1. INTRODUCTION

Statement of Purpose and Scope

1.0 This Labor and Human Rights Policy Statement ("Policy Statement") complements the OPIC Environmental and Social Policy Statement ("ESPS"), provides **Applicants** (see Glossary) notice of OPIC's labor and human rights guidelines, which are distinct from those outlined in the ESPS. More specifically, this Policy Statement addresses the requirements that OPIC applies in evaluating prospective **Projects** (see Glossary) seeking OPIC support and monitoring[1] on-going OPIC-supported **Projects**, and addresses OPIC's commitments regarding the labor and human rights dimensions of sustainable development.

1.1 This Policy Statement addresses labor and human rights requirements that apply to all projects supported through OPIC insurance, reinsurance, direct loans, or investment guaranties, including support through **Financial Intermediaries** (See Glossary).

Source of Policy

1.2 This Policy Statement implements applicable labor and human rights requirements and procedures contained in U.S. law.

OPIC Commitment

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) through its labor and human rights review. Specifically, OPIC will ensure through its processes that projects receiving OPIC support:

- Promote respect for worker rights and implement international worker rights standards.[2]
- Establish, maintain, and improve the labor-management relationship.
- Promote compliance with applicable national employment and labor laws.
- Promote due diligence in areas in which labor risks exist.
- Promote respect for human rights.

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[1] See Sections 5, 6, and 7 of the ESPS for OPIC's policies on public consultation and disclosure, conditions and compliance, and monitoring, all of which apply to the labor and human rights aspects of OPIC-supported projects.

[2] These standards are guided by a number of international conventions and instruments, including those of the **International Labour Organization** (see Glossary ("ILO")) and the **United Nations** (see Glossary ("UN")).

2. COUNTRY ELIGIBILITY

U.S. Law Requirements and Waivers

2.0 Section 231A of the **Foreign Assistance Act** (see Glossary ("**FAA"**)) contains the following provision:

"The Corporation (OPIC) may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend **internationally recognized worker rights**,[3] as defined in section 507(4) of the Trade Act of 1974, to workers in that country (including any designated zone in that country)."

2.1 Section 231A contains a waiver provision that permits OPIC to support projects in a country, notwithstanding its failure to meet the statutory standard, if the President of the United States determines that such activities would be in the national economic interests of the United States. Any such determination must be reported in writing to the Congress, together with the reasons for the determination.

Determining Country Eligibility: The USTR Process

2.2 The statute establishing the **Generalized System of Preferences** (see Glossary ("**GSP**")) program provides that the President of the United States shall not designate a country as a **GSP** beneficiary if it "has not or is not taking steps to afford **internationally recognized worker rights** to workers in that country" (See 19 U.S.C. 2462). In addition, the President must consider "whether or not such country has taken or is taking steps to afford . . . **internationally recognized worker rights**" in determining whether to designate a country as a beneficiary. For consistency of worker rights country-level determinations across the U.S. Government, OPIC accepts the determinations made by the President for the purpose of the **GSP** program.

2.3 Through the **Office of the U.S. Trade Representative** (see Glossary ("**USTR**")), the Trade Policy Staff Committee ("TPSC"), chaired by the **USTR** and made up of representatives from the **U.S. Department of State** (see Glossary), **U.S. Department of Labor** (see Glossary), and other U.S. Government agencies, advises the President as to which countries should be designated as **GSP** beneficiaries. Any person may request to have the **GSP** status of any beneficiary country reviewed with respect to any of the eligibility criteria, including the "taking steps" country standard for worker rights.

2.4 If a petition is accepted for review, the TPSC review typically includes examination of the issues raised in the petition and encouragement of the foreign government to implement worker rights reforms. USTR also solicits comments through the **Federal Register** (see Glossary) and holds a public hearing.

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[3] "Internationally recognized workers rights", as specified in the Trade Act of 1974 (as amended), means: (1) the right of association; (2) the right to organize and collective bargaining; (3) prohibition on forced labor and the worst forms of child labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.

