

**Written Statement of the  
American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)**

**OPIC Annual Hearing**

March 13, 2018

The AFL-CIO welcomes the creation of the United States International Development Finance Corporation (hereinafter “the Corporation”) and efforts by the United States government to support inclusive economic growth globally. We hope to work with the Overseas Private Investment Corporation (OPIC) in this transition period to develop robust project selection criteria and oversight mechanisms that will deliver on the Corporation’s mandate to create shared, sustainable prosperity.

Foreign direct investment has the potential to positively impact development by providing access to new employment, skills, and technology. However, without adequate safeguards, such investment can harm communities and undermine environmental, social, and labor protections. We are concerned there are serious deficiencies in OPIC’s current processes and practices, including the way the agency assesses development impact, approves and monitors projects and reports results.<sup>1</sup> It is our hope that the transition process will include a frank assessment of these systemic shortcomings and incorporate lessons learned to ensure intended benefits actually materialize and that they are shared equitably.

To fulfill the need for development-enhancing foreign direct investment not currently being met by the private market, the Corporation must set the highest possible standards, and ensure transparency, accessibility and accountability throughout the life of the project. These processes should be guided by best practices as defined in the UN Guiding Principles on Business and Human Rights, the ILO Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises. This not only will ensure the Corporation meets its mandate with respect to development outcomes, it presents a compelling alternative to low-road development financing that is non-transparent, unaccountable and not focused on ensuring respect for fundamental rights and long-term prosperity.

**Current Due Diligence Mechanisms Are Inadequate and Have Resulted in Poor  
Development Outcomes**

The AFL-CIO is encouraged to see statutory requirements in the BUILD Act that require the Corporation to develop standards for measuring projected and ex-post development impacts, create risk mitigation tools, and engage in active monitoring and oversight. While the labor

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<sup>1</sup> These shortcomings are discussed in Audit Report: OPIC Investments Increased Chile’s Energy Capacity, but Weak Processes and Internal Controls Diminish OPIC’s Ability To Gauge Project Effects and Risks, Office of Inspector General, U.S. Agency for International Development, Audit Report 9-OPC-19-002-P (February 1, 2019) *available at* <https://oig.usaid.gov/index.php/node/1892> (hereinafter “Audit Report”)

standards at OPIC have improved over time, meaningful due diligence at virtually all stages, from project assessment to completion, has been severely lacking. The Corporation must learn from these insufficient OPIC mechanisms and build a systematic, robust approach to project design that mitigates risks of human rights impacts and create an accountable and transparent oversight process to identify and respond to violations when they do occur.

A recent audit of OPIC’s investment portfolio in Chile’s energy sector conducted by USAID revealed serious, systemic flaws “related to mitigating environmental risks, protecting human and labor rights, and implementing sound business practices.”<sup>2</sup> The agency found that “major design weaknesses in OPIC’s process for measuring projected effects—including lack of documentation, weighting, and overall lack of rigor—make ratings unreliable and at risk for inflation.”<sup>3</sup> Metrics are not designed to capture development impacts in line with the organization’s mission, further impeding OPIC’s ability to accurately assess a project’s impact.

The process for overseeing projects and measuring actual results is marred by inconsistent, ineffective and inadequate processes and procedures. OPIC does not have a coherent system for collecting, let alone assessing, project documentation. Information such as borrower deliverables and third-party monitoring reports is gathered haphazardly, if at all. Nor does OPIC have a coherent approach to collecting information from site visits. USAID estimates that OPIC monitored approximately 5% of its projects between 2012 to 2016, but OPIC could not “provide an accurate list of projects eligible for its monitoring selection”<sup>4</sup> or even verify whether the list of monitored sites was correct. Further, OPIC had no “clearly defined processes and roles for handling concerns that citizens and other outside groups bring to its attention.”<sup>5</sup>

This lack of meaningful assessment and oversight has contributed to serious labor rights violations on OPIC-funded projects, with limited efforts to respond to these violations or ensure access to remedy. The Alto Maipo hydroelectric project was included in the portfolio investigated in the USAID report. There were serious, ongoing labor rights issues that constituted a breach of OPIC’s own standards, including two workers deaths, retaliatory firings, intimidation and obstruction of collective bargaining by employers. In addition, the USAID study found that OPIC never actually verified claims by the companies at all six Chilean projects that workers would receive benefits above what was legally required, and only one actually appears to have done so. The projects were rated highly for employee benefits based on this assurance.

