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Subcommittee: State, Foreign Operations, and Related Programs

Agencies: U.S. International Development Finance Corporation; USAID, U.S. Export-Import Bank; U.S. Department of Treasury, and U.S. Department of State

Written Testimony:

Dear Chairman Coons, Ranking Member Graham, and members of the subcommittee:

On behalf of Accountability Counsel, thank you for this opportunity to provide input on the FY 2023 State, Foreign Operations, and Related Programs (SFOPs) appropriations process. In this written testimony, we will provide recommendations for the **U.S. International Development Finance Corporation (DFC)**, the **U.S. Agency for International Development (USAID)**, the **U.S. Export-Import Bank (EXIM)**, the **U.S. Department of the Treasury** (specifically, the U.S. executive directors at multilateral development institutions), and the **U.S. Department of State** (specifically, the U.S. National Contact Point for the OECD Guidelines).

Accountability Counsel amplifies the voices of communities around the world to protect their human rights and environment from the impacts of internationally financed projects, including projects funded by development agencies and development finance institutions, private banks, and export credit agencies. Despite good intentions and even with the best due diligence, projects financed by these actors can result in harm to the very communities they are meant to benefit. When negative environmental, social, or labor impacts result from these projects, the affected communities must be made whole.

Our requests center on ensuring that local communities most affected by U.S. investments have robust avenues to raise concerns about any unintended impacts from these investments and receive redress when harm occurs. Several institutions, including the World Bank and the Chinese-led Asian Infrastructure Investment Bank, have developed independent accountability mechanisms (IAMs)¹ to address environmental and social concerns from project-affected people. In addition to addressing grievances, IAMs can provide valuable lessons learned to their institution for the strengthening of future projects. The United States has been a strong champion of IAMs at the multilateral development banks and for its own bilateral foreign investments, with members of both parties recognizing the benefits of these feedback channels.

¹ *Accountability Office FAQs*, Accountability Counsel), <https://www.accountabilitycounsel.org/accountability-resources/accountability-office-faqs/> (last visited June 2 2022).

The FY 23 SFOPs bill provides opportunities to further strengthen accountability for U.S. assistance and international investments. Doing so will help ensure that U.S. investments meet their mark and address unintended impacts that can undermine sustainability and lead to reputational damage for the U.S. government and companies.

In this spirit, we provide the following recommendations:

- 1. Include bill language to allocate at least \$750,000 to resource the DFC's accountability mechanism.**

Section 1415 of the BUILD Act requires DFC to operate an IAM to address environmental, social, and human rights concerns related to the DFC's financing. For this mechanism to be effective, it has to have dedicated resources to carry out its functions. It is a common feature of IAMs at other international financial institutions to have a separate budget for the IAM that is controlled by the mechanism. Items this budget would cover would include the director and staff's salaries, resources for dispute resolution processes, compliance review investigations, and advisory notes as well as outreach to project-affected communities.

- 2. Include bill language to allocate at least \$500,000 to resource USAID's new accountability mechanism, and enact report language to ensure that the mechanism contains the key features of an IAM.**

In directing USAID to establish an accountability mechanism in the explanatory statement² to the FY 21 appropriations law, Congress took an important step to ensure that USAID has an effective avenue to address unintended negative environmental and social impacts to communities from USAID's activities. To be effective, USAID's accountability mechanism must adopt international best practices³ and incorporate the standard features of an accountability mechanism, including dedicated staff and compliance, dispute resolution, and advisory functions. As with the DFC's mechanism, the new USAID mechanism will need dedicated resources to operate effectively.

- 3. Include report language directing EXIM to create an IAM.**

² Further Consolidated Appropriations Act, 2021, SFOPS Statement, [https://www.appropriations.senate.gov/imo/media/doc/Division K - SFOPS Statement FY21.pdf](https://www.appropriations.senate.gov/imo/media/doc/Division%20K%20-%20SFOPS%20Statement%20FY21.pdf) - page=94.

³ This includes incorporating the UN Guiding Principles on Business and Human Rights effectiveness criteria for non-judicial grievance mechanisms – legitimacy, accessibility, predictability, equitability, transparency rights-compatibility, and serving as a source of continuous learning. Office of the U.N. High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. HR/PUB/11/04, Principle 31 (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. See also, ACCOUNTABILITY COUNSEL ET. AL, GOOD POLICY PAPER: GUIDING PRACTICE FROM THE POLICIES OF INDEPENDENT ACCOUNTABILITY MECHANISMS (Dec. 2021), <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>.