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2.5 Upon completion of a country review, a country's eligibility status may remain unchanged, or be withdrawn, suspended, or limited. Based on the country review, should the President determine that a country's **GSP** beneficiary status be withdrawn, suspended, or limited, OPIC implements the determination with respect to its own programs. If a country's **GSP** beneficiary status is withdrawn for failure to meet the statutory worker rights standard, the country becomes ineligible for OPIC programs from the effective date of that country's ineligibility under the **GSP** program. However, if a country becomes ineligible for **GSP** benefits on grounds other than worker rights, that country remains eligible for OPIC programs.

2.6 Modifications to countries' **GSP** eligibility are implemented by **Executive Order** or **Presidential proclamation**, and are published in the **Federal Register**. If a country's **GSP** beneficiary status is withdrawn or suspended for failure to meet the worker rights standard, the country list on OPIC's website is updated to remove the country as of the effective date of the withdrawal or suspension of GSP benefits, and OPIC staff are notified of the change of country status. If the determination is that **GSP** eligibility should be limited, OPIC staff are instructed to follow the same limitations in the conduct of OPIC's programs.

Reviewing Country Eligibility: The OPIC Process

2.7 In making its determinations as to whether non-**GSP**-eligible countries where OPIC programs are being offered are taking steps to afford workers internationally recognized worker rights, OPIC utilizes a similar petition and review process. Petitions can be submitted to OPIC at its annual public hearing conducted pursuant to Section 231A of the **FAA** to reexamine whether the status of any such country should be changed on worker rights grounds. OPIC provides notice of such hearings through the **Federal Register** at least 20 days in advance of such hearings.

2.8 Upon an initial petition review, if OPIC makes the determination that the petition merits a formal review, OPIC will consult with, at a minimum, the **U.S. Department of State, U.S. Department of Labor**, and the **USTR** to carry out such a review. OPIC may use multiple instruments to inform its country practices review, including, but not limited to:

- The **U.S. Department of State's** (see Glossary) **Annual Country Reports on Human Rights Practices** (see Glossary);
- Independent consultants' country practice reviews;
- Information received through OPIC's public hearings; and
- Consultations with labor organizations.

2.9 While the "taking steps" standard is a purposefully flexible standard to reflect the varying levels of economic and social development in developing countries, OPIC uses certain general criteria to assess whether countries meet this standard:

1) Membership in the **International Labour Organization** (ILO);
2) Laws and practices that are consistent with at least one of the five **internationally recognized workers rights** specified in the Trade Act of 1974, as amended; and
3) Progress in the adoption and implementation of such laws and practices.

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Granting Country Eligibility on Worker Rights Grounds

2.10 For non-**GSP**-eligible countries that are deemed particularly sensitive on worker rights grounds, and where OPIC seeks to implement its programs for the first time or to lift suspension of OPIC programs due to foreign policy or other priorities, OPIC will consult with, at a minimum, the **U.S. Department of State, U.S. Department of Labor**, and the **USTR** in making its "taking steps" determination.

Country Status Effect on OPIC-Supported Projects

2.11 If a country becomes ineligible for OPIC support on worker rights grounds, the change of status does not affect projects to which OPIC made a legally binding commitment prior to the date on which the country status changed. All other projects that are either in the application process or have not been formally committed to by OPIC prior to the official ineligibility date will not be eligible for OPIC support during the term of the country's ineligibility.

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3. PROJECT LABOR REQUIREMENTS

Requirements and Standards

3.0 Section 231A of the **FAA** contains the following provision:
"The Corporation (OPIC) shall include the following language, in substantially the following form, in all contracts in which the Corporation (OPIC) enters into with eligible investors to provide financial support under this title:

'The investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours or work, and occupational health and safety, and not to use forced labor. The investor is not responsible under this paragraph for the actions of a foreign government.'"

OPIC includes this language in all **OPIC Agreements**, not just financing agreements.

3.1 OPIC contractually requires all **Projects** (see Glossary) to comply with the **IFC Performance Standards** (see Glossary)**, internationally recognized worker rights,** and all applicable laws in the host country, including all labor laws. The main requirements[4] include:

- Identification of labor risks and impacts of the **Project**;
- 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 labor risks and impacts.
- Implementation of human resources policies and procedures that are appropriate to the Project's size and workforce and that are consistent with the **IFC Performance Standards**, **internationally recognized worker rights**, and national laws;
- Protection of **Workers**' rights of association, organization and collective bargaining, including alternative means to express grievances and to protect rights in the workplace;[5]
- Prohibition on the use of forced labor, including trafficked labor, and child labor;[6]
- Establishment of a minimum age for employment; [7]
- Non-discrimination with respect to employment and occupation;[8]

