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| 1 | General | General | We commend OPIC for formalizing a Labor and Human Rights Policy as it sends an important signal to investors and countries with regard to ensuring that workers and communities are not negatively impacted by development projects. | Noted. |
| 2 | General | General | Amnesty International welcomes the opportunity to comment on OPIC's Proposed Labor and Human Rights (LHRP) Statement. Amnesty International's recommendations will focus on strengthening and putting into practice OPIC's commitment to respect human rights. This contribution also builds on the meeting with OPIC's President Elizabeth Littlefield and civil society held on September 1, 2010, where Amnesty International was able to raise some of its concerns. Amnesty International's comments respond to the human rights provisions contained in the proposed LHRP Statement, released for public consultation on August 4, 2010. | Noted |
| 3 | General | General | We are pleased to learn that OPIC adopts, as a benchmark for the labor and human rights review process, the International Finance Corporation's (IFC) Performance Standards on Social and Environmental Sustainability. Many sustainable and responsible investment (SRI) firms like Calvert have had relationships of more than 10 years with IFC and its Performance Standards, as well as the Policy on Disclosure of Information, and are very familiar with the process. We hold up IFC's safeguard and sector policies as a global standard for project finance, particularly in emerging markets. Therefore, we applaud OPIC's commitment to using the IFC safeguards as a benchmark, but also to developing its own labor and human rights policy statement. We thank you for allowing us an opportunity to provide comments to OPIC. | Noted. |
| 4 | General | General | On the Project Labor Requirements section, we commend you for using the International Labour Organization (ILO) core standards and performing gap analysis to identify deficiencies, especially in areas such as gender and sexual orientation. Under the Human Rights Requirements section, we are pleased to see that you consult with the U.S. Department of State, require an identification of human rights risks and impacts, establish effective social management systems, and conduct appropriate consultations with project-affected people, including those who may be particularly vulnerable due to gender, poverty, or location in conflict or conflict-prone zones. | Noted. |

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| 5 | General | General | Thank you for the opportunity to comment on the Labor and Human Rights Policy Statement. We look forward to hearing your thoughts and ideas about what we have proposed in our letter. While seeking online comments is one way to obtain input from a broad range of stakeholders, we would also encourage that OPIC organize a stakeholder consultation with the SRI community to share experiences and knowledge. Such a consultation would provide OPIC with an opportunity to hear from, and brainstorm with, experienced sustainability analysts and investors in the areas of labor and human rights. | Noted. |
| 6 | General | General | We appreciate the opportunity to comment on the Draft Policy and look forward to continued engagement with OPIC staff on creation of this important policy. | Noted. |
| 7 | General | General | In conclusion, Amnesty International welcomes OPIC's desire to strengthen its Labor and Human Rights standards. In particular, we recognize OPIC's evident commitment to respect labor and human rights, and its desire to implement the framework developed by the UN Special Representative on Business and Human Rights. At the same time Amnesty International believes that its recommendations are necessary to turn OPIC's commitment into a reality and ensure that respect for human rights is fully integrated and implemented both by OPIC and its clients. | Noted. |

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| 8 | General | General | <p>Since OPIC is using the IFC Performance Standards as a benchmark, we are concerned about the IFC standard around "Broad Community Support" (BCS). As you may know, this issue has been a key concern flagged by both civil society organizations and SRI investors who believe that the BCS standard is less stringent and therefore not best practice compared with free, prior, informed consent (FPIC). In a recent report "Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information" (May 10, 2010), the Office of the Compliance Advisor/Ombudsman for the IFC and Multilateral Investment Guarantee Agency (MIGA) found that IFC's implementation of BCS has been highly restrictive and not transparent, and that IFC missed the opportunity to play a leadership role in helping to advance the implementation of local approval processes. As investors, we are also concerned that IFC applies BCS only to a few high risk projects. Therefore, we recommend that OPIC consider a much stronger international normative standard, preferably that of FPIC. Consent allows for opportunity to shift the power dynamics from a company-focus to that of local communities. There is increased recognition that a community's ability to say "no" is more important than ever.</p> | <p>Section 5 (Public Consultation and Disclosure) of the combined Policy Statement addresses policies related to BCS. Further, the IFC concept of "free, prior informed consultation" reflects current US Government policy.</p> |
| 9 | General | General | <p>OPIC's proposed Labor and Human Rights Policy Statement does not include its current exclusion list, if any. The Statement should clearly outline prohibited conditions related to human rights and labor under which OPIC will turn away from applicants and projects, such as large dams, resettlements of 5,000 or more persons, projects impacting natural World Heritage Sites, etc.</p> | <p>Appendix B of the combined Policy Statement contains a list of Categorical Prohibitions. OPIC has taken an additional step of adding forced and harmful child labor to the Categorical Prohibitions list.</p> |

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| 10 | General | General | <p>OPIC's statement does not clearly state a requirement for labor and human rights disclosure. As an investor, we place great importance and high priority on transparency and disclosure. We go beyond the responsibility to respect human rights generally to robust human rights reporting, and in general improved corporate transparency in discussing human rights challenges. In our experience, we find that one of the greatest challenges in human rights work is the lack of consistencies and high-quality disclosure of corporations' human rights systems, if any, and their implementation. According to the UN Special Representative for Business and Human Rights, John Ruggie, most companies lack the systems that would allow them (or anyone else) to know whether they actually do respect human rights. Investors and other stakeholders must rely on information in the public domain. Transparent labor and human rights reporting, as part of the company's social and environmental reporting, is a necessary element of a properly functioning capital market. We recommend that OPIC support the Global Reporting Initiative (GRI) as a leading sustainability reporting format. Unfortunately, currently few companies are willing to produce truly transparent reports on labor and human rights.</p> | <p>Addressed in Sections 5 (Public Consultation and Disclosure) and 7 (Monitoring) of the combined Policy Statement.</p> |

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| 11 | General | | <p>OPIC should consider several other emerging and related human rights issues. For example, one of the emerging issues relates to water, particularly access to clean water. While this may be considered an environmental issue, we recognize that environmental harms are closely connected to impacts on human rights. Another human rights-related issue is revenue transparency. For example, over the past two years Calvert has been the leading investor advocate for extractives revenue transparency legislation, supporting a broad-based U.S. coalition working to pass the legislation, called Publish What You Pay United States. Calvert's efforts culminated in the April 2010 publication of the report "Materiality of the Disclosure Required by the Energy Security Through Transparency Act" (http://www.calvert.com/NRC/literature/documents/10003.pdf), which had a significant impact on passage of the extractives revenue transparency provision of the Dodd-Frank financial reform bill that was signed into law on July 21. We make the case, along with others, that extractives revenue payments may be of material interest to investors and should be disclosed. Corruption is another such human rights-related issue which seriously undermines human rights by weakening the rule of law, creating social inequality and discouraging foreign investment. Corruption disproportionately affects the poor in developing countries, critical to the mission of OPIC.</p> | <p>Section 2.5 of the combined Policy Statement addresses ecosystem services that benefit people, such as freshwater and surface water purification. Section 5.22 addresses policies related to revenue transparency (specifically EITI).</p> |
| 12 | General | General | <p>There is an emerging consensus that all companies have a responsibility – as a minimum – to respect all human rights. This responsibility requires companies to know whether their activities would result in negative impacts on human rights and to take steps to prevent and address such impacts. In effect, companies must exercise "due diligence" to ensure they respect human rights.</p> | <p>Noted.</p> |
| 13 | General | General | <p>In the provision of financial support, an adequate human rights due diligence process has two levels: first, there are steps that a financial institution, such as OPIC, ought to take; and second, there are steps that OPIC should ensure its clients are taking. All companies, including OPIC's clients, have a responsibility to exercise due diligence in order to ensure that they respect all human rights in their operations. OPIC has a responsibility to ensure that its supported clients do not engage in activities that cause or contribute to human rights violations.</p> | <p>Noted and addressed throughout the combined Policy Statement, which delineates OPIC's and the client's responsibilities with respect to exercising due diligence on social issues, including human rights-related issues.</p> |

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| 14 | General | General | Given that financial support to corporate actors is stipulated through a contractual agreement, it is through such a contract that OPIC can require its clients to put in place adequate human rights due diligence processes. | Section 6 (Conditions and Compliance, specifically 6.2 and 6.3) addresses covenants included in the OPIC Agreements, which include compliance with the IFC PSs, a requirement of which is to conduct due diligence by identifying and evaluating environmental and social risks, creating action plans as necessary to address the actions required to mitigate such risks, and implementing appropriate management systems to ensure that the project does not violate human rights that are relevant to the project. |
| 15 | General | General | Amnesty International recommends OPIC to clearly outline the responsibilities of both OPIC and its clients with regards to ensuring respect to human rights throughout their operations. Section 4 of the LHRP Statement should clearly spell out the practical steps that should be put in place by both OPIC and its clients to discharge such responsibility. | See response to 13 above regarding the delineation of responsibilities of OPIC vs those of the client. With respect to "practical steps", the Policy Statement addresses OPIC's policies and not the day-to-day implementation of such policies. However, it should also be noted that the IFC Performance Standards are applied in a manner that is appropriate to the project and fit for purpose. Therefore, OPIC assesses a project to develop and apply project-specific requirements that address a project's human rights-related risks. |

