

March 14, 2019

The Honorable Jim Risch  
Chairman  
Committee on Foreign Relations  
423 Dirksen Senate Office Building  
Washington, DC 20510-6225

The Honorable Bob Menendez  
Ranking Member  
Committee on Foreign Relations  
423 Dirksen Senate Office Building  
Washington, DC 20510-6225

Dear Chairman Risch and Ranking Member Menendez:

We, the undersigned 33 organizations, are writing to request that the Senate Foreign Relations Committee hold a hearing in the next two months on the impending commencement of the U.S. International Development Finance Corporation (USDFC), the new development finance institution created by the Better Utilization of Investments Leading to Development (BUILD) Act.<sup>1</sup> As civil society, labor, development, and environmental organizations that advocate for accountability in development finance, we have a deep interest in ensuring that the USDFC is built on a strong foundation and operates according to international best practice.

The USDFC will subsume the Overseas Private Investment Corporation (OPIC) as well as the United States Agency for International Development's (USAID) Development Credit Authority. The USDFC will have more tools than OPIC, including the ability to make equity investments.<sup>2</sup> Additionally, the USDFC will have an investment cap of \$60 billion, more than double OPIC's investment cap. Proponents of the USDFC highlight the agency's potential to facilitate sustainable development and create jobs in the world's least developed countries as well as support U.S. foreign policy goals.<sup>3</sup>

Development finance, when operating properly and according to high standards, can greatly benefit communities around the world, reducing poverty and improving governance. This is particularly true when communities have a say in the development that affects them, including through meaningful and continuous consultation. However, when not designed and implemented properly, development finance can have the opposite effect and can exacerbate poverty and conflict as well as harm the environment and public health.<sup>4</sup>

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<sup>1</sup> The BUILD Act was passed as a part of the FAA Reauthorization Act. FAA Reauthorization Act of 2018, Pub. L. No. 115-254, §§1401-1470, <https://www.congress.gov/115/bills/hr302/BILLS-115hr302enr.pdf>.

<sup>2</sup> *FAQs on BUILD Act Implementation*, OPIC, <https://www.opic.gov/build-act/faqs-build-act-implementation> (last visited Feb. 12, 2019).

<sup>3</sup> OPIC, 2018 ANNUAL REPORT 4 (2019), <https://www.opic.gov/sites/default/files/files/OPIC-AnnualReport2018.pdf>.

<sup>4</sup> GLASS HALF FULL? THE STATE OF ACCOUNTABILITY IN DEVELOPMENT FINANCE 11, 29 (Caitlin Daniel, Kristen Genovese, Mariette van Huijstee, & Sarah Singh eds. 2016), <https://www.somo.nl/glass-half-full-2>.

OPIC and other governmental stakeholders to the USDFC are currently planning the transition to the new agency and, per the BUILD Act's requirements, have recently submitted a reorganization plan to the Senate Foreign Relations Committee and other oversight committees. As the transition to the USDFC continues, with an anticipated opening date of October 1, 2019, it is crucial that the USDFC implements environmental, social, human rights, labor, stakeholder engagement, and accountability policies and practices according to best practice. Sustainable development is impossible without robust policies and practices in place, and Congressional oversight is important to ensure that the transition to the USDFC prioritizes implementation in this manner.

Robust environmental and social practices, including the assessment and monitoring of environmental, social, human rights, and labor risks, are important for properly identifying projects that could result in potential negative impacts to communities affected by the USDFC's activities. The BUILD Act mandates that the USDFC maintain OPIC's existing policies, which include its Environmental and Social Policy Statement (ESPS) and the use of the International Finance Corporation's Performance Standards. Key questions remain as to how the agency will apply these existing policies to the new financial tools at the USDFC. Additionally, although the 2017 ESPS includes significant improvements over its previous version, more information is required to know how the USDFC plans to address ongoing gaps in the ESPS and current OPIC practice.<sup>5</sup> A February 1, 2019 USAID Office of Inspector General report highlighted shortcomings with OPIC's approach to monitoring and mitigating environmental and social impacts, and issued several recommendations to improve OPIC's current practice and inform the practice of the future USDFC.<sup>6</sup> Fully addressing these gaps will help bolster the sustainability of projects and protect vulnerable communities from negative impacts.