[4] The detailed requirements of the IFC Performance Standards can be found on the IFC website.
[5] OPIC and IFC Performance Standards are guided by ILO Convention 87 on Freedom of Association and Protection of the Right to Organize and ILO Convention 98 on the Right to Organize and Collective Bargaining.
[6] OPIC and IFC Performance Standards are guided by ILO Conventions 29 and 105 on Forced Labor and ILO Convention 182 on the Worst Forms of Child Labor and the UN Convention on the Rights of the Child, Article 32.1.
[7] OPIC and IFC Performance Standards are guided by ILO Convention 138 on Minimum Age (of Employment) and the UN Convention on the Rights of the Child, Article 32.1.
[8] OPIC and IFC Performance Standards are guided by ILO Convention 100 on Equal Remuneration and ILO Convention 111 on Discrimination in Employment and Occupation.

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- Establishment of reasonable working conditions and terms of employment,[9] and the extension of comparable terms and conditions to migrant **Workers**;
- Establishment of an appropriate retrenchment plan to mitigate the adverse impacts of unavoidable collective dismissals, if alternatives to retrenchment cannot be identified;
- Establishment of an appropriate grievance mechanism if not provided for in the applicable collective bargaining agreement;
- Consideration of adverse impacts associated with the supply chain where there is a high risk of the use of child labor or forced labor.[10]

Screening and Review

3.2 OPIC screens applications to identify, as early as possible, the risk of adverse labor impacts of a proposed project, including impacts that could preclude OPIC support if the **Applicant** cannot implement, or does not demonstrate the capacity to implement, international worker rights standards in a satisfactory manner and cannot be expected to meet international worker rights standards and related requirements over a time frame considered reasonable and feasible.

3.3 OPIC reviews the labor risks and impacts identified by the **Applicant** to determine whether the information is adequate, accurate, objective and appropriate to the size and nature of the project activity. As required, OPIC will seek additional information from the **Applicant** and/or knowledgeable third parties to verify and supplement the information.

3.4 OPIC applies the appropriate level of project review based on OPIC's preliminary assessment of (1) the labor risks and impacts of the project in the absence of any required mitigation, (2) the **Applicant's** commitment and capacity to effectively manage the labor risks and impacts, including the ability to implement any required mitigation and (3) the potential role of third parties in achievement of successful outcomes.

3.5 Projects considered at higher risk from a labor perspective are those that:

- Are in historically challenging locations or sectors; or
- Have existing or historical labor issues; or
- Employ a substantial number[11] of **Workers**; or
- Have a higher likelihood for the use of child and/or forced labor; or
- Do not have established sound labor management systems and practices; or
- Examples include large-scale[12] construction or agriculture **Projects**, which can employ substantial numbers of temporary and/or migrant **Workers.**

[9] Working conditions and terms of employment include wages and benefits, wages deductions, hours of work, overtime arrangements and overtime compensation, breaks, rest days, and leave for illness, maternity, vacation or holiday.

[10] Supply chain issues related to Occupational Health and Safety are addressed under OPIC's Environmental and Social Policy Statement.

[11] Establishment of quantitative screening thresholds that define what is meant by "substantial number" is not feasible since the size of the workforce is a relative measurement based on the project sector, nature of the operations performed, and the project location, for all projects.

3.6 Projects considered at lower risk from a labor perspective are those that:

- Are likely to have a limited or no negative impact on workers' rights; or
- Involve the limited use of hazardous work; or
- Are unlikely to use child and/or forced labor; or
- Are in sectors that historically do not violate workers' rights; or
- Employ sound labor management systems and practices.
- Examples include **Projects** that are relatively small operations and due to the nature of the operating environment and **Project** location, require less sophisticated human resource policies, procedures, and management systems.