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| 16 | 1 | 1.3 | Section 1.3 explains that OPIC will ensure through its processes that the projects it supports meet five goals. However, these goals are more aspirational than they need to be. At the project level, projects must not merely “promote” respect for worker rights and compliance with applicable nation labor and employment laws but should actually respect them. In other cases, the terminology used is peculiar. For example, the term “international worker rights standards” fuses together the distinct concepts of rights and standards into a single term. A better term would simply be “international workers rights.” A second option could be “international worker rights and standards.” Further, it is unclear what a “labor risk” is. In still other cases, the goal is vague or confusing. For example, the fourth bullet point states that OPIC will ensure that a project “promote[s] due diligence in areas in which labor risks exist.” It is unclear how a project promotes due diligence rather than exercises it. | Noted and addressed. Deleted “promote.” OPIC recognized the need to reconcile “internationally recognized worker rights” with the IFC Performance standards (some of which are rights, others are not). Hence, OPIC developed a defined term “Labor Rights” - which refers specifically to Workers' rights (see Glossary). Noted on “exercise” due diligence, which is addressed throughout the combined Policy Statement when clearly defining OPIC and client roles and responsibilities to identify, assess, address, and mitigate risks and impacts. |
| 17 | 1 | 1.1 | We applaud OPIC for confirming that the policy applies to all of its activities, including support through Financial Intermediaries. We recommend that this provision be maintained at the beginning of the OPIC policy in Section 1 (to note applicability to Labor and Human Rights issues) and should be reiterated in the Statement of Policy in Section 4(B) as noted above. | Noted. Reiteration addressed in the “Scope of Application” sections at the beginning of each of Sections 2-8 of the combined Policy Statement. |
| 18 | 1 | 1.3 | We note that in Section 1.3, OPIC is not making a commitment if it is only ensuring that projects will “promote” certain standards, rather than adhere to them. The word “promote” should be deleted. | Addressed. See response to 16 above. |
| 19 | 1 | 1.3 | Amnesty International is calling on OPIC to put in place a human rights due diligence process throughout its operations and the ones of its clients, with a view to ensuring that supported operations do not cause or contribute to human rights abuses. This should be explicitly spelled out in OPIC’s commitment, outlined in paragraph 1.3 of the draft policy. | Addressed. See response to 13 and 14 above. |

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| 20 | 1 | 1.3 | Currently the proposed LHRP Statement does not explicitly commit OPIC to ensure that its projects do not have adverse impacts on human rights but rather to ensure its projects “promote” respect for human rights. “Promoting respect” is a significantly lower level of commitment by OPIC and does not require neither OPIC nor its clients to “adhere” to respecting for human rights. Similarly, due diligence processes and compliance with national laws should be “promoted” by projects, as opposed to actually being adhered to. | Addressed. See response to 16 above. |
| 21 | 1 | 1.3 | In order to address these shortcomings we recommend that section 1.3 of OPIC’s LHRP statement be revised to read as follows: "1.3 This Policy Statement outlines how OPIC will put into practice its commitment to the development goals (See Paragraph 1.2 of the ESPS) by conducting its own due diligence, including through its labor and human rights review. Specifically, OPIC will ensure through its processes that projects receiving OPIC support: • Comply with applicable national employment and labor laws • Carry out a due diligence process in areas in which labor and human rights risks exist. • Respect all human rights. • Do not cause or contribute to human rights or labor rights violations. | Addressed. See responses to 14 and 16 above. |
| 22 | 1 | 1.3 | Amnesty International is calling for a specific reference to international human rights standards, as articulated in internationally agreed instruments, to be included in the contractual requirements for all projects supported by OPIC. It is now widely acknowledged that corporate actors can have adverse impacts on all human rights – either directly or indirectly. Given that a due diligence framework is aimed at preventing potential adverse impacts on all human rights, it is critical that OPIC refers to the full range of human rights rather than a limited set. These include those outlined in the following internationally agreed instruments: • the Universal Declaration of Human Rights; • the core UN human rights conventions (as defined by the UN Office of the High Commissioner for Human Rights); • UN Declarations (such as the UN Declaration on Rights of Indigenous Peoples) • Core ILO Conventions. | OPIC’s adoption of the IFC PSs, which address human rights issues that are relevant to the private sector, harmonizes OPIC with the major entities in the development finance arena. The adoption of the IFC PSs also creates a level playing field with respect to client responsibilities on human rights issues. |

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| 23 | 1 | 1.3 | All of these instruments must be read in conjunction with the work of UN expert bodies such as Special Procedures and Treaty Bodies which provide useful interpretation and guidance on how to respect and implement such standards. While corporate actors are not bound directly by these instruments, these do outline the human rights that all corporate actors have a responsibility to respect. As such, it is essential that the impact of the activities of companies is benchmarked against human rights instruments, not other documents or principles. | Addressed. See response to 22 above. |
| 24 | 1 | 1.0 | A Statement of Purpose should include why a particular policy has been developed and why it is important for Applicants to uphold labor and human rights standards in their projects. A link between labor and human rights and OPIC's mission statement and development goals could be made to highlight the interdependence of labor and human rights and economic and social development. Also, the benefits of applying these standards to the Applicant could be mentioned, such as reducing risks of project interruption, increasing quality of management, etc. | Sections 1.2 and 1.3 of the combined Policy Statement link OPIC's environmental and social policies to the Foreign Assistance Act. |
| 25 | 1 | 1.2 | The Source only refers to U.S. law, however, later on, international standards are mentioned. The Source of Policy in OPIC's Environmental and Social Policy Statement includes a reference to the IFC Performance Standards and Industry Sector Guidelines. It is suggested to include the same statement in the Labor and Human Rights Policy Statement as well as the International Labour Organization Conventions and UN Human Rights Conventions and Declarations. | Addressed in Section 1.5 of the combined Policy Statement. Also see response to 22 above. |
| 26 | 1 | 1.3 | It is suggested that the word 'promote' be removed from the commitments as 'promote' could be interpreted by Applicants as a much less stringent standard and is more difficult to measure as there is not clear definition of the degree to which rights and compliance should be 'promoted'. | Addressed. See response to 16 above. |

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| 27 | 2 | 2.5 | <p>Section 2.5 is incorrect in one very material respect. In addition to withdrawal, suspension or limitation, the TPSC can and routinely does put a country under “continuing review.” This means that the TPSC has found that a country has not taken steps to afford internationally recognized worker rights, but the TPSC has decided to give the beneficiary country an opportunity (usually one or two petition cycles) to make necessary improvements before determining whether trade preferences should be withdrawn, suspended or limited. Countries under continuing review should either be temporarily ineligible for OPIC programs for the length of that review (or, at the very least, subjected to rigorous additional scrutiny – especially if the project is in a sector that is highlighted in the GSP complaint). Thus, OPIC should not rely entirely USTR’s list of GSP eligible countries but must also review the list of countries under continuing review and the reasons therefore. <i>Footnote</i> : Taking note of those countries under “continuing review” is important but insufficient. The USTR assumes that all countries currently in the GSP program are taking steps to afford internationally recognized worker rights. However, numerous countries may not in fact be eligible due to serious and systemic violations of worker rights but nonetheless remain on the list because a third-party petition was not filed during that petition cycle (for any number of reasons, including the safety of workers in a repressive regime) or the U.S. government did not self-initiate action. OPIC should therefore adopt a presumption that any country currently eligible for GSP benefits is taking steps to afford internationally recognized worker rights, which can be rebutted if a petitioner presents evidence that the country does not in fact meet the eligibility standard. An independent determination for purposes of OPIC support could be made at that time.</p> | <p>Section 2.5 of the proposed LHRPS is correct as drafted, in that it refers to outcomes that can result “upon completion of a country review.” “Continuing review” refers to a status for which a TPSC country review is not completed, and for which the TPSC has decided that a review will continue. A TPSC decision to place a country under “continuing review “ does not mean that the TPSC has found that a country has not taken steps to afford internationally recognized worker rights. Additionally, language was added to Section 9.11 of the combined Policy Statement to reflect the already-established practice of subjecting projects to closer scrutiny.</p> |

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| 28 | 2 | 2.7 | <p>OPIC states that it will provide the public an opportunity to submit submissions with regard to non-GSP eligible countries seeking OPIC support. The guideline suggests 20 days notice. As it can take substantial time to collect information from international sources and to organize it into a submission, the AFL-CIO recommends at least 30-45 days. Petitions should also be accepted not only before each annual meeting but also before any board meeting. It is often the case that serious violations of worker rights which may disqualify a country not happen in the weeks or month prior to the annual meeting. If anti-labor legislation were to be enacted or a major crackdown on labor organizers were to occur one month after the annual public hearing, that country could remain eligible for OPIC support for another eleven months – until the next annual hearing. Allowing for submissions of petitions more frequently would avoid this problem.</p> | <p>Section 9.7 of the combined Policy Statement reflects the extension of 20 days advance public notice to 40 days.</p> |
| 29 | 2 | 2.8 | <p>OPIC provides a non-exhaustive list of sources to inform its review of a non-GSP eligible country's labor practices. The list should of course include the reports, observations and recommendations of the International Labor Organization (ILO).</p> | <p>Added to Section 9.8 of the combined Policy Statement.</p> |
| 30 | 2 | 2.9 | <p>The criteria suggested to determine whether a country is “taking steps” are not consonant with the GSP standard as it has been applied. Under 2.9, a country could be considered to be “taking steps” even if they banned unions, abolished collective bargaining, allowed for the employment of 6 year old children and subjected the population to periods of forced labor, so long as they respected domestic laws with regard to the minimum wage, overtime laws and provided safety and health protections (acceptable conditions of work). Of course, a country's laws need not be fully consistent with all of the internationally recognized worker rights in order to become or to remain eligible for trade benefits under the current GSP standard; however, Section 2.9 seriously understates the necessary minimum measure of consistency between internationally recognized worker rights and a country's labor laws. The same observation applies to the enforcement of those laws. Finally, as nearly every country is a member of the ILO, membership in that institution is not a suitable measure. Although not much better of an indicator, the ratification of ILO core and priority conventions would be somewhat more meaningful.</p> | <p>Section 9.9 of the combined Policy Statement has been amended to better clarify how OPIC addresses the "taking steps" standard. In addition, the bullet on ILO membership was deleted.</p> |