Even with the best risk management and monitoring, negative impacts to project-affected people can happen. A robust independent accountability mechanism (IAM) provides an important forum for impacted communities and individuals to raise grievances and receive redress, restoring the livelihoods of vulnerable populations and providing the institution with useful lessons learned for better projects in the future.<sup>7</sup> The BUILD Act includes a positive provision for an IAM for the USDFC. The USDFC should hold a public consultation process for the

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<sup>5</sup> *Strengthening OPIC's Environmental and Social Policy Statement*, ACCOUNTABILITY COUNSEL, (2017)

<https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/2.27.17-OPIC-ESPS-Impact-Summary.pdf>.

<sup>6</sup> USAID OFFICE OF INSPECTOR GENERAL, OPIC INVESTMENTS INCREASED CHILE'S ENERGY CAPACITY, BUT WEAK PROCESSES AND INTERNAL CONTROLS DIMINISH OPIC'S ABILITY TO GAUGE PROJECT EFFECTS AND RISKS 17, 23-25, 28 (Report No. 9-OPC-19-002-P, Feb. 1, 2019), <https://oig.usaid.gov/index.php/node/1892>. The 2019 OIG report is the latest in several recent reports that highlight gaps in OPIC's practices. Building on the findings and recommendations in a 2015 U.S. Government Accountability Office report, OPIC's Office of Accountability recently highlighted several areas where OPIC's monitoring, including site visits, should be strengthened. OFFICE OF ACCOUNTABILITY, ASSESSMENT OF OPIC'S ENVIRONMENTAL AND SOCIAL (E&S) MONITORING OF PROJECTS (Feb. 7, 2018), [https://www.opic.gov/sites/default/files/files/OA\\_Assessment\\_OPIC\\_ES%20Monitoring-Final-02072018.pdf](https://www.opic.gov/sites/default/files/files/OA_Assessment_OPIC_ES%20Monitoring-Final-02072018.pdf). See also U.S. GOVERNMENT ACCOUNTABILITY OFFICE, OVERSEAS PRIVATE INVESTMENT CORPORATION, ADDITIONAL ACTIONS COULD IMPROVE MONITORING PROCESSES (GAO-16-64, December 2015), <http://www.gao.gov/assets/680/674142.pdf>; USAID OFFICE OF INSPECTOR GENERAL, ASSESSMENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION'S DEVELOPMENT OUTCOME AND COMPLIANCE RISKS (Report No. 8-OPC-15-002-S, May 15, 2015), <https://oig.usaid.gov/sites/default/files/2018-06/8-opc-15-002-s.pdf>.

<sup>7</sup> See GLASS HALF FULL, *supra* note 4, at 113-119.

establishment of the IAM, so that the IAM builds on the policy and experience of OPIC's IAM, the Office of Accountability, as well as best practice at other IAMs, and effectively handles complaints.

Several other key issues remain unclear, and a Congressional hearing can help ensure that these questions are addressed in a transparent and participative manner. The hearing should include testimony from OPIC and USAID officials as well as experts in international development, the environment, and human rights. Importantly, the hearing should be a part of a larger public consultation process on the transition.

Given the USDFC's goals and potential impact on some of the world's poorest communities, a Congressional hearing is an important part of the transition process. We thank you for your consideration of this request and look forward to ongoing engagement on this matter.

Sincerely,

Accountability Counsel – United States  
Action Paysanne Contre la Faim – Democratic Republic of the Congo  
AFL-CIO – United States  
Africa Centre for Policy Facilitation – Africa (Regional)  
Africa Development Interchange Network (ADIN) – Cameroon  
African Law Foundation (AFRILAW) – Nigeria  
Ambiente y Sociedad – Colombia  
Bank Information Center – United States  
Buliisa Initiative for Rural Development Organisation (BIRUDO) – Uganda  
Center for Biological Diversity – United States  
Center for International Environmental Law (CIEL) – United States  
Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie (COCODHD) – Cameroon  
Columban Center for Advocacy and Outreach – United States  
Congregation of Our Lady of the Good Shepherd, U.S. Provinces – United States  
Conseil Regional des ONG de Développement – Democratic Republic of the Congo  
Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO) – Democratic Republic of the Congo  
Crude Accountability – United States  
Fondation pour le Développement au Sahel (FDS) – Mali  
Friends of the Earth U.S. – United States  
Green Advocates International – Liberia  
Greenpeace – United States  
Inclusive Development International – United States  
International Accountability Project – United States  
International Labor Rights Forum (ILRF) – United States  
International Rivers – Brazil  
IRPAD/Afrique – Mali  
LOEILDAFRIQUE – Togo  
Maryknoll Office for Global Concerns – United States

MiningWatch Canada – Canada  
The Oakland Institute – United States  
Peace Point Action – Nigeria  
Responsible Sourcing Network – United States  
SUHODE Foundation – Tanzania