parameters for the operation of bank GRMs will help guide these institutions to establish and implement mechanisms that can effectively and comprehensively address complaints and concerns, ensure accessibility, provide timely resolutions, redress harms, and generate opportunities for continuous improvement. International criteria about the standards that should be met have been developed by the United Nations in the Guiding Principles on Business and Human Rights, World Bank Safeguard Policies, or the International Finance Corporation Performance Standards.

We appreciate that the process of creating these mechanisms and operationalising them is challenging, but urge the NFRA to update the public both on the minimum standard expected and on what progress has been made towards operationalizing this aspect of the Green Finance Guidelines, and the Guidelines more broadly. Individual banks and insurers should likewise be encouraged to report on the progress made to date and their timelines for implementation. Once operational, it is crucial that institutions publicize the existence of GRMs, along with details on the process and guidance on how project-affected people can access them.

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<sup>7</sup>UNGP, principle 31.

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

It has been a year since the Green Finance Guidelines were issued, and there are active projects that threaten the environment and local communities' integrity, and likely planned projects that would benefit from the existence of bank GRMs. To date we have seen no updates from either policy or commercial banks informing the public about their efforts to adopt such mechanisms. Delaying the establishment of GRMs not only exacerbates existing socio-environmental risks, but also increases financial risks associated with them for investors and companies. In order to achieve the “green” development commitments that the Chinese government envisions, banks must expedite progress towards building ESG risk management capacity, publicize their ESG policies, and regularly disclose the results of their implementation.

We thank you in advance for your attention to this letter and kindly ask you to acknowledge its receipt. We are always receptive to engage in further discussions, delving into more intricate aspects of the matters posed in the above. Please contact us via [eapcontracts@protonmail.com](mailto:eapcontracts@protonmail.com). If there are any questions regarding the contents of the letter, please refer to this original version in English.

Sincerely,

Signatories

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