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| 31 | 2 | 2.10 | It is unclear what criteria OPIC would use to determine whether a country belongs in the category of a “particularly sensitive” country and how that decision would be made. OPIC should publish a list of countries that it currently deems “sensitive” and the reasons for the determinations. | Section 9.10 of the combined Policy Statement clarifies that "particularly sensitive" means "due to a documented history of issues relating to internationally-recognized worker rights." |
| 32 | 2 | 2.11 | A change in a country’s designation should not affect existing projects; however, OPIC should substantially increase monitoring of those projects to ensure that the contract provisions on worker rights are being respected. | Noted. |
| 33 | 2 | 2.9 | We note that in this section, subsection (2) provides too wide a loophole, allowing activity in countries that have failed to adopt four out of five of the core labor standards, thus allowing certain forms of forced and child labor. We note that this is addressed in 3.1 to some extent, but this should be corrected for consistency in Section 2.9. | Addressed. See response to 30 above. |
| 34 | 2 | General | The ‘Country Eligibility’ section defines the process to determine if a country is eligible for OPIC-supported projects based on whether the country is taking steps to afford internationally recognized worker rights. However, this section does not define a process for country eligibility with respect to human rights. Are countries’ human rights records taken into consideration and what criteria would a country need to meet to be eligible based on its human rights record? | The country eligibility criterion is a statutory worker rights-based criterion. There is no parallel statutory criterion for OPIC eligibility on human rights grounds. NOTE TO JOHN: their comment on "human rights records taken into consideration" has to do with country eligibility on human rights grounds, so I think the response above is sufficient. |

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| 35 | 2 | General | While the 'Country Eligibility' section defines the countries in which OPIC can support projects, once a country is eligible, OPIC could still consider categorizing or ranking countries according to labor and human rights risks in order to factor in country risk in its determination of project risk discussed in 3.5 and 4.7. Country risk could be determined by, for example, the number of relevant Conventions the country has signed; the degree to which the country's national laws and regulations are consistent with international human rights and labor standards; the level of enforcement of those laws and regulations; and the effectiveness of the country's judicial system to resolve claims brought by victims of human rights abuses or labor exploitation. | Noted. See responses to 30 and 34 above. Also, see Sections 2.5 and 2.6 for screening of projects with higher labor-related risks and impacts (based on a variety of factors, including location). |
| 36 | 2 | 2.1 | Section 231A of the FAA quoted in this section does not include a provision on taking actions to ensure non-discrimination, although it is mentioned in section 3.1. Non-discrimination is core labor standard as identified in the 1998 ILO Declaration of Fundamental Principles and Rights at Work and it should be included in the language mentioned in 3.0 that goes into all OPIC Agreements. | Noted. The language in 3.0 of the Proposed LHRPS is statutory language, which does not include reference to non-discrimination in employment and equal opportunity . However, non-discrimination is covered by IFC PS2, with which Projects are required to comply, as noted throughout the combined Policy Statement. |

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| 37 | 3 | 3.1 | This section provides that all projects must respect three overlapping but distinct bodies of law: national law, internationally recognized worker rights and the IFC performance standards. It then lists the main requirements. This list is not sufficiently clarifying to comprehensive to be useful; moreover, it contains internal contradictions. If the list is maintained, it should note that the list is not exhaustive. Below are further observations on the list: | IRWR and the IFC PSs are not bodies of law, but are standards to which the project will be held, and which can overlap with national laws. For the combined Policy Statement, the list was deleted 1) to avoid the misinterpretation that the requirements listed were the only applicable requirements, and 2) to be consistent with the format of the ESPS. OPIC's and the IFC's labor-related standards are requirements with which the projects must comply, regardless of overlaps. |
| 38 | 3 | 3.1 | In the first bullet point, it is unclear what the terms "labor risks" or "labor impacts" of the project mean. Further, it is unclear how the project itself, rather than the administration of the project, could have an impact on enjoyment of labor rights and standards. A better phrased indicator could be borrowed from the IFC's Labor Toolkit, which explains that the purpose of a "risk assessment" is to ascertain: "the likelihood that there will be labor rights violations within a particular project, but also considering the severity of any labor rights violations and the degree to which any violations in a project would have an impact on [OPIC]." | Addressed. See response to 16 above. Section 2.6 of the combined Policy Statement addresses "higher risk" factors to reflect the higher risk factors outlined in the IFC's Labor Toolkit. |

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| 39 | 3 | 3.1 | The fourth bullet point is a rough summary of PS-2 paragraphs 9 and 10. The “alternative means” language applies to <i>countries</i> where national law substantially restricts worker organizations. However, a country that substantially restricts the right of workers to form a union should be ineligible for OPIC support as such a restriction would be clear evidence that the country is not taking steps to afford internationally recognized worker rights. In such a case, there would simply be no OPIC-supported project in that country to carry out the contents of bullet point four. | Noted. See responses to 30 and 37 above. |
| 40 | 3 | 3.1 | The fifth bullet point mandates a prohibition on the use of child labor. This is a stronger (and much better) formulation than that which is contained in the sixth bullet point, the establishment of a minimum age for employment. If child labor is prohibited in accordance with relevant ILO and UN conventions, then the establishment of a minimum age for employment in the sixth bullet point is superfluous. The only way that these two points could be reconciled would be to amend bullet point five to refer to the elimination of the <i>worst forms of child labor</i> (which may have been the intent given the references in the footnote). | Noted and deleted (see response to 37 above). The prohibition of child labor and the requirement of a minimum age were intended by the ILO to be complementary standards rather than substitute standards and are both addressed by fundamental conventions. Thus, the intent of the minimum age reference is for projects that may employ Workers under 18, within legal and international limits and standards. |
| 41 | 3 | 3.1 | The eighth bullet point refers to “reasonable working conditions.” This is in some respects broader than the statutory term “acceptable conditions of work,” which refers only to “minimum wage” but is narrower in that it does not appear to cover occupational safety and health. Indeed, there is no mention in the list of any requirement to provide workers with a safe and healthy work environment. | Addressed. See response to 37 above. IFC Performance Standards uses "reasonable working conditions" and IRWR refers to "acceptable conditions of work", both of which apply to OPIC projects. |

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| 42 | 3 | 3.1 | Finally, it is not clear what is meant in the footnotes when the policy states that OPIC is “guided” by an ILO convention. One could read the term to mean that a project need only comply “more or less” with the relevant provisions on, for example, freedom of association, rather than adhere to the terms of the relevant convention. | Addressed. The footnote has been deleted. See also response to 37 above. The combined Policy Statement clearly states throughout that projects must comply, not “more or less” comply, with the OPIC and IFC labor-related standards. |
| 43 | 3 | 3.2 | Once again, it is unclear what is meant here by adverse labor impacts of a proposed project. Further, this section should clarify what is meant by “international worker rights standards.” The policy statement previously referred to a requirement to comply with domestic laws, internationally recognized worker rights and the IFC Performance Standards at Section 3.1. Is “international worker rights standards,” a term which is itself confusing, meant to be shorthand for the three bodies of law referred to in Section 3.1? If not, then this must be corrected. | Addressed. See responses to 16 and 37 above. Also, the combined Policy Statement makes clear references to the IFC Performance Standards, IRWR, and host country laws. |
| 44 | 3 | 3.2 | The statement also provides that the purpose of the project-level screening and review is not to determine whether the project applicant complies with those rights, but whether it cannot or does not have the capacity to implement those rights “in a satisfactory manner” or cannot be expected to meet those rights and standards “over a time frame considered reasonable and feasible.” This appears to contemplate OPIC support for a project that may not be compliant with national law, internationally recognized worker rights and/or IFC PS-2 at the time an OPIC agreement is reached but which could come into compliance over time. However, an OPIC-supported project is required by statute to be in full compliance with those rights, not “in a satisfactory manner.” A project must also comply with those rights from the start, not at some indeterminate time in the future. | Section 4.11 of the combined Policy Statement clarifies that Labor Rights (see Glossary) requirements apply to projects from the outset. The “over a time frame considered reasonable and feasible” language is intended to cover certain aspects of the requirements, such as the development of a retrenchment plan, which may not be applicable or if so, may not need to be developed prior to the execution of an OPIC Agreement, depending on the project development phase. |

