



March 18, 2010

Ms. Mary Boomgard, Office of Investment Policy
Overseas Private Investment Corporation
1100 New York Avenue, N.W.
Washington, DC 20527

Re: Environmental and Social Policy Revision

Dear Ms. Boomgard,

We are writing in regards to the review of the “Environmental Handbook” at the Overseas Private Investment Corporation (OPIC). We appreciate the opportunity to comment on revisions to these environmental and social standards and encourage OPIC to actively seek broad public input on its policy as it sets critical standards around climate change, human rights and biodiversity protection.

We would also like to take this opportunity to applaud OPIC’s groundbreaking climate change policy. In 2009, OPIC became the first U.S. government agency to set a target and timetable for greenhouse gas emissions (GHG) reductions across its portfolio, including a reduction of 30 percent in 10 years and 50 percent in 15 years. Meeting these targets will be a significant step towards curbing the dangerous impacts of unmitigated climate change. Moreover, given the severity of climate change, these percentages should be increased.

In regards to the “Draft Environmental and Social Policy Statement” (Draft Policy), available on OPIC’s website, we have the following comments and recommendations:

- **Human rights:** While we understand that OPIC is currently drafting a human rights policy, these rights should be integrated into OPIC’s environmental and social policy. At a minimum, we recommend that a human rights impact assessment is performed on each OPIC-supported project prior to project approval and that the findings of this assessment are made available to the public.
- **IFC performance standards:** We understand that OPIC intends to link its policy to the environmental and social performance standards at the International Financial Corporation (IFC). However, the IFC is currently updating these standards and we strongly recommend that OPIC wait to link its policy to those at the IFC until the IFC’s review process is complete.

- Cumulative impacts: Like many financial institutions, OPIC's Draft Policy draws a clear boundary around project facilities to determine which impacts must be addressed, and which communities must be consulted. This creates a risk of excluding affected communities, such as those living downstream from a project. OPIC should also take into account the cumulative impacts of its investments.
- Application of standards to financial intermediaries: Section 2.10 of the Draft Policy creates a distinction and contradiction between Category D financial intermediary and sub-projects, and Categories A-C. Recent legislation on OPIC's environmental policy, HR 3288 calls for a policy "that shall be consistently applied to all projects, funds and subprojects supported by the corporation."
- Public disclosure of environmental and social management: Section 3.1 of the Draft Policy identifies processes that are normally included in Environmental and Social Management Systems, including environmental and social action plan, monitoring and reporting performance. However, it is unclear whether or not these documents are publicly disclosed. The public disclosure of the environmental and social action plan, monitoring and reporting should be explicitly required in the Policy.
- Consistent application of international standards: Section 4 of the Draft Policy allows OPIC to select what standards it will apply on an ad hoc basis. As a result, the standards could vary for each separate project. This is very confusing, especially for communities affected by OPIC projects who will not be able to determine if projects are in compliance with OPIC requirements. Furthermore, it may favor one affected community over another. For example, if particular environmental standards apply to one project but not to a similar project, communities affected by the former have more protections than communities affected by the latter.
- Strong community engagement in all projects: The Draft Policy only requires consultation on Category A projects. This is inconsistent with a number of international standards regarding development project finance, including current standards at the IFC. Category B, C and D projects may still cause harm in the project areas and to communities living there. These communities should be consulted about decisions that affect their lives. A problem may also arise if OPIC mis-categorizes a project, and later corrects the categorization, but too late into the project cycle to return to consultations.
- Presumption of disclosure: There should be a "presumption of disclosure," rather than an assumption that all information falls under "confidential business information." This is consistent with the U.S. Freedom of Information Act (FOIA).
- Participation on decision-making: Given that OPIC has a development mandate, public participation upstream in the decision-making process is an imperative. The policy requires community consultations, but the standards are not robust enough to ensure that communities actually have a voice in project decision-making. As a result, project sponsors might claim compliance with consultation requirements through one-way informational briefings after a

project has already begun. In particular, the policy does not ensure that consultations occur before key decisions are made, and does not require the client to demonstrate to communities how it responded to their concerns.

