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By email: odp@dfc.gov

Dear Ms Boggs Davidsen,

We write to thank you for the opportunity to participate in the recent consultation session that the U.S. International Development Finance Corporation (DFC) hosted regarding the upcoming revision to its Environmental and Social Policy and Procedures (ESPP).

We welcome this initiative to update the ESPP. We know how critical it is for all agencies of the United States government engaged in multilateral and bilateral public finance to adopt and implement consistent policies on environmental and social risk management, transparency, and accountability. And this is why the policies and practices of bilateral financing institutions like DFC should be consistent with, and not undermine, the positions taken by the United States at multilateral institutions like the Multilateral Development Banks (MDBs). We also recognize how important it is that the safeguarding policies across these institutions reflect the highest international standards, including the UN Guiding Principles on Business and Human Rights (UNGPs).

The purpose of this letter is to outline six areas of policy and practice that should be addressed in the revised ESPP. These priorities are based on key gaps in the current ESPP that are inconsistent with positions taken by US Treasury at the MDBs, or that fall short of higher standards adopted by the MDBs.

SUMMARY

In short, we recommend DFC use this opportunity to, at minimum:

1. Align Chapters 3 and 4 of the ESPP with emerging norms around human rights and environmental due diligence.
2. Adopt a strong, public position on reprisals against civil society.
3. Adopt disclosure requirements for Financial Intermediary investments.
4. Require projects impacting the rights of customary land rights holders to apply the standard of free, prior, and informed consent (FPIC).
5. Strengthen the effectiveness of DFC's public consultation and accountability systems in Chapter 5.
6. End DFC support for all fossil fuel projects, including natural gas.

We expand on these recommendations below.

DETAILED RECOMMENDATIONS

1. **Align Chapters 3 and 4 of the ESPP with emerging norms around human rights and environmental due diligence**

Voluntary approaches to human rights and environmental due diligence have proven limited in their effectiveness, and despite some good practices by a few leading companies, human rights due diligence remains anemic, where implemented at all. The absence of clear alignment between the requirements for MDB lending and these emerging norms around responsible business conduct creates major risks that DFC investments will fail to adequately mitigate key environmental and social risks, thereby falling short on their stated development objectives. As DFC ramps up its investments in clean energy infrastructures, the need for alignment is urgently needed. To achieve this, DFC should:

- Prioritize finding and funding solutions to minimize the need to mine transition minerals, including recycling, reuse, and second life applications.
- Require applicants of high-risk projects[1], and any projects involving the extraction of minerals including those used in renewable energy infrastructures, to conduct intersectional[2] human rights impact assessments as part of their environmental and social impact assessments (ESIAs), integrate these findings into their Environmental and Social Management system (ESMSs), and to disclose these assessments publicly.
- Require applicants to disclose contract and revenue payments for all extractives projects, as well as beneficial ownership information, in line with global standards like the Extractive Industries Transparency Initiative (EITI). IFC's Policy on Environmental and Social Sustainability already requires the disclosure of project level payments and contracts from extractive industry clients, given the recognized public interest in doing so. Currently, DFC applies the Performance Standards of the International Finance Corporation (IFC), which are obligations for the borrower, but it has not adopted key requirements included in the sustainability policy, which include IFC's extractives transparency commitments on revenue and contract disclosure.
- Require applicants to disclose evidence of their human rights and anti-corruption due diligence efforts.
- Require applicants to provide evidence of a project-level grievance mechanism that is accessible, predictable, equitable, transparent, rights compatible, and that is developed based on engagement and dialogue with rights-holders.
- Amend Appendix B by adding a categorical prohibition on "Extraction or infrastructure in or impacting the Arctic Ocean."

2. Adopt a strong, public position on reprisals against civil society

Civic space is severely restricted around the world, making it difficult or even impossible for citizens to engage in decisions around development projects that impact their lives. Community leaders that do speak out and voice concerns can face serious forms of reprisals from harassment and threats, to physical harm and even death.

In 2018, the International Finance Corporation (IFC) developed a position statement that reiterated the importance for all stakeholders to be able to engage freely with IFC and its clients, including those civil society organizations and project-affected peoples who voice opposition and seek to raise concerns. IFC adopted a position of zero tolerance to any action by an IFC client that amounted to retaliation against any stakeholder. The World Bank public sector side followed IFC in 2020, as did the Inter-American Development Bank.