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| 45 | 3 | 3.2 | The statutory requirement of full and immediate compliance with internationally recognized worker rights also appears to conflict with the approach taken by PS-1, which is incorporated by reference into this document. PS-1 provides that a project, upon completion of a risk assessment, must develop a management program and produce an action plan, if necessary, to come into compliance with applicable laws and the relevant performance standards. The project is also required to adopt a monitoring mechanism to verify compliance. PS-1 appears to contemplate the possibility that a project will not be in compliance with the applicable laws or PS-2 from the beginning, but that it will take appropriate measures to do so over time. | Addressed. See response to 44 above. |
| 46 | 3 | 3.2 | The IFC Performance Standards provide substantial rights for workers, among others, with regard to IFC funded projects. However, the wholesale incorporation of these standards into the proposed OPIC policy statement presents several inconsistencies due to the requirements of the OPIC statute. While the IFC Performance Standards could and should provide meaningful guidance to OPIC, care needs to be taken to identify where the OPIC statute requires a different approach and to draft policies accordingly. | Noted and addressed. See responses to 15, 37 and 44 above. |
| 47 | 3 | 3.2 | Screening to determine whether a project applicant can or will comply with national law, internationally recognized worker rights and IFC PS-2 is of course much easier when the project is already operating at the time the application is under review. OPIC can investigate to see whether any complaints or lawsuits were filed against that project applicant and could interview workers off-site to assess whether there are any relevant worker rights issues. If a project concerns a new operation, OPIC should investigate to see whether worker rights claims have been filed against the entity's other operations in the country in question or elsewhere. | Noted. See response to 15 above. |

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| 48 | 3 | 3.3 | In sum, a far better description of OPIC's screening methodology is needed. It is impossible from the proposed policy to ascertain how the screening is carried out – and thus whether it is adequate – based on this single paragraph. This section should delineate what will be requested of applicants in this self assessment, and how OPIC will assess its veracity. | Section 2 of the combined Policy Statement addresses in greater detail screening policies. With respect to policy implementation, see response to 15 above. |
| 49 | 3 | 3.4 | Sections 3.2 and 3.3 describe screening and review, though with insufficient information to fully understand what that screening and review entails. Thus, it is not clear what additional review is undertaken under Section 3.4 beyond what is already undertaken in the previous sections. Further, it is unclear how the level of review differs for projects considered “high risk” and “low risk,” as those terms are described in the following sections. | Sections 2 and 3 of the combined Policy Statement address in greater detail screening and review policies. With respect to policy implementation, see response to 15 above. |

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| 50 | 3 | 3.5 and 3.6 | <p>These indicators may indicate a high risk situation. However, bullet point two is problematic, as a project applicant with a history of labor violations should be disqualified, not merely put into a "high risk" category. As for low risk indicators, I am aware of no sector that historically does not violate labor rights (bullet point four). Further, the fact that a project may be small does not in any way mean that labor violations are less likely. Many serious abuses occur in small firms. The IFC Labor Toolkit, in the shaded box on page 2, provides a much better set of high risk indicators.</p> | <p>See response to 38 above. Deleted the "lower risk" factors.</p> |
| 51 | 3 | 3.7 | <p>This section does not describe what kind of projects would be considered Category A on labor grounds. Annex A in the Environmental and Social Policy Statement appears to limit such categorization to serious occupational or health risks. If OPIC believes that a project could be deemed "Category A" on labor grounds other than occupational safety and health, it would be useful to know what those circumstances might be.</p> | <p>Based on input received during the public comment period, OPIC recognized that the Category A designation was not well-suited to projects based on labor-related risks. In response, Sections 2.5 and 2.6 of the combined Policy Statement describes a separate "Special Consideration" classification based solely on labor-related risks that may be applied to certain projects in addition to the categorization of all projects based on environmental and social factors. The associated requirements for a project with a "Special Consideration" designation, particularly with respect to reporting and monitoring, are outlined throughout the combined Policy Statement.</p> |

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| 52 | 3 | 3.1 | Under Project Labor Requirements, we recommend that OPIC consider adding the following issues: gender identity, HIV/AIDS status, pregnancy discrimination, whistleblower protection, and workplace violence. | Noted. See response to 36 above. IFC's PS2 covers non-discrimination and equal opportunity. IFC PS2 also requires the provision of a safe and healthy work environment. Guidance notes on the IFC PS2's reference to "working conditions" including respect for workers' personal dignity, and avoidance of physical punishment or abusive language. IFC PS2 also requires the provision of a grievance mechanism that workers can use without any retribution. |
| 53 | 3 | 3.1 | Similar to our Statement of Policy recommendation for Section 4(B), above, we recommend that instead of reference to other policies, this section enumerate the labor standards that OPIC and its clients must follow. We note that reference to the IFC Performance Standards here will leave the policy weak in certain areas unless the areas of deficiency are specifically enumerated in the policy. For example, without specific enumeration, the current Draft Policy is unclear as to whether threatening, abusive, exploitative or sexually coercive disciplinary practices are allowed. | Addressed. See response to 37 above. |

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| 54 | 3 | 3.1 | Section 3.1 describes the contractual requirement for Projects to comply with IFC Performance Standards, internationally recognized worker rights, and all applicable laws in the host country, including labor laws. However, it does not provide guidance on what Applicants should do if the national laws conflict with international standards. For example, in some countries, migrant workers have fewer rights, including less favorable terms of employment, than national workers under the law. It should be made clear that the highest standard should apply in those cases. While this is mentioned in section 3.9 as part of the Gap Analysis, it should be reiterated in section 3.1 and worded in such a way that the Applicant is the subject to ensure it is clearly understood at the outset. | Section 4.12 of the combined Policy Statement clarifies that the more stringent standard applies. |
| 55 | 3 | 3.1 | The requirement of the establishment of 'reasonable' working conditions and terms of employment invites a great deal of subjectivity into the definition of 'reasonable'. What is OPIC's test of reasonableness? Does it include a 'living' wage as opposed to a minimum wage, for example? | Reasonable' working conditions and terms of employment are part of the IFC PSs, and the IFC Guidance Notes provide guidance on these terms. Also see response to 37 above. |
| 56 | 3 | General | As mentioned above, it is recommended that country risk be factored in to the screening and review process, including the high/low risk categorization. | Noted. See responses to 34 and 35 above. |

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| 57 | 3 | 3.2 | From this point onwards, it is not clear if the document is outlining the steps involved in OPIC's review process sequentially. It would be useful to clarify at what stage of the project review these activities are occurring and how the review moves from one stage of the process to the next. | Noted. See response to 15 above. |
| 58 | 3 | 3.3 | Section 3.3 limits OPIC's review to risks and impacts identified by the Applicant. This seems to be a very limited source of information that is likely to be somewhat biased. Although 'knowledgeable third parties' are mentioned as a possible source of additional information, a more comprehensive approach would be to expand investigation at the initial stage in order to identify risks and impacts from other sources. In addition, the publication of the project at this stage would facilitate input from 'knowledgeable third parties' who could submit supplementary information about the project's risks and impacts. | OPIC does not rely entirely on client-provided information during the assessment process. OPIC conducts site visits, hires independent consultants and utilizes OPIC research staff and US embassies for additional verifications. OPIC is in the process of hiring additional consultants to support this effort. It should be noted that Applicants are required to certify, under penalty of law, that all statements and information provided to OPIC are true and correct. Regarding policy implementation, see response to 15 above. |

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| 59 | 3 | 3.5 | Section 3.5 should also include hazardous work and extensive use of subcontractors as high risk factors. Current issues should also be taken into account. For example, a project that involves the use of cotton from Uzbekistan where child labor in cotton farming is extensive and well-documented, should be considered higher risk. | Addressed. See response to 38 above. |
| 60 | 3 | 3.5/3.6 | Sections 3.5 and 3.6 discuss risks in terms of high/low, whereas OPIC's Environmental and Social Policy Statement provides for categorization of projects as A, B, or C. It is not clear how the high/low risk criteria are linked to the A, B, C categorization process. For example, would high labor risks affect a project's categorization? | Addressed. See responses to 38 and 51 above. |

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| 61 | 3 | 3.8 | Given that the 'gap analysis' is for the purpose of determining the differences between applicable laws and internationally recognized worker rights standards, it is difficult to understand why this would need to be conducted for each project, unless there were industry-specific laws that could apply. It may be more efficient to conduct the gap analysis for each country (and update them annually) and incorporate any industry-specific laws on a project-by-project basis. | Noted. This is an established process that OPIC has had in place and may be re-examined as we assess implementation of the IFC PSs. Nonetheless, the gap analysis section from the proposed LHRPS has been reformatted to be consistent with the ESPS and is summarized in Section 6.2 of the combined Policy Statement. See response to 109 below. |
| 62 | 3 | General | In general, there is a lack of discussion as to how an Applicant should address any labor risks and impacts raised and how OPIC will ensure that any risks or impacts identified are mitigated. | The combined Policy Statement provides greater detail and clarity on OPIC's roles and responsibilities, versus clients roles and responsibilities with respect to project review of social issues, and on conditions and compliance, public consultation, and monitoring. With respect to policy implementation, see response to 15 above. |
| 63 | 4 | General | Under section 4 titled Human Rights Requirements, we recommend that OPIC explicitly mention The Universal Declaration of Human Rights (UDHR), the globally-agreed-upon framework on human rights, adopted by the UN General Assembly in 1948. While your Statement expressly mentions the ILO under section 2.9, it does not mention support for the UDHR. | Addressed. See response to 22 above. |