According to the Environmental and Social Policies at the Asian Development Bank, meaningful consultations and participation in decision-making include a process that: “(i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides disclosures of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”

- Free, prior and informed consent: The policy should ensure that projects do not go forward unless affected communities have demonstrated their free, prior and informed consent in a culturally appropriate manner.
- Third party verification: OPIC should not rely so extensively and almost exclusively on information from clients to determine if clients are in compliance with the policy. The client has an inherent conflict of interest in the provision of information to OPIC and this should be recognized. More emphasis should be placed on OPIC’s own site visits and independent due diligence based on information from other than project sponsors prior to project approval and during the monitoring phase.
- Disclosure of third-party audit: Section 5.12 of the Draft Policy states that “The [third party] auditor certification and a publically releasable summary of audit findings are disclosed on the OPIC web site but are not subject to a designated comment period.” OPIC should disclose the audit in its entirety (redacted if necessary as is consistent with FOIA procedures) not just a summary. Development of a summary places an unnecessary burden on OPIC or the third party.
- Reporting on project performance: Section 6.3 of the Draft Policy requires clients to prepare and submit to OPIC an annual environmental and social report summarizing the environmental and social performance of the project over the preceding year to demonstrate compliance with OPIC agreement conditions. However, OPIC's current policy stipulates that project clients that do not comply with this requirement will have to conduct an independent third party audit. A failure to include reference to a third party audit violates HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009."
- Clarification of OPIC’s role: Section 6 discusses compliance, non-compliance, remediation and termination *vis a vis* project clients, but not *vis a vis* OPIC. For example, OPIC commits

to follow the IFC Performance Standards (which apply to clients), but does not have an internal sustainability policy like IFC (which applies to IFC). This weakens OPIC accountability and the ability of the Office of Accountability to review OPIC compliance with its own policies. Policy provisions that spell out OPIC compliance requirements are needed.

- Monitoring: OPIC's current environmental policy states that OPIC "endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project." OPIC's Draft Policy is more vague, stating that "OPIC conducts on-site monitoring of projects for environmental and social performance. Projects selected for monitoring in a given year are prioritized based on environmental and social risk." This creates a contradiction between Section 7 of the Draft Policy and HR 3288 which states that OPIC's revised environmental and social policy shall be "no less rigorous than the environmental and social guidelines that the Corporation has made publicly available as of June 3, 2009." Moreover, OPIC should commit to conducting its own site monitoring of Category A and B projects by staff or independent consultants during the construction phase of projects (when negative environmental and social impacts can be at their highest) and at programmed intervals throughout OPIC's participation in the project.
- Disclosure of monitoring reports: Section 7 of the Draft Policy describes monitoring requirements but should also stipulate that all monitoring documents must be publicly disclosed.
- Robust greenhouse gas accounting: OPIC currently accounts for direct emissions in its active portfolio for those projects that emit more than 100,000 tonnes of CO₂-eq. per year. Best practice is to also account for indirect emissions across the life cycle of projects. The best practice threshold, as determined by the U.S. Environmental Protection Agency, is 25,000 tonnes of CO₂-eq. per year. For more information, please see: <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.
- Loopholes for coal: Section 8.5 of the Draft Policy is intended to ensure that OPIC's clients cannot claim that a project has "negative" emissions. However, the language in this section creates a potential loophole that would allow OPIC to assign some coal and other high greenhouse gas-emitting projects an emissions level of zero. We recommend that this entire paragraph be deleted.
- Incentives for energy efficiency and renewables: The Draft Policy encourages clients to pursue renewable and energy efficiency technologies. OPIC is developing financial incentives for small and medium sized enterprises to integrate these approaches into its projects. This, and more creative engagement and partnerships with other agencies and partners should be encouraged.

Thank you, again, for this opportunity to comment on OPIC's Draft Environmental and Social Policy. We look forward to your response to these comments and recommendations including whether or how they will be incorporated into the next draft of the Policy.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanna Levitt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joanna Levitt, Co-Director
International Accountability Project
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