3.7 Projects screened as "Category A" based on their environmental and social impacts, including labor rights impacts, are subject to all requirements as outlined in the OPIC ESPS, including project assessment, reporting and disclosure requirements.[13]

The Gap Analysis and Contractual Conditions

3.8 OPIC performs a "gap analysis" for each project to determine areas in which 'applicable laws', as referenced in Paragraph 2.0 above, or the implementation of such laws may not meet **internationally recognized worker rights** standards. Through the gap analysis, OPIC identifies areas of deficiency for which prescriptive and contractually binding worker rights requirements could prevent the project from falling below international standards. Examples of such contract requirements include, but are not limited to, the following language in substantially the following form:

- The investor shall not take any actions to prevent workers from lawfully exercising their right of association and their rights to organize and bargain collectively, including, but not limited to, actions that may result in the termination, suspension, demotion, blacklisting or transfer of workers by the project company, or by an officer, agent or representative thereof.
- The investor shall not subject any person to any discrimination in employment on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.
- The investor shall ensure that workers have the right to remove themselves from hazardous situations without jeopardizing their continued employment.
- The investor shall pay all wages, including all legally-mandated bonus pay and premium pay for overtime work, in full, in legal tender, and in a timely fashion.
- The investor shall not require hourly and/or quota-based wage workers to work more than 48 standard hours of work per week, and all workers shall be guaranteed a weekly 24-hour rest period.

[12] Establishment of quantitative screening thresholds that define what is meant by "large-scale" is not feasible for all projects, but these types of projects are typically determined to be "Category A" projects, as defined by the ESPS.
[13] See the ESPS for the definition of "Category A" and the associated requirements.

3.9 OPIC applies the more stringent standard in instances when applicable laws may be weaker than the international standard that OPIC references.

3.10 OPIC applies worker rights contract language to all **Workers** (see Glossary) of each **Project**.

3.11 OPIC's annual public hearing (See Sec. 2.7, above) affords any person the opportunity to present views as to whether OPIC is carrying out its activities in accordance with its worker rights requirements and other statutory policy requirements, as well as whether OPIC should provide or should have provided support to any **Project.** The same issues may be raised at the public hearing that is held before each OPIC board meeting with respect to any **Project** that is being proposed to the OPIC Board of Directors.

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4. HUMAN RIGHTS REQUIREMENTS

Requirements and Standards

4.0 Pursuant to Section 239 (i) of the **FAA**, OPIC must take into account in the conduct of its programs in a country, in consultation with the **U.S. Department of State**, all available information about observance of and respect for human rights and fundamental freedoms in such country and the effect the operation of such programs will have on human rights and fundamental freedoms in such country.

4.1 OPIC contractually requires all **Projects** to comply with the **IFC Performance Standards** and all applicable laws in the host country, including all human rights laws. The main requirements[14] include:

- 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.
- Appropriate consultations with identified **Project Affected People** (see Glossary).

Screening and Review

4.2 For each **Project**, OPIC relies on the guidance provided by its consultative human rights impact review with the **U.S. Department of State**, the lead U.S. agency on human rights matters and determinations. For consistency across U.S. Government agencies, the **U.S. Department of State** guides OPIC to determine whether a **Project** will receive OPIC support based on the consultative human rights impact review.

4.3 OPIC screens applications to identify, as early as possible, the risk of adverse human rights impacts of a proposed project, including impacts that could preclude OPIC support if an **Applicant** does not demonstrate the capacity and willingness to respect human rights in a satisfactory manner.

4.4 OPIC reviews the human rights risks and impacts identified by the **Applicant** to determine whether the information is adequate, accurate, objective and appropriate to the size and nature of the project activity. As required, OPIC will seek additional information from the **Applicant** and/or knowledgeable third parties to verify and supplement the information.

4.5 OPIC applies the appropriate level of project review based on OPIC's preliminary assessment of (1) the human rights risks and impacts of the project in the absence of any required mitigation, (2) the **Applicant's** commitment and capacity to effectively manage the human rights risks and impacts, including the ability to implement any required mitigation and (3) the potential role of third parties in achievement of successful outcomes.

[14] The detailed requirements of the IFC Performance Standards can be found on the IFC website.

4.6 In addition to reviewing the human rights risks and impacts identified by the **Applicant**, including **Project** consultation with **Project Affected People**, OPIC conducts its own human rights impact review of each project. Such reviews are intended to inform OPIC of the relevant issues and prevent the support of projects that directly cause or contribute to human rights abuses. OPIC reviews the following factors in its human right impact review, all of which guide the scope and level of due diligence devoted to the human rights impact review:

- The nature, scale, operations and location of the **Project;**
- Identified **Project Affected People**, including those who may be particularly vulnerable due to gender, poverty, or location in conflict or conflict-prone zones;
- Relevant historical information related to the **Project**;
- The type and level of host government involvement in the **Project**.