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| 64 | 4 | 4.7 | <p>We agree with OPIC that the large-scale extractives industry is one example of a higher risk project from a human rights perspective. However, we find that there are now all kinds of businesses linked to higher risk human rights violations. One such area is the global supply chain. Social investors have engaged in advocacy and filed numerous shareholder resolutions over the years around sub-standard working conditions in the global supply chain, especially for the apparel, footwear, toy, auto, food/agricultural industries. Another higher risk area is the pharmaceutical industry, which faces major human rights concerns relating to the development and provision of drugs serving basic human needs, as well as human clinical trials. In addition, internet and technology companies have also been in the forefront of high risk human rights challenges around freedom of information and privacy as internet service providers may store user data in countries where the government has used the data to track political dissidents. While OPIC lists projects in financial sectors as lower risk from a human rights perspective, these firms are sometimes the primary financiers to companies linked with human rights abuses.</p> | <p>Noted. In response to similar comments on the "lower risk" factors for labor, the "lower risk" section on human rights has been deleted. Further, this section was not meant to be exhaustive, but more indicative of what may constitute a higher risk project from a general human rights perspective.</p> |
| 65 | 4 | General | <p>OPIC's Statement does not mention human rights impact assessments (HRIAs). Corporations are being asked to use HRIAs to anticipate human rights challenges by assessing how human rights are respected or violated, analyzing how the business activity might be beneficial or detrimental to the conditions, and how companies can decrease the risk of human rights abuses. As a sustainable investor, we believe that a prudent and comprehensive assessment of human rights risks is essential to minimize and mitigate risks across a whole range of issues and industries. While HRIAs may be most obviously useful in the extractive sector, they are also very relevant to other higher risk industries, such as apparel, toy, footwear, retail and consumer products manufacturing, pharmaceuticals, information technology, agriculture, beverages, and food sectors.</p> | <p>Noted. OPIC recognizes HRIAs as a potentially useful tool. However, given their relatively recent development and a general lack of consistent standard for such an assessment (unlike ESIAAs), OPIC will continue to consider if and how an HRIA could be incorporated into its policies, procedures or guidelines.</p> |
| 66 | 4 | General | <p>As a general matter, we recommend restructuring Section 4, Human Rights Requirements, to include four distinct sections, which we propose here as Sections 4(A)-(D)</p> | <p>Noted.</p> |

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| 67 | 4 | General | <p>We propose that Section 4(A) be a timeline of the events required in OPIC’s human rights due diligence process so that Applicants, OPIC, and the public have a clear view of the process. The timeline should generally include OPIC’s initial screening process, the Applicant’s due diligence requirements, OPIC’s due diligence evaluation and review process and consequences. The timeline should clarify that OPIC will not approve projects unless the Applicant’s human rights due diligence process results in a finding, verified by OPIC, that (1) there are no human rights risks or that they can be avoided through mitigation measures, (2) that an action plan has been created in consultation with the affected communities, and consent has been freely given by any indigenous communities, and (3) that a grievance mechanism has been established at the project level and project affected people are aware of the Office of Accountability. Each of the events in the timeline would then be detailed in Sections 4(B) through (D).</p> | <p>Noted and addressed in response to 15 above.</p> |
| 68 | 4 | General | <p>We recommend that a proposed Section 4(B) be a Statement of Policy describing which human rights OPIC commits to uphold through its own activities and those of its clients. This Statement of Policy should include the affirmation that the Policy applies to all projects supported by OPIC, including those supported through Financial Intermediaries. In addition to the IFC Performance Standards and host country human rights laws, which are stated in the current Draft Policy, Section 4(B) should include a commitment to follow the “International Bill of Human Rights” per the “UN Framework” developed by the United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie. The Statement of Policy should also include a commitment to follow the UN Declaration of the Rights of Indigenous Peoples (“UNDRIP”) and the Convention on the Elimination of Discrimination Against Women (“CEDAW”). For projects involving private security forces, OPIC should commit to adherence with the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Voluntary Principles on Security and Human Rights. The Draft Policy should then contain two additional sections regarding the obligations of OPIC and the Applicant to implement this Statement of Policy.</p> | <p>Addressed. See response to 22 above.</p> |

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| 69 | 4 | General | We propose that Section 4(C) cover OPIC's own obligations under the Draft Policy, containing the following steps: (i) For each Project, OPIC consults with the U.S. Department of State per requirements of the Foreign Assistance Act (former Section 4.0 in the Draft Policy). This section will need to describe the implications of this consultation on OPIC practice (e.g., could this result in Projects being rejected?). Furthermore, if the results of this consultation are public, this should be made clear in the Draft Policy. | Section 3.6 of the combined Policy Statement has been clarified to include projects that the U.S. Department of State advises that OPIC should decline to support based on the consultative human rights review. Furthermore, a project summary is not posted on the OPIC website unless the project has been approved, including on environmental and social policy grounds. Therefore, a project that does not obtain approval on human rights grounds will not have a project summary posted on the OPIC website. |
| 70 | 4 | General | (ii) OPIC conducts its own initial human rights Project Screening. This should first include application of an 'exclusion list' to determine if the type of proposed activity should be rejected because of an exclusion. The remainder of the screening should be based on a proposed OPIC pre-determined ranking system for each type of activity OPIC undertakes, so that individual judgment of OPIC staff is not required at this stage. The ranking of each activity should be agreed upon by OPIC management and should be altered by their approval only. Such a categorization process should happen only once (see examples below), and should be re-examined only as OPIC takes on new activities. The ranking system for OPIC's activities could use the following system, with Level I representing the highest degree of risk, impact, or leverage, and Level III representing the lowest: Level I – clear risk, clear impact, and/or high leverage over activities (such as project finance, advisory services, insurance, investment funds and certain types of credit facilities and corporate loans) Level II – some risk, some impact, and/or some leverage over activities (such as franchise loans) Level III – no risk, no impact, and/or no leverage over activities (such as housing or mortgage financing or provision of credit to small microfinance enterprises) | OPIC's list of Categorical Prohibitions is addressed in Appendix B of the combined Policy Statement (see response to 9 above). Section 2.6 of the combined Policy statement details OPIC's categorization of projects based on environmental and social factors. |
| 71 | 4 | General | (iii) After assigning the level of risk, OPIC would then turn the human rights due diligence process over to the Applicant, per proposed Section 4(D), below. | Addressed. See response to 70 above. |

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| 72 | 4 | General | (iv) After the Applicant completes the required analysis per Section 4(D), OPIC would then conduct its own human rights impact review of each project to evaluate the information provided by the Applicant. 1. Particular attention should be paid to the Applicant’s scoping of the human rights risks involved in the Project, disclosure of information, consultation with Project Affected People – including practicing free, prior, informed consent (FPIC) with Indigenous People – formation of resettlement plans, development of indigenous peoples development plans and human rights risk management plans, and establishment of a grievance mechanism. 2. If OPIC finds that the Applicant has correctly conducted its due diligence and finds that there are either no human rights risks or that they are avoidable through mitigation measures, OPIC would then apply current Section 4.5(2) and (3) criteria to determine the “Applicant’s commitment and capacity to effectively manage the human rights risks and impacts, including the ability to implement any required mitigation” and “the potential role of third parties in achievement of successful outcomes.” An example of this final factor should be given. | See responses to 8 and 15 above. |
| 73 | 4 | General | (v) OPIC should then either send the due diligence materials back to the Applicant for revision(s), refrain from involvement in the project, or accept the project provided there is confirmation that: a. there are no human rights risks or that they can be avoided through mitigation measures, b. that an action plan has been created in consultation with the affected communities, and consent has been freely given by any indigenous communities, and c. that a grievance mechanism has been established at the project level and project affected people are aware of the Office of Accountability. | Addressed. See responses to 8 and 15 above. Additionally, IFC's PSs require the establishment of a grievance mechanism. |
| 74 | 4 | General | (vi) If the project goes forward, OPIC must regularly review monitoring reports involving implementation of any action plan and must independently verify such information. In particular, OPIC’s review should follow functioning of grievance mechanisms, and sure that Project Affected People are properly consulted in their creation and aware of their purpose. | Addressed. See responses to 8, 15, and 73 above. Section 5 of the combined Policy Statement addresses in detail client responsibilities on consultation with Project Affected People. |