In 2021, the US State Department adopted guidance that reiterated the United States' commitment to the UN Declaration on Human Rights Defenders and to strengthening the safeguards of the MDBs to tackle the systemic risks facing HRDs. DFC needs to follow IFC's lead and:

- Adopt a public commitment on retaliation against civil society and project stakeholders and protocols that clearly outline how DFC will implement this commitment, including what they will do when retaliation is reported. In July 2021, the Appropriations Committee, in its report for the

[1] By high risk, we refer to Category A or Special Consideration projects, as well as any relevant Category D where that intermediary financing goes to Category A or Special Consideration projects.
[2] This additional guidance is required because the level of attention given to gender and the analysis of gender impacts within standards like the IFC Performance Standards is low.

State, Foreign Operations, and Related Programs Appropriations Bill, directed DFC to develop such a policy.[3]

- Require applicants seeking DFC support to demonstrate their commitment to adapt project design and implementation to prevent and mitigate risks of reprisals.

3. Adopt disclosure requirements for Financial Intermediary investments

The DFC, like the IFC, now funnels a significant portion of its lending through financial intermediaries (FI). In 2020, over half of DFC's approved projects were FI investments. Yet the DFC does not currently disclose basic information about the high-risk subprojects of these operations in searchable form. This type of information is critical for communities that might be impacted by projects, and needs to be disclosed in a way that is easily accessible so that they know who is financing the projects.

In 2020, the US government negotiated several reforms that were adopted by the IFC, including disclosure practices for its FI lending. This effort to enhance transparency at the IFC was the result of years of advocacy by civil society and the IFC's own Compliance Advisor Ombudsman (CAO) that had raised serious concerns with the IFC's FI portfolio. Specifically, the IFC committed to requiring its FI clients with high-risk subprojects "to annually report the name, location by city, and sector" for those subprojects. In addition, that information is to be disclosed publicly on IFC's website "in searchable form".

This type of disclosure is possible, and the information is actually already available—but only to those with the ability to pay for it. Communities have a right to this information, and development institutions like the DFC have an obligation to make it publicly available and accessible to them. The DFC should recognize that the lack of transparency around its own FI portfolio can also lead to weak enforcement of environmental and social standards, and significant impacts on people and the environment. Given the US government's role in enhancing transparency at the IFC on its FI portfolio, it is critical that US government agencies like the DFC embrace a leadership role on this issue and:

- Adopt equivalent FI public disclosure practices as IFC, at minimum.
- Ensure that the ESMSs of high-risk subprojects supported by DFC's FI clients are disclosed publicly, as is already required by 3.9.
- Publish on its website a list of all subprojects funded by DFC's FI clients.

4. Require projects impacting the rights of customary land rights holders to apply the standard of free, prior, and informed consent (FPIC)

For Indigenous peoples, the power to give or withhold consent to extractive industries or other large-scale infrastructure projects is a right protected by international law, a crucial safeguard for the protection and realization of their rights to self-determination. Increasingly, FPIC is being interpreted as a best practice standard for affected local communities who do not fit the international law definition of rights-holding Indigenous entities.

In the most recent version of its social and environmental safeguards, the World Bank attempted to address this issue by expanding its ESS7 Indigenous Peoples standard to apply both to Indigenous peoples and to "Sub-Saharan African Historically Underserved Traditional Local Communities." Regional institutions like the African Commission on Human and Peoples Rights and Pan African Parliament have already called on States to respect the FPIC of local communities that face potential impacts from natural resource projects, whether these communities include Indigenous Peoples or not.[4]

[3] H. Rept. 117-84 - STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS BILL, 2022, H.Rept.117-84, 117th Cong. (2022), https://www.congress.gov/congressional-report/117th-congress/house-report/84/1, p.81.
[4] See Legal Resources Centre, "Free, Prior and Informed Consent in the Extractive Industries in Southern Africa: An Analysis of Legislation and Their Implementation in Malawi, Mozambique, South Africa, Zambia and Zimbabwe"

In the revised ESPP the DFC should expand the standard of FPIC as a best practice for sustainable development and:

- Clearly state that it requires applicants for financial support to commit to respect and uphold Indigenous Peoples' right to FPIC as well as the individual and collective rights of customary land rights holders.
- Amend Chapter 5.16 and require applicants whose projects involve impacts on Indigenous peoples or *customary land rights holders* to demonstrate compliance with the additional disclosure requirements in IFC PS 7.
- Require applicants to publicly disclose information on how communities were consulted around projects and the results of these consultations (both when FPIC is triggered and for other consultations).
- Allow for the "no project" or "no" scenario, so that a decision to give or withhold consent can be one that is freely given, serving as an actual process for communities to consent, consent conditionally, oppose, or oppose conditionally at any stage, rather than just a consultation that can be ignored.

