



**To: Mary Boomgard, Office of Investment Policy,  
U.S. Overseas Private Investment Corporation**  
**Re: Comments on OPIC's Draft Environmental & Social Policy Statement**  
**Date: 23 March 2010**

Dear Ms. Boomgard:

Thank you for providing the opportunity to comment on OPIC's draft environmental and social policy statement. We apologize for submitting comments past the deadline, and hope that you can still consider our recommendations. We appreciate your staff's dedication to strengthening OPIC's environmental and social standards, and also see this process as an important opportunity to demonstrate the value of having strong environmental, social, and human rights standards at a public financial institution.

We recommend that you consider the following modifications to the draft:

### **Section 1: Introduction**

#### **Role of OPIC vs. role of clients**

Most public financial institutions' environmental and social policies include a clear delineation of the responsibilities of the financial institution vs. clients. The IFC, for example, has a Sustainability Policy that governs IFC's role, and Performance Standards that govern clients' role. Your draft mixes together the requirements of OPIC and its clients, which may send unclear signals to clients. We recommend a clearer distinction of OPIC's and clients' roles.

#### **Human rights**

We welcome OPIC's effort to develop a human rights policy, but it is important that you do not consider human rights issues in isolation. This is a particular risk at OPIC, given the three-silo structure (environment, human rights/labor, and economic) of OPIC's investment policy unit. Effective risk management depends on integrating human rights considerations into environmental and social management systems. Some specific steps may include:

- Assessing projects upfront for human rights risks.
- Providing affected people with the opportunity to influence project design.
- Ensuring that the activity does not undermine the ability of the host government (or U.S. government) to meet obligations under international human rights treaties and humanitarian law.
- Ensuring, before the project begins, that a system is in place to respond when allegations of rights violations occur, stop potentially harmful activities quickly, investigate, and compensate for any harm done.
- Monitoring for compliance with human rights requirements.

## **Section 2: Screening and Categorization**

### **Screening**

The success of an environmental and social risk management system also depends on the initial boundaries that you set—determining which impacts to consider, and identifying which stakeholders to engage. By drawing an artificial line around a project’s boundaries, OPIC continues to be exposed to many environmental and social risks.

On the environmental side, we recommend that you incorporate the concept of ecosystem services into your screening and impact assessment process. Ecosystem services allows for a more accurate assessment of how local communities depend on the surrounding environment, and how the project itself depends on the surrounding environment. For more information, please see:

<http://www.wri.org/project/mainstreaming-ecosystem-services>, as well as [http://pdf.wri.org/banking\\_on\\_natures\\_assets.pdf](http://pdf.wri.org/banking_on_natures_assets.pdf).

On the social side, section 2.0 of the draft potentially excludes affected communities downstream from the project. Furthermore, section 2.2 does not take into account the local political context. In many parts of the Amazon, for example, indigenous communities make decisions as part of a larger federation and not as individual communities. By failing to require that clients take into account the broader political context and human rights conditions during screening, there is a risk that clients will inadvertently consult communities in an inappropriate manner, “divide and conquer” communities, or exclude key stakeholders.

### **Sources of information for OPIC’s decision**

This section does not describe how OPIC staff will make the screening and categorization determinations. What information will OPIC use? If OPIC relies only on information that the client provides, clients face a potential conflict of interest. Instead, OPIC should regularly draw upon independent or third party sources of information.

## **Section 3: Environmental and Social Review**

### **Human rights impact assessment**

It is important that clients also assess potential human rights impacts upfront, rather than after human rights violations have occurred. Some major projects may require a separate “human rights impact assessment.” But OPIC should require all projects to incorporate human rights elements into its basic requirements for the impact assessment/review. Some of the human rights-related elements that project proponents typically fail to assess include:

- Host government’s human rights commitments under international and national law.
- Potential discrimination against or disproportionate impacts on minorities and marginalized groups.
- Whether conditions are in place for meaningful consultations, such as access to information, inclusiveness of minority groups, and freedom of communities to express opinions without retaliation.

- Availability of conflict resolution mechanisms for affected communities to seek redress.
- Legacies of past development projects and unsettled human rights claims that could affect the proposed investment.

### **Cumulative impacts**

A common problem with environmental/social impact assessments is the failure to assess the cumulative impacts of project. If OPIC finances only one facility in a larger project, for example, ESAs should consider the impacts of the overall project and not just the individual piece. The facility could exacerbate the impacts of other parts of the project—such as impacts of migrant workers, road traffic, or water usage levels. OPIC should ensure that clients assess cumulative impacts.

## **Section 4: Environmental and Social Standards**

### **Ineffective reference to external standards**

While we appreciate the need for professional discretion at OPIC, this section potentially undermines the entire policy statement. Under the draft policy statement, OPIC's use of standards would be neither predictable nor transparent. Communities need to know what standards OPIC has applied to a particular project, in order to hold the project proponents accountable for their environmental and social performance. Furthermore, the vagueness of this section could make it difficult for OPIC's Accountability Office to assess compliance.