4.7 **Projects** considered at higher risk from a human rights perspective are those that:

- Have high risks inherent in the sector or location;
- Face physical or social challenges while safeguarding project personnel and property in a manner that respects the human rights and security of **Project Affected People**;
- Are historically associated with human rights issues or violations;
- Do not have established sound social management systems and practices;
- Examples include large-scale[15] **Extractive Industries** (see Glossary) **Projects** (e.g., oil and gas, mining), projects in conflict or conflict-prone zones, and projects in locations or social situations that require sophisticated security arrangements or collaboration with public security forces.

4.8 **Projects** considered at lower risk from a human rights perspective are projects that:

- Have low risks inherent in the sector or location,
- Are not historically associated with human rights issues or violations.
- Employ sound social management systems and practices;
- Examples include **Projects** in sectors such as financial services (e.g. mortgage lending), and **Projects** that, due to the nature of the operating environment, require minimal security arrangements, such as the employment of a night watchman, or the use of simple sign-posting or well-placed lighting and fences.

4.9 **Projects** screened as "Category A" based on their environmental and social impacts, including human rights impacts, are subject to all requirements as outlined in the ESPS, including project assessment, reporting, and disclosure requirements. [16]

[15] Establishment of quantitative screening thresholds that define what is meant by "large-scale" is not feasible for all projects, but these types of projects are typically determined to be "Category A" projects, as defined by the ESPS.
[16] See the ESPS for the definition of "Category A" and the associated requirements.

Glossary

Annual Country Reports on Human Rights Practices – Reports that are submitted annually by the U.S. Department of State to the U.S. Congress in compliance with sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (FAA), as amended, and section 504 of the Trade Act of 1974, as amended.

Applicants – Investors, lenders, insurers or project sponsors seeking OPIC support.

Executive Order – An order issued by the President, the head of the executive branch of the federal government.

Extractive Industry – An enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals (except rock used for construction purposes), or coal.

Federal Register – The official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as **Executive Orders** and other presidential documents.

Financial Intermediary –Investment funds, banks or other financial institutions, or other entities or vehicles that receive financing, guaranties or insurance from OPIC and provide debt or equity investment directly to projects or enterprises (**Subprojects**).

Foreign Assistance Act (FAA) – The Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq*.).

Generalized System of Preferences (GSP) – A trade preferences program, overseen by the **USTR,** that provides preferential duty-free entry for products from designated beneficiary countries and territories with the purpose of promoting economic growth in the developing world.

International Labour Organization (ILO) – The tripartite **United Nations** agency that brings together governments, employers and workers of its member states in common action to promote decent work throughout the world.

Office of the U.S. Trade Representative (USTR) – An agency of the U.S. Government that is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries.

OPIC Agreement – An OPIC loan agreement, guaranty agreement, project consent or insurance contract.

Performance Standards – The eight performance standards on social and environmental sustainability issued by the **International Finance Corporation.**

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Presidential Proclamation – An instrument that states a condition, declares a law and requires obedience, recognizes an event or triggers the implementation of a law (by recognizing that the circumstances in law have been realized).

Project – All facilities owned or controlled within a physical project boundary that constitute a commercially viable business unit eligible for OPIC support.

Project Affected People – Individuals, **Workers**, groups or local communities which are or could be affected by the **Project**, directly or indirectly, including through cumulative impacts. Emphasis should be placed on those who are directly and adversely affected, disadvantaged or vulnerable.

Subproject – A project or enterprise that receives financing or investment from an OPIC-supported **Financial Intermediary**.

U.S. Department of Labor – An agency of the U.S. Government that is responsible for administering labor laws on working conditions, unemployment insurance benefits and re-employment services, and tracks national economic measurements.

U.S. Department of State – An agency of the U.S. Government that is responsible for the international relations of the United States.

United Nations (UN) – An international organization made up of member states that are committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights.

Workers – Individuals who are employed directly by the project or under a project contract, and who perform on-site work for a substantial duration of a project or area material to the primary operations of the project. Workers can be temporary or permanent.

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