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| 75 | 4 | General | (vii) Finally, the policy should address OPIC's response and the consequences to the Applicant for the Applicant's failure to follow this policy. For example, this could include immediate cancellation of project support, engagement with the client and other operators to address and resolve human rights issues, referral of the issue to the Office of Accountability, or any number of responses scaled to the issues. | Section 6 (Conditions and Compliance) of the combined Policy Statement outlines consequences to the Applicant for non-compliance, including, but not limited to, remediation or in the case of an incurable default, contract termination or acceleration of a loan repayment. |
| 76 | 4 | General | The proposed Section 4(D) should address the Applicant's human rights due diligence, impact assessment, and operational human rights requirements. First, regarding due diligence, the Applicant will have received a Level I, II or III rating from OPIC of its proposed project. For each type of activity ranked above as Level I, II or III, each of the risk factors below should be analyzed to determine whether and what type of human rights impact assessment is required. | Addressed. See responses to 62, 65, 70 above. |
| 77 | 4 | General | The risk factors should include, but are not limited to: i. activity related to certain sectors such as agribusiness, chemicals, forestry, mining, munitions, oil and gas, power, infrastructure, or water; ii. the scale of the activity (larger scale projects will require a more in-depth HRIA); iii. activity impacting weak governance zones; iv. activity impacting conflict zones; v. projects that require sophisticated security arrangements or collaboration with public security forces; vi. the type and level of host government involvement in the Project (risk is highest where there is a high level of host government involvement and low capacity to address human rights issues or government reputation for abuse); vii. physical or social challenges while safeguarding project personnel and property in a manner that respects the human rights and security of Project Affected People; viii. activity impacting "at risk" groups such as indigenous peoples, women and children, or the disabled; ix. activity impacting areas or entities with known labor rights issues; x. activity related to areas or entities with known human rights issues; and xi. activity related to areas or entities with known environmental issues affecting communities; xii. relevant historical information related to the Project; | Section 2.5 of the combined Policy Statement addresses higher risk social factors. |

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| 78 | 4 | General | <p>The level of analysis of these risk factors depends on the ranking of the activity. For example, for a Level I activity, such as project finance, an in-depth analysis of these factors is required and if any of these risk factors are present or possibly present, an in-depth human rights impact assessment is required. For a Level II activity, such as a franchise loan, an analysis of the risk factors may result in the requirement of a less extensive impact assessment if any of the risk factors are triggered. For Level III activities, such as provision of small-scale micro-finance, the lowest degree of analysis is required and no further impact assessment may be needed if none of the risk factors are triggered. To assist in evaluation of these factors, a number of online tools are available.</p> | <p>Addressed. See responses to 65 and 70 above.</p> |

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| 79 | 4 | General | <p>Based on the above screening, when a human rights impact assessment (“HRIA”) is required, the assessment should be based on recent social and environmental baseline data. The assessment should be based on guidance from OPIC regarding the elements of and process for conducting an HRIA. Where risks are identified, OPIC policy should then require a human rights management system (including action plans which should be made in consultation with Project Affected People), the Applicant’s obligations in implementing such a management (system, and a discussion of monitoring and reporting duties, including requirements for the establishment of project-based grievance mechanisms. There should be an explicit requirement that when the Applicant consults with communities regarding a proposed project, the information regarding the project and its risks should include discussion of creation of a grievance mechanism at the local level and information about the OPIC Office of Accountability. OPIC should state in the proposed Section 4(D) that in some cases, the HRIA may identify impacts that are so large or so challenging to mitigate that refraining from taking on the activity is the only acceptable step that will allow adherence to OPIC’s policy. In order to have meaning and provide public assurance that OPIC will not tolerate human rights abuse in its projects, OPIC’s human rights policy must have the option of ‘refraining from involvement.’ While each of these topics must be dealt with in the OPIC policy, the degree of detail can be minimal to the extent that comprehensive guidance already exists on these topics that may be incorporated by reference. For example, there are a number of in-depth tools regarding human rights impact assessment and management and the establishment of grievance mechanisms</p> | Addressed. See response to 65 above. |

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| 80 | 4 | 4.1 | <p>We appreciate reference to the IFC Performance Standards and host country laws, including host country human rights law. However this is an insufficient statement of human rights policy. First, IFC has explicitly refused to adopt a human rights policy. While we welcome its inclusion because it does address some human rights issues, it is out of step with international human rights law in a number of areas. For example, IFC has long refused to meet its international law obligations to obtain free, prior, informed consent (“FPIC”), when projects impact indigenous groups. We note that the IFC Performance Standards also fail to explicitly require a human rights impact assessment (despite IFC’s sponsoring of the HRIAM). Further, the IFC Performance Standards lack, and the OPIC Policy should include, a requirement that clients “ensure that private security at [OPIC]-supported projects is provided in line with the principles contained in the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Voluntary Principles on Security and Human Rights.”</p> <p>Second, where host country international human rights obligations incorporated into national laws are weak, reference to these as additional to the IFC Performance Standard requirements, while still a worthwhile requirement, will not be sufficient. As noted above in the proposed new Section 4(B), Statement of policy, the “International Bill of Human Rights”, UNDRIP, CEDAW, and the relevant private security standards form the appropriate reference points for OPIC’s human rights policy. Regarding the first of three bullet points in Section 4.1, “Identification of human rights risks and impacts,” it is unclear who does the identification and what particularly they are identifying. Is this the Applicant’s duty? OPIC’s duty? There is also no information regarding when this is required and who determines what human rights risks are short of “significant.” Regarding the second bullet point, there is no indication of how a social management system should be established. Additionally, there is no sentence connecting the identification of risks with the social management system. For example, there would need to be a reference to a management plan that results from the HRIA. This is addressed in our proposal above in the General Comments section. Regarding the third bullet point in 4.1, while we agree that there must be appropriate</p> | Addressed. See responses to 8 and 22 above. |

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| 81 | 4 | 4.2 | <p>The first sentence of 4.2 is unclear as to when this consultation with the State Department happens in the OPIC process. This issue can be resolved by adopting the proposed timeline suggested above in the General Comments section (proposed as Section 4(A)). It is also unclear what the purpose or consequences are of OPIC's reliance on this guidance. Finally, there is a transparency issue regarding the consultation with the State Department – is this guidance available to the public and when is it made public? We propose that this 4.2 requirement be incorporated into a new Section 4(C)(i) as the first sub-point.</p> | <p>Addressed. See responses to 15 and 22 above. Regarding the consultation with the State Department, the information elements of the consultative process are not available to the public.</p> |
| 82 | 4 | 4.3 | <p>This section is also more appropriate for our proposed Section 4(C) involving OPIC's duties, where we propose that OPIC identify the risk level based on the project activity and then apply the exclusion list. As it currently stands, there are open questions in 4.3 regarding the timeline for this OPIC screening, when it is administered, whether it happens before the Applicant is required to conduct a risk assessment, etc. Again, these issues could be made clearer with the proposed timeline in Section 4(A) above. It is also unclear whether 4.3 duties are independent of duties in 4.1. For instance, is this screening conducted in reliance on client information alone? How does OPIC do this screening? Who does it? What measurements are used to make the identification? What are the types of impacts that could/ should/ must preclude OPIC support? If an applicant does not demonstrate capacity and willingness to respect human rights, why are there any circumstances that would allow a project to continue nonetheless? There should be situations that are intolerable that trigger application of the OPIC exclusion list.</p> | <p>Addressed. See responses to 15 and 58 above.</p> |

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| 83 | 4 | 4.4 | <p>Again, we propose that the OPIC review here be contained in a new Section, 4(C). The current section 4.4 is confusing. It should be made clear when the applicant is to provide information to OPIC for internal review. There are further questions regarding how OPIC is to know whether information from the Applicant is accurate and objective. If not corrected, OPIC is relying on the Applicant's own self-serving information. Also, is the 4.4 review the same as the 4.3 screening? How is it different? How will it be determined whether third party information and verification is required?</p> | <p>Addressed. See responses to 15 and 58 above. Sections 2 (Screening and Categorization) and 3 (Environmental and Social Review) of the combined Policy Statement provide greater clarity on the distinctions between screening and review.</p> |
| 84 | 4 | 4.5 | <p>Section 4.5 should also be reorganized into a new Section 4(C). First, we are unclear when the "review" mentioned takes place in OPIC's process? Who at OPIC applies the level of review? What are the different levels of review? Are these factors more appropriate for initial screening or for review of the Applicant's own assessment? Regarding section 4.5(1), where is the information coming from for this review of human rights risks and impacts? Regarding (2), upon what is OPIC basing its analysis of this element regarding "the Applicant's commitment and capacity to effectively manage the human rights risks and impacts, including the ability to implement any required mitigation"? We applaud OPIC's inclusion of this as a factor for consideration, but clarification is needed. Regarding (3), clarification is needed to reflect the role of the analysis of third parties on OPIC's support. In general, what are the results of this analysis of (1) – (3)? Please note that we have incorporated these factors into our proposed Section 4(C).</p> | <p>Addressed. See responses to 15, 58 and 83 above. OPIC analysts conduct screening and review. OPIC also hires consultants to supplement staff efforts and to provide independent projects assessments or verification of Applicant representations, when necessary.</p> |