5. Strengthen the effectiveness of DFCs public consultation and accountability systems in Chapter 5

The US government has long championed the adoption of strong environmental and social risk management systems and independent accountability mechanisms (IAMs) at the multilateral development banks that hold both the public and private sector arms of the institutions accountable and provide recourse for affected communities. It is critical that the DFC's own system—including its IAM, the Office of Accountability (OA)—reflect the highest international standards for accountability systems and that it adopts a leadership role among its peer institutions. The DFC's predecessor, OPIC, contributed to remedial action in the past but only on an ad hoc basis and DFC does not currently have a clear policy for contributing to remedy when its projects cause harm. In the ESPP revision, DFC should:

- Adopt a clear policy and framework for remedial action that is predictable, systematic, and accessible.
- Establish a clear policy for responsible exit that is closely tied to the strong remedy framework. The OA found that DFC's predecessor, OPIC, focused on financial risks rather than development risks and impacts upon exiting a high profile investment in Liberia, and still does not have a clear policy on ensuring harms are remedied prior to closing or exiting a project.
- Strengthen the independence of the OA, including through allowing it to develop its own budget, hire its own staff, and incorporating pre- and post-employment bans and cooling off periods for principals and staff from working at the DFC. These critical elements of independence are incorporated into the mandates of other IAMs, and accepted as good practice.

6. End DFC support for all fossil fuel projects

Immediate and deep cuts in global greenhouse gas (GHG) emissions before 2025 is needed if global heating is to be kept under 1.5 degrees Celsius. At COP26, the US pledged to end public financing for coal, oil and gas. Since then, the US Treasury Secretary has called for MDBs to fundamentally reshape their lending practices and use their financial instruments to incentivize renewable energies. Considering this, DFC should:

- Amend Chapter 8 and expressly limit its financial support, directly or through financial intermediaries, to projects with clear emissions reductions and climate adaptation and resilience

(Oxfam, Washington, D.C., 2018), https://www.oxfamamerica.org/explore/research-publications/free-prior-and-informed-consent-in-the-extractive-industries-in-southern-africa

objectives[5] and end all support for all fossil fuel projects. US taxpayer dollars should only be used to boost lending for renewable energy projects, and not prop up fossil fuel projects we know our planet can no longer support.
- Update its GHG Cap and commit to reduce GHGs associated with projects and subprojects within the DFC's portfolio by, relative to October 1, 2020—(i) not less than 60 percent by 2025; and (ii) 100 percent by 2028. DFC should ensure all projects, current and closed, are counted towards this cap.
- Require all applicants for financial support to disclose its scope 1, 2 and 3 GHG emissions and for DFC to publish these on its website.
- Use 20 year (not 100 year) global warming potential for methane when calculating overall project emissions.[6]
- Require all applicants for financial support to disclose their climate-related financial risks in accordance with Task Force on Climate-related Financial Disclosures (TCFD).

Thank you for taking these six issues into account as you revise the ESPP. We look forward to maintaining an open dialogue with you and your team on the revision process, and to receiving your response to this letter. Please do not hesitate to contact Scott A. Sellwood (scott.sellwood@oxfam.org) for any questions or clarifications about anything in this letter.

Sincerely,

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[5] For example, these would include key sectors listed on pages 14 and 15 of DFCs Climate Action Plan (September 2021), developed in response to Executive Order 14008. https://www.sustainability.gov/pdfs/dfc-2021-cap.pdf
[6] Global warming potential for methane (20-year) should be 87, reflecting methane's stronger impact in the short-term due to its atmospheric lifespan of about 12 years. IPCC Sixth Assessment Report Climate Change 2021: The Physical Science Basis, https://www.ipcc.ch/report/ar6/wg1/