Although it is positive that EXIM has taken steps to increase opportunities for feedback from communities affected by its financing in recent years, EXIM's current Environmental and Social Project Information and Concerns complaint process is inadequate. The complaint process is not independent from management and the lines of EXIM's operations, which undermines its legitimacy. EXIM should create a fully independent IAM that follows international best practices. While EXIM has an Office of the Inspector General (OIG), an IAM would serve a different function as an IAM can receive complaints related to environmental and social harm directly from affected communities and can facilitate a dispute resolution process or conduct a compliance investigation. In fact, in its 2015 report⁴ on the Sasan Power Limited project in India, the OIG recommended that EXIM create a formal complaint process to address community concerns. In keeping with best practices for accountability mechanisms, EXIM should commence public consultations on its current process, with the objective of creating a mechanism that is in line with international best practices.

4. Include report language directing the U.S. executive directors at each multilateral development institution to use the voice and vote of the United States in the respective institution to provide resources to remediate unintended negative impacts from the institution's activities, including those confirmed by the institution's independent accountability mechanism.

Although the multilateral development institutions have IAMs to address grievances related to projects, often resources are not immediately available to facilitate full and effective remediation of the harms confirmed by the mechanism. This challenge has been recently highlighted in a 2022 report by the United Nations, *Remedy in Development Finance*.⁵ Given the U.S. government's support for strong environmental and social policies and accountability at the multilateral development institutions, the U.S. should support initiatives, including ongoing efforts at the International Finance Corporation,⁶ to ensure that remedy is provided for harmed communities.

5. Include report language directing the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises to issue a report to the Committees on Appropriations, Senate Foreign Relations Committee, and House Foreign Affairs

⁴ OFFICE OF INSPECTOR GENERAL EXPORT-IMPORT BANK OF THE UNITED STATES, REPORT ON THE PROJECT FINANCING OF SASAN POWER LIMITED (2015), <https://www.exim.gov/sites/default/files/oig/reports/Final%20Sasan%20Report%20-%20Redacted.pdf#page=44>.

⁵ UNITED NATIONS HUMAN RIGHTS, REMEDY IN DEVELOPMENT FINANCE: GUIDANCE AND PRACTICE (2022), <https://www.ohchr.org/sites/default/files/2022-03/Remedy-in-Development.pdf>.

⁶ INTERNATIONAL FINANCE CORPORATION, EXTERNAL REVIEW: IFC/MIGA UPDATE OF A REMEDIAL ACTIONS FRAMEWORK, APRIL 2022 (2022), <https://www.ifc.org/wps/wcm/connect/123a4cd3-89a0-40f8-a118-23e9e5e0d0d6/202108-IFC-MIGA-Enabling-Remedial-Solutions.pdf?MOD=AJPERES&CVID=nImw-23>.

Committee addressing how the National Contact Point has implemented the recommendations received during its 2017 Peer Review.

In addition to championing accountability at development and international financial institutions, the U.S. has also championed responsible business conduct around the world, including in the publishing of the first U.S. National Action Plan on Responsible Business Conduct.⁷ The U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises (U.S. NCP), housed in the State Department, is one of the only non-judicial avenues available for people harmed by U.S. multinational corporations to seek redress and remedy.

In 2017, the U.S. NCP underwent an OECD peer review process whereby it received feedback from other countries' national contact points and various stakeholders, including civil society organizations. Since the publication of the peer review report⁸ in 2019, there has been little public information on how the report's recommendations and other recommendations provided during the peer review have been addressed and implemented. Given the importance of promoting responsible business conduct and facilitating remedy when harm occurs, the NCP should publicly demonstrate how it is incorporating the recommendations to strengthen its operations.

Thank you for your consideration of our requests. We look forward to continued engagement with you to ensure that U.S. assistance and investments respects the rights and voices of local communities and upholds our national commitment to accountability.

⁷ RESPONSIBLE BUSINESS CONDUCT – FIRST NATIONAL ACTION PLAN FOR THE UNITED STATES OF AMERICA (2016), <https://2009-2017.state.gov/documents/organization/265918.pdf>.

⁸ OECD, NATIONAL CONTACT POINT PEER REVIEWS – UNITED STATES (2019), <http://mneguidelines.oecd.org/United-States-NCP-Peer-Review-2019.pdf>.