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| 85 | 4 | 4.6 | <p>Section 4.6 states: "OPIC conducts its own human rights impact review of each project." We applaud OPIC for taking a strong position on the need to independently review the human rights impacts of projects. However, this section raises several questions for clarification: who conducts this review at OPIC? Are they trained in human rights impact assessment? Are outside experts consulted? What tools and resources are used for this review and in consultation with whom? The word "directly" should be deleted, as indirect human rights impacts are equally unacceptable. Regarding the Section 4.6 factors that determine the level of due diligence, we have incorporated these into proposed Section 4(D), above. These factors are important for OPIC's consideration, but should first be part of the Applicant's analysis and should then be verified by OPIC. We note that a number of relevant and useful factors have been added in our proposal above.</p> | <p>Addressed. See responses to 15, 58, 83, and 84 above. OPIC analysts conduct such reviews. Noted on the word "directly" and the issue is addressed more accurately in the term "Area of Influence", as defined in the Glossary of the combined Policy Statement.</p> |
| 86 | 4 | 4.7 | <p>Section 4.7 contains an important listing of high-risk elements, but as stated above, these should be incorporated into Section 4(D), as we propose in our General Comments. This list is duplicative and confusing when read along with 4.6 and 4.8.</p> | <p>Noted. Section 4 of the Proposed LHRPS had largely already been addressed by the ESPS as issued on August 26, 2010, and subsequently addressed in the combined Policy Statement.</p> |
| 87 | 4 | 4.8 | <p>As discussed above, when analyzing factors, the low-risk of projects is part of the high risk analysis (each factor is analyzed along a scale of risk). These factors are therefore unnecessary. We recommend that this section be deleted.</p> | <p>"Lower Risk" factors were deleted and not included in the combined Policy Statement.</p> |
| 88 | 4 | 4.9 | <p>Regarding 4.9, this provision feels out of place. The reference to Category A projects is a bit of a "catch all" that would be unnecessary if our suggestions regarding proposed Section 4(A) – (D) are adopted.</p> | <p>Addressed. See response to 51 above.</p> |

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| 89 | 4 | General | First, the Draft Policy is missing explicit mention of project-level grievance mechanisms and the requirement that they be legitimate, accessible, predictable, equitable, transparent, and operated in a manner that ensures independence from the company or project sponsor. The Policy must also provide people impacted by project activities the ability to raise grievances and have them addressed promptly in order to avoid human rights (and other) violations. We address this issue in our proposed Section 4(C) & (D), above. | Sections 3.9 and 5.15 of the combined Policy Statement addresses the requirement for the establishment of a grievance mechanism, which is also a requirement of the IFC PSs. See response to 73, and response to 75 above on OPIC's Office of Accountability. |
| 90 | 4 | General | Second, OPIC needs to make clear what its response will be if there is a breach of the OPIC human rights policy. That these are contractual breaches enforced through a breach of contract action is a first step, but immediate engagement to correct the breach and avoid harm (in whatever response can accomplish such a goal), should also be mentioned. We address this in our proposed Section 4(C)(viii). | Section 6 (Conditions and Compliance) of the combined Policy Statement provides greater clarity and detail on OPIC's and Applicants' roles and responsibilities with respect to project performance and remedies. |
| 91 | 4 | General | The approach advocated by AI seems to have been followed by OPIC with regards to the provisions on Labor requirements, which specifically refer to internationally recognised workers' rights (see Paragraph 3.1.). The same level of clarity is not provided for the international human rights protection framework, which the US government is also bound by. | See response to 22 above. In addition, the IFC PSs represent the best and most widely-accepted social standards for private sector development, which combined with the OPIC statutory requirement to consult with the Department of State on a project's human rights-related matters, represents a robust human rights protection framework. |

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| 92 | 4 | General | <p>A reference to IFC Performance Standards is not adequate to ensure that OPIC’s clients respect all human rights. The IFC Performance Standards do not reflect the full range of human rights that companies may impact and some of the guidelines provided fall below international standards.^[1] For example, Performance Standard 3, which deals with pollution and the prevention of pollution, contains no explicit requirement for clients to identify and address the risks or potential impacts that pollution may have in relation to human rights. Similarly, Performance Standard 5, which deals with involuntary resettlement does not stipulate that clients should ensure they do not carry out forced evictions, which have been described by the UN Commission on Human Rights as a “gross violation of human rights, in particular the right to adequate housing”.^[2] Finally, IFC Performance Standard 7 outlines how clients must respect the rights of Indigenous Peoples and requires a process of free, prior and informed consultation. This is a requirement that falls short of international human rights standards, given that the UN Declaration on the rights of Indigenous Peoples speaks of free, prior and informed consent - which is a different concept.</p> | <p>See response to 22 and 91 above. Section 3.11 of the combined Policy Statement addresses impacts of projects on worker and community health and safety. See response to 8 above on BCS and indigenous peoples.</p> |
| 93 | 4 | 4.1 | <p>For the reasons outlined above Amnesty International would like to see a specific reference to international human rights standards, as articulated in internationally agreed instruments, in paragraph 4.1. Paragraph 4.1: OPIC contractually requires all Projects to comply with International Human Rights Standards, IFC Performance Standards, and all applicable laws in the host country, including all human rights laws. The main requirements include:</p> | <p>Addressed. See response to 22 above.</p> |

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| 94 | 4 | 4.1 | Paragraph 4.1. is a critical section in LHRP Statement as it is meant to outline the due diligence requirements that clients ought to put in place in order to be granted and retain OPIC support. According to Professor John Ruggie, the Special Representative of the UN Secretary-General on human rights and transnational corporations and other business entities (Special Representative on Business and Human Rights), corporate human rights due diligence comprises four aspects: 1. a statement of policy articulating the company's commitment to respect human rights; 2. periodic assessment of actual and potential human rights impacts of company activities and relationships; 3. integrating these commitments and assessments into internal control and oversight systems; and 4. tracking and reporting performance. | Noted. |
| 95 | 4 | General | Drawing from this emerging consensus at the international level, Amnesty International believes that the practical steps that OPIC should contractually require <i>its clients</i> to follow as part of <i>their human rights due diligence process</i> are the following: | Addressed. See response to 14 and 15 above. |
| 96 | 4 | General | 1. Human rights policies - Clients seeking OPIC support should be required to have in place a human rights policy in line with international human rights standards, and systems to ensure that corporate operations do not result in harm to or abuse of human rights. Clients should be able to demonstrate that policies are integrated into management systems and are implemented and monitored with adequate resources throughout the company. | Section 2.10 (Screening and Categorization) of the combined Policy Statement addresses the requirement that client develop an overarching policy statement of social objectives and principles that will be used to guide the project. Sections 3.2, 3.7 and 3.8 of the combined Policy Statement address management systems and organizational capacity and competency. |

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| 97 | 4 | General | For projects that pose a risk of significant adverse human rights impacts OPIC should require clients to carry out a full human rights impact assessment before final support is granted. A human rights impact assessment can occur along with environmental impact assessments – as long as it covers the full range of human rights and conforms to the principles outlined above. | Addressed. See response to 65 above. |
| 98 | 4 | General | For projects that pose a risk of adverse human rights impacts, OPIC should require clients to submit an Action plan that sets out how identified risks of adverse human rights impacts will be addressed and managed. Such an Action Plan should be submitted before final support is agreed. Involvement of affected communities in the development of the Action plan will be instrumental in identifying effective avoidance and mitigation measures. | Section 3.15 of the combined Policy Statement addresses requirements associated with Action Plans. |
| 99 | 4 | General | Engagement with affected communities and individuals - All clients receiving OPIC support should present a clear explanation of how affected communities will have access to information and be consulted on decisions and activities that are likely to affect their human rights throughout the project's lifespan. Ideally this information will be captured in the impact assessment phase. For this purpose, OPIC should require the client to have in place a grievance mechanism to allow affected communities to raise issues with the company and ensure they are addressed at an early stage. | Addressed. Section 5 of the combined Policy Statement addresses the Applicants' roles and responsibilities on public disclosure and consultation, particularly with respect to Project Affected People, including the establishment of grievance mechanisms. |

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| 100 | 4 | 4.1 | <p>Amnesty International recommends OPIC to include these provisions in its LHRP Statement, in particular by amending paragraph 4.1. as follows:</p> <ul style="list-style-type: none"> • Identification of human rights risks and impacts that are relevant to the Project and are reasonably expected to be significant; • Establishment of an effective social management system that is appropriate to the size and nature of the Project activity and that is commensurate with the level of its human rights risks and impacts, with a view to avoid adverse human rights impacts; • Ongoing monitoring and public reporting to OPIC of human rights impacts of a project throughout its whole lifespan; • Appropriate consultations with identified Project Affected People (see Glossary). • Establishment of a grievance mechanism to allow affected communities to raise issues with the company and ensure they are addressed at an early stage; • Establishment of a human rights policy that commits the client to respect human rights throughout its operations, and to be fully integrated into management systems and implemented and monitored with adequate resources throughout the company. | Addressed. See response to 86 above. |
| 101 | 4 | 4.2 | <p>Section 4.2 refers to a “consultative human rights impact review” with the US Department of State. It is unclear what this review entails, on the basis of what information is this review carried out, by whom and at what stage of the review process. There also seems to be confusion on the provision outlined in paragraph 4.6. that commits OPIC to conduct its own human rights impact review for each project. While this latter provision is a welcome addition to OPIC’s policies, it remains unclear how such impact assessment will relate to the consultative impact review referred to earlier - both in terms of their scope and timeline within the review process. Amnesty International recommends OPIC to clearly state that it will carry out its own human rights impact assessment in order to identify the level of risk of a project and provide on-going monitoring of high-risk projects throughout the project’s duration.</p> | <p>The combined Policy Statement provides greater detail and clarity on OPIC’s roles and responsibilities, versus clients roles and responsibilities with respect to project review of social issues, and on conditions and compliance, public consultation, and monitoring. With respect to policy implementation, see response to 15 above.</p> |