The Corporation’s mandate to work in “countries with chronic suffering as a result of extreme poverty, fragile institutions, or a history of violence” makes the need to develop better assessment and oversight mechanisms particularly critical. OPIC’s record of operating in environments where the rule of law is weak leaves little cause for optimism.

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<sup>2</sup> Audit Report at 17

<sup>3</sup> Audit Report at 13

<sup>4</sup> Audit Report at 19

<sup>5</sup> Audit Report at 20

For example, an investment in Grupo Jaremar in Honduras has been marred by serious violations of internationally recognized worker rights and Honduras' own labor laws.<sup>6</sup> The company engaged in a campaign of intimidation and violence against workers, which included bribing, threatening and firing workers in retaliation for organizing. The company did not pay minimum wage or overtime, or provide workers with statutorily mandated benefits. The workforce was hired through short-term contracts in violation of Honduran law and a series of serious health and safety incidents were reported, including a worker death after handling agrochemicals, an amputation following an electrical accident and a miscarriage. Such violations are, sadly, predictable - obstructing worker organizing, using unlawful precarious work arrangements and failing to adhere to minimum wage and safety requirements are common in Honduras. Even a cursory review should have identified these risks, they are the subject of an open complaint by US and Honduran unions under the Labor Chapter of the Central American Free Trade Agreement (CAFTA) and detailed in the State Department's annual country report. OPIC should have anticipated these types of violations and had systems in place to respond.

Instead, representatives of the Honduran union STAS and U.S. allies had to bring the situation to OPIC's attention in March 2018. In April 2018, OPIC representatives met with the union in Honduras. The union and allies have continued to provide updates to OPIC and are awaiting a response. While Grupo Jaremar finally recognized the union and has modestly improved basic labor rights compliance following a concerted international campaign, it still refuses to engage in collective bargaining. On November 5, 2018, OPIC environmental and human right staff notified STAS's attorney and labor allies based in DC that OPIC considers Citibank, the financial intermediary for the \$20 million dollar loan to Grupo Jaremar, to hold the direct relationship with Grupo Jaremar and thereby the responsibility to receive and review complaints. The same staff advised the assembled labor advocates that human rights and environmental staff do not review the complaints that OPIC receives. This wholly inadequate response highlights the desperate need for clear, effective oversight and monitoring mechanisms.

**The Corporation must create transparent, accountable project assessment, monitoring and evaluation processes to maximize development impact**

Included below are some initial recommendations to ensure that the Corporation creates robust, accountable project assessment, monitoring and evaluation processes to maximize development impacts.

- a. *Create robust eligibility criteria to assess potential private sector partners*

Identifying responsible private sector partners is a critical part of risk mitigation. The Corporation, in consultation with unions and other stakeholders, should develop metrics to

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<sup>6</sup> OPIC Public Project Profile: Grupo Jaremar *available at* <https://www.opic.gov/sites/default/files/files/jaremare-info-summary-fy14.pdf>

identify high-road companies - those with a track record of going beyond minimum standards with respect to issues like wages and working conditions and with policies regarding workforce and supply chain transparency already in place.

Assessments of potential partners should include a deep dive into the history of labor relations at the company, including both outstanding and past workforce claims. Preference should be given to companies with a proven track record of positive industrial relations. Evidence of this would include collective bargaining agreements, protocols and/or memoranda of understanding with unions, the existence of a global framework agreement between a parent multinational and a global union federation, the presence of an international works council, or some combination thereof. Conversely, a history of violations of local labor law or internationally recognized worker rights should disqualify a company from consideration. Candidates should make this information publicly available, to facilitate stakeholder monitoring and verification.

Partner assessment should require disclosure of the corporate structure. Companies should also be required to make disclosures around tax reporting.<sup>7</sup> Preference should be given to companies that already have transparency policies in this respect.

*b. Development impact assessment should include labor relations and tax revenue*

Project impact assessment should include an examination of how the project would advance labor relations in the host country by promoting social dialogue between workers and companies, as well as improving wages and working conditions. Project assessment should also include an analysis of how the project would maximize domestic tax revenue mobilization by partner countries.

*c. Project development should identify and respond to community needs*

The Corporation must develop a transparent, thoughtful approach to stakeholder engagement that starts in the earliest stages of project development and extends throughout the life of the project. Workers and community members must be able to meaningfully contribute to early decision-making to ensure that the project is fit for purpose, and have an understanding of what the intended benefits of the project are going forward.