### **Link to the IFC Performance Standards**

OPIC's draft claims to use the IFC Performance Standards as a "benchmark." Does this mean that the Performance Standards are binding on clients, or merely guidance? It is unclear when or how OPIC applies the Performance Standards.

Appendix C is particularly problematic—by providing a summary of the Performance Standards, there is a risk that clients will comply with a watered-down version rather than the comprehensive set of standards. As with many environmental and social protections, the value of the Performance Standards lies in the details that they provide. As the example of community engagement describes below, broad principles are often ineffective. We encourage you to remove Appendix C from the draft.

Furthermore, although the IFC Performance Standards have been widely adopted, they are not considered "best practice" in many respects. Many companies, including ones based in the United States, have gone far beyond the IFC in terms of environmental and social performance. How does OPIC justify committing to the new version of the Performance Standards before they are finalized in Fall 2010? There may be several discrepancies between the Performance Standards and U.S. policies. For example, because approval of the Performance Standards requires a consensus of IFC's Board of Directors—composed of member governments—IFC standards on climate change may fall below U.S. standards.

## **Section 5: Public Consultation and Disclosure**

### **Community engagement**

OPIC's proposed community engagement requirements do not provide effective risk management tools. Effective community engagement should ensure that communities have access to information prior to consultations, and should participate in decision-making on key elements of project design, e.g. location of facilities, environmental and social risk management steps, and determination of community benefits. As currently designed, clients could comply with OPIC's community engagement requirements by arriving in a community the day before construction begins, briefing the community on what has already been decided, informing them of a pre-determined compensation amount, and taking a few questions. This is a recipe for conflict.

Furthermore, the links to additional resources in the text do not substitute for strong policy language. We recommend that you consider the recommendations put forth in WRI's 2009 report, *Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects*: [http://pdf.wri.org/breaking\\_ground\\_engaging\\_communities.pdf](http://pdf.wri.org/breaking_ground_engaging_communities.pdf).

### **Free, prior and informed consent**

OPIC should not invest directly or indirectly in any projects where indigenous communities have not provided their free, prior and informed consent (FPIC). IFC has a version of FPIC in its Sustainability Policy, called "broad community support," but the current version has many concerns. IFC is expected to strengthen this requirement during current review. See attached civil society comments to IFC on the Performance Standards, and WRI comments to IFC for more details.

## **Section 6: Conditions and Compliance**

### **Conflicts of interest in relying on client information**

Our experiences with the World Bank, IFC, and other public financial institutions have demonstrated that an over-reliance on client information leads to ineffective implementation. Rather, for all projects OPIC should also commit to using third party monitoring of information, as well as third party sources of information. This is particularly important when verifying the quality of community engagement and FPIC/broad community support processes.

### **Disclosure of OPIC involvement**

In its financing covenants, OPIC should require clients to disclose to affected communities that: (1) they have received financing from OPIC; and (2) OPIC has an Accountability Office that accepts grievances.

## **Section 7: Monitoring**

### **Community trust in information provided to them**

According to this section, OPIC commits to monitor implementation of projects for its own purposes. But monitoring should also be used to assure communities that promises made to them are kept. In

particular, communities should have opportunities to participate in monitoring of the environmental and social action plan, or should have the opportunity to identify a trusted source who can participate in the monitoring on their behalf.

## **Section 8: Climate Change and Renewable Energy**

### **Unclear language**

After speaking with you, we now understand the purpose of Section 8.5. However, we strongly recommend that you reword this provision. As currently worded, it creates potential loopholes for coal and other emissions intensive technology to be given an emission level of zero.

### **Greenhouse gas accounting**

We recommend that OPIC's greenhouse gas accounting methodology meet best practices, as identified by WRI's Greenhouse Gas Protocol. In particular, the U.S. Environmental Protection Agency has recommended that the baseline for accounting should be 25,000 tonnes of CO<sub>2</sub> eq/year. While we take the point that only a small number of investments in OPIC's portfolio meet this range, we recommend that you adopt the U.S. government position for the sake of consistency.

Furthermore, we recommend that you extend "direct emissions" to include life cycle analysis on projects (including Scope 3 emissions).

### **Large hydropower**

Studies are emerging that suggest that methane emissions from large hydropower are sources of high levels of GHG emissions. Regardless of the climate impacts, however, large hydropower has a history of profoundly harmful environmental and social risks—such as the impacts of involuntary displacement. We encourage OPIC to exclude large hydropower from consideration for financing.

### **Preferential incentives for renewable energy and energy efficiency**

We commend OPIC for your efforts to develop preferential incentives, in order to encourage small and medium sized enterprises to adopt cleaner technologies. As you have not developed these incentives yet, we understand why the language in the policy statement is weak (clients "are encouraged" and "should explore opportunities"). However, as this policy statement will likely be in effect for several years, we recommend that you strengthen the language to the degree possible, to signal that you intend to provide preferential incentives.

### **Contact information**

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