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| 102 | 4 | 4.2 | Greater clarity is needed in the LHRP Statement also with regards to the requirements placed over clients. For instance, must companies have a human rights policy in place before they apply for OPIC support or funding, or must they develop and adopt such a policy before any contract can be agreed? When should the Action Plan for addressing and mitigating human rights impacts be submitted? When will OPIC review performance and conduct a gap analysis? | Addressed. See responses to 15 and 101 above. |
| 103 | 4 | 4.2 | In order to provide prospective clients with greater clarity, it might be useful for OPIC to include a timeline in its LHRP statement that indicates clearly what specifically is required of prospective clients and of OPIC itself. This should include at what point in time of the review process or lifespan of a project the different steps should be taking place. | Noted and addressed. See response to 15 and 102 above. |
| 104 | 4 | General | The Labor section of the proposed LHRP Statement includes a requirement for OPIC to perform a "gap analysis" on each project to identify those cases where projects may fall below international standards. The same is not provided for in the human rights section of the Statement. Instead, if included, this would provide OPIC with a framework to decide what corrective measures need to be put in place by OPIC and its clients in the case of a project falling below international human rights standards. As a result of this process corrective measures should be spelled out explicitly in OPIC's contractual agreements with its clients. | Noted. See responses to 15 above and 109 below. |
| 105 | 4 | General | In line with OPIC's commitment to respect human rights, the LHRP statement should also make clear that if corrective measures are not implemented or violations of the rights of those affected by the projects cannot be avoided, OPIC should terminate support for such project. | Addressed in Sections 6.6 and 6.7 of the combined Policy Statement. |

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| 106 | 4 | 4.6 | Paragraph 4.6 requires the identification of Project Affected People, including those particularly vulnerable. However there is no reference to Indigenous Peoples, whose rights are often undermined by the operations of corporate actors. Indigenous Peoples must be provided with adequate protection in line with international human rights standards. In this respect OPIC should amend paragraph 4.6. to include a specific reference to the rights of Indigenous Peoples, as well as amending the definition of Project Affected People, as contained in the Glossary to the LHRP Statement. | The combined Policy Statement makes direct references throughout to indigenous peoples, with emphasis on the requirements of IFC PS7. |
| 107 | 4 | 4.1 | Section 4.1 should also reference International Human Rights Law, including the International Bill of Human Rights and other UN Conventions and Declarations. As with the Labor Requirements section, section 4.1 should include a list of the main human rights requirements and refer to those relevant UN Human Rights Conventions and Declarations. | Addressed. See response to 22 above. |
| 108 | 4 | 4.4-4.8 | Regarding sections 4.4 – 4.8, the above comments on the corresponding sections of the Labor Requirements section also apply to the Human Rights Requirements. | Noted. |
| 109 | 4 | | Given that the Labor Requirements section ends with a description of the Gap Analysis and Contractual Conditions, are we to assume that a similar process is not undertaken for Human Rights Requirements? A similar process should be undertaken for Human Rights as well. | Section 6.2 of the combined Policy Statement addresses this process for developing appropriate environmental and social covenants to be included in the OPIC Agreements. |

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| 110 | 3 LHRPS / 5 ESPS | 3.7 LHRPS | With regard to non-“Category A” projects, Section 5 appears to offer little more than a commitment to provide general information about its activities (Section 5.2) or project summaries and monitoring reports (Section 5.3) on its website. The information available on the website with regard to most projects, however, provides workers with little useful information. Further, information is not available in the language of the country in which the project is located, making what information is available of little use to most workers. The burden of providing most project-related information is with the Applicant (Section 5.3). It is unclear from the ESPS what effort OPIC has made or will make to ensure that workers are actually provided relevant information by the Applicant. | OPIC has made significant efforts over the last few years to improve transparency with its stakeholders, particularly through the posting of project summaries on the OPIC website, and OPIC continues to consider transparency while balancing various stakeholder needs. Regarding information disclosure to workers, Section 5 of the combined Policy Statement discusses public consultation and disclosure, and IFC PS2 has requirements on information disclosure to workers. |
| 111 | 3 LHRPS / 5 ESPS | 3.7 LHRPS | Most of Section 5 (15.1-15.14) concerns “Category A” projects, a designation for those projects that could have a significant adverse social or environmental impact. Such a designation requires enhanced consultation, the preparation of impact studies and greater opportunities for public comment. It is unclear from the information available in the ESPS that a project could be designated “Category A” on the basis of “labor risks” alone, such as a high likelihood of trafficked labor. However, it appears from a review of Annex A of the ESPS that the designation of a project as Category A is confined largely to those with a significant adverse impact on the environment or local communities (with the exception of projects that pose “serious occupational or health risks”). To date, we are unaware of any project that was designated “Category A” on the basis of a high risk of labor law violations. As it appears that labor concerns are largely irrelevant to the project’s designation as Category A, we do not here review the adequacy of the procedures established for Category A projects. However, as explained further below, a “high risk” designation should be established, which would require more rigorous pre-approval screening and post-approval monitoring. | Addressed. See responses to 38 and 51 above. |

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| 112 | 3 LHRPS / 5 ESPS | 5.16 ESPS | Section 5.16 requires an Applicant to disclose to workers OPIC’s potential participation in a project. However, missing is a clear requirement to inform workers of the implications of OPIC’s involvement. For example, workers on OPIC-sponsored projects may have greater labor protections by virtue of the “internationally recognized worker rights” enumerated in the OPIC statute and IFC PS-2. Further, workers would have access to a complaint mechanism to raise labor violations to the Office of Accountability. Such information must also be shared with workers on any potential and operational OPIC-sponsored project. | OPIC applies IFC PS2, which outlines disclosure requirements to Workers, and will apply any revision to the disclosure requirements (see Sections 4.13 and 4.14 of the combined Policy Statement). IFC PS2 also requires the establishment of a grievance mechanism to raise workplace concerns. |
| 113 | 3 LHRPS / 5 ESPS | 5.18 ESPS | Section 5.18 refers to projects with the “potential” for “significant adverse impacts.” It is unclear whether this section contemplates projects that may pose risks other than those that may lead to a “Category A” designation. For example, does a high potential for forced labor or trafficking trigger the additional consultations and requirement of community support required under 5.18? | Addressed. See responses to 38 and 51 above. |
| 114 | 3 LHRPS / 6 ESPS | 6.4 ESPS | Section 6.4 should include an obligation to work with those affected by a curable default to devise the remediation plan. | Section 3.9 of the combined Policy Statement and IFC PS1 outline client responsibilities on meaningful consultation with affected persons, including a requirement to establish an appropriate grievance mechanism, the combination of which provides robust opportunities for the clients and affected persons to engage with one another regarding concerns and requests. |

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| 115 | 7 ESPS | 7.3 ESPS | Section 7.3 provides that OPIC or its consultants will conduct periodic site visits to projects to review compliance with, inter alia, labor criteria in OPIC agreements. With the exception of Category A projects, however, Section 7.3 provides no guidance as to how frequently monitoring is to take place, merely that the scope, timing and frequency of the visits is commensurate with the risks. This section needs to include an outer limit for non-Category A projects. Further, projects that have a high likelihood of labor violations but which are not Category A should be monitored with at least the same frequency and depth as a Category A project. If, for example, the project is identified as having a high risk for trafficking given the sector, location and/or country, the project should be monitored early and frequently. This section should be amended to so provide. | Noted. See response to 15 above. Section 7 of the combined Policy Statement clearly states Applicant requirements on monitoring and reporting for Special Consideration projects. |
| 116 | 7 ESPS | 7.4 ESPS | Section 7.4 requires OPIC to review the Applicant's periodic monitoring report. The section is silent, however, on what OPIC will do to verify the content of the reports to ensure their veracity. | See response to 58 above, which applies to any information submitted to OPIC, including monitoring reports. |
| 117 | 7 ESPS | 7.11 ESPS | Section 7.11 provides that the Applicant has an obligation to ensure that OPIC has a right to visit and inspect projects. Fatally, Section 7.11 gives Applicants the right to reasonable prior notice. Without the right of OPIC to perform unannounced visits, credible monitoring with regard to labor rights will be all but impossible. | As noted in the response to 58 above, Applicants are required to certify under penalty of law, that all statements and information provided to OPIC are true and correct. In many cases, unannounced visits are difficult to conduct without violating U.S. government security protocols and compromising OPIC staff safety, and are difficult to conduct as a practical matter. OPIC finds that its site visits, combined with information from outside sources such as US embassies and other third parties, yield accurate information regarding project working conditions. |

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| 118 | 7 ESPS | General | Importantly, what is not found in this document is any description of the methodology used to perform monitoring on worker rights. The ad-hoc monitoring procedures utilized in the recent past include some very troubling practices, including worker interviews (if at all) in the presence of management or on workplace property (rather than confidential, offsite interviews with workers and unions) and extremely slow reaction times to clear evidence of obvious and serious labor violations. In our view, the current methods are wholly inadequate to ensure that worker rights violations are detected and remediated. It is important that OPIC have a written methodology, which is publicly available, that explains how labor monitoring is to take place. | Addressed. See response to 15 above. |