Workers and community members should have the chance to voice their own priorities and objectives, and to see those incorporated into project design. The local community is generally in the best position to know what kind of projects are feasible and what safeguards will work. This should not be a rubber stamp exercise, it should be a collaborative process to maximize development impact. Relevant trade unions, including those in the appropriate sectors and areas,

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<sup>7</sup> *Aligning blended finance to development effectiveness: where we are at* Trade Union Development Cooperation Network (2018) available at <https://www.ituc-csi.org/aligning-blended-finance> (hereinafter "TUDCN Report"); See also: TUDCN, *Criteria on Private Sector investment in development programs: Trade Unions key asks* at [https://www.ituc-csi.org/IMG/pdf/criteria\\_private\\_sector\\_engagement\\_en.pdf](https://www.ituc-csi.org/IMG/pdf/criteria_private_sector_engagement_en.pdf)

should be consulted on eligibility, risk assessment and project design. Workers and their trade unions are an invaluable source of information that otherwise may be overlooked.

Both the intended beneficiaries and those who might be at risk of suffering adverse impacts need to know what promises have been made by potential partners and what the intended outcomes of the project are. The impact notification should include any and all claims made by the project partner or the Corporation with respect to development impact, including promises relating to jobs, benefits and services. This information should be widely disseminated through mediums best suited to the community, in all commonly spoken languages, including any migrant worker populations.

We know from years of studying development that it is difficult to get stakeholder engagement right. The Corporation has discretion to convene civil society and private and public sector actors, and should use this mandate to develop a set of transparent, consistent processes for stakeholder engagement.

*d. Accurately analyze country conditions*

The Corporation should not engage with countries that are not in substantial compliance with internationally recognized worker rights. The requirements of Performance Standard 2, the ILO core conventions and good international industry practice should be the floor of client behavior, including where national law is silent or below international standards. Potential clients should be thoroughly assessed for their ability to comply with these requirements through internal procedures, and monitored according to the level of risk for the company, country and sector. Due diligence is inadequate if the existence of national laws is merely acknowledged by a potential client and given as proof that they are capable of compliance with lending safeguards. It is also necessary for due diligence to identify gaps in national legal frameworks and country-specific risks with regards to violations of labor rights.

*e. Engage in robust monitoring and oversight*

The Corporation needs to both engage in more active, in-house monitoring through the use of site visits and an organized approach to collecting follow-up documentation; and empower local communities to monitor and report on compliance. Workers are best placed to identify labor rights abuses. It is both more economical and more effective to ensure that workers know their rights and that information from the ground can transfer up.

Compliance officers must have the ability to initiate their own investigations, make on-site visits, and conduct confidential interviews with workers and their representatives, as well as with local labor ministry officials and ILO representatives. Current OPIC practice includes giving advance notice of site visits, which is not in line with best practices regarding labor inspections.

All project stakeholders, particularly workers, need to be equipped to hold both partners and the Corporation accountable. Workers are best-placed to monitor working conditions and identify abuses, when they are empowered to do so. The Corporation needs to ensure workers know their rights under the Corporation's standards at the time of hiring, including Performance Standard 2 and especially the client company's commitments on freedom of association and health and safety. Frontline management should also be trained on the content of standards. This is a proactive approach that involves workers in operationalizing standards, ensures that they understand their rights and avoids breakdowns in expectations within the client company. The current approach often means that only the upper management of the borrowing company discuss expected standards with the lender, and symbolic steps are taken to satisfy lender standards such as amended human resources handbooks. The Corporation should engage with any unions present at projects to ensure active monitoring of the standards. Where there is not a union present, the Corporation should work with companies and workers to create a health and safety committee, with a mandate that includes workplace violence and harassment, with elected worker representatives who have been trained on labor standards.

*f. Create an accessible, effective and independent Complaints Mechanism*

We are pleased to see the inclusion of an Independent Accountability Mechanism under Section 1415 of the BUILD Act, which should both evaluate compliance and provide a forum for resolving concerns regarding the impact of projects. This must include an accessible complaint mechanism, with clear procedures for receiving and evaluating claims in a swift and transparent manner, and the mandate to provide remedies in the case of violations, which must include suspension or termination of financial support.<sup>8</sup>

*g. Engage in meaningful public reporting to ensure transparency and accountability*

Workers and communities must be actively consulted throughout the life of a project, including active participation in monitoring and oversight to ensure claimed benefits materialize and reach the intended recipients. The Corporation needs to develop metrics for information disclosure, informed by community consultations, to ensure this can happen.

Information on individual projects should include supply chain transparency, including a list of all subsidiaries, suppliers and contractors. The workforce involved in the project should be mapped out, including disaggregated breakdowns of gender and minority hiring. Disclosures should include both initial projections regarding job creation and any representations made regarding access to benefits or services, as well as current reporting on actual job creation, wages and working conditions. It should also include disclosures of all workplace injuries and fatalities, and any workforce complaints filed with national authorities or the Corporation's complaint mechanism.

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<sup>8</sup> TUDCN Report at 54

The annual report to Congress should be used as an opportunity to collect aggregate data on development impacts across projects, to inform plans for how to improve outcomes. This should include aggregate data on injuries and fatalities across projects. The European Bank for Reconstruction and Development discloses this information in its annual sustainability report, fostering accountability and action by the institution to address recurring safety problems.<sup>9</sup> Disclosures should also include aggregate data on job creation, how many of those jobs pay above legally mandated minimum wage and benefits, and by how much. It should include information on how many hires are for short-term positions, and if projects are generating any long-term, secure jobs. There should be a breakdown of who is working, in both the direct borrower and in the supply chain, including disaggregation by gender, with data on pay disparity and relative positions in management. This would help satisfy the requirement in Section 1451(f) to consider the Corporation's impact on women's economic empowerment.

*h. Embed expertise in labor rights throughout the Corporation*

The Corporation must embed expertise in worker rights and industrial relations throughout all levels of the organization to ensure it meets its goal of supporting sustainable, broad-based economic growth. Congress clearly recognized the importance of this knowledge when it outlined relevant experience for non-governmental board members. In addition to senior leadership, oversight committees and staff charged with project assessment and implementation must include individuals with a background in evaluating risk and compliance with labor standards from a worker perspective.

In Section 1413(b)(2)(C), Congress indicated that relevant experience for the Corporation's non-governmental board members includes a background in labor. To effectuate this intent, and to ensure that the Corporation can effectively implement the statutory requirements related to internationally recognized worker rights and labor monitoring, at least one board member must have a specific background in labor rights.

Likewise, the Development Advisory Council established under 1413(i) should include at least one member with specific expertise in labor rights and industrial relations, to ensure that the Corporation is able to competently assess development impacts with respect to worker rights.

The Risk Committee created in Section 1441, tasked with assessing social risks, needs to include individuals with the proper background to assess and identify pertinent labor rights risks and develop mechanisms to prevent adverse impacts. This is particularly critical because OPIC appears to have indicated that the Risk Committee will be tasked with reviewing current policies and procedures with an eye to identifying relevant lessons and improving practices.<sup>10</sup> Given the serious labor rights abuses that have occurred on OPIC programs in the past, it is critical that

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<sup>9</sup> See, e.g., European Bank for Reconstruction and Development Sustainability Report (2017) available at <https://www.ebrd.com/sustainability-report-2017>

<sup>10</sup> Audit Report at 43

labor rights experts are included in the assessment and reorientation of processes to ensure that mistakes of the past are not repeated.

Lastly, the Corporation needs to ensure expertise in project monitoring and oversight. As discussed above, staff should have expertise on labor, including specifically in occupational health and safety. The European Bank for Reconstruction and Development has dedicated staff for this purpose which has improved monitoring and oversight on its project, and we encourage the Corporation to do the same.

- i. Adequately resource and create incentives for agency staff to embed human rights throughout the process*

The Corporation needs to ensure adequate resources are directed to monitoring and oversight. The USAID study found currently “a total of 11 employees—2 managers and 9 staff” are “responsible for clearing prospective projects and monitoring environmental and social risks for all OPIC projects worldwide.”<sup>11</sup> This is grossly insufficient to ensure proper monitoring and oversight. Staff incentives should also be linked with the development, social and labour outcomes of projects.

### **Conclusion**

We welcome the creation of the United States International Development Finance Corporation and look forward to working together to create robust selection criteria and oversight and monitoring mechanisms to ensure future projects enhance labor rights and create positive development impacts for workers and communities.

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<sup>11</sup> Audit Report at 19