

November 18, 2020

Mr. Andrew M. Herscowitz
Chief Development Officer
U.S. International Development Finance Corporation
1100 New York Avenue NW
Washington D.C. 20527

via electronic mail

CC: Mr. Adam Boehler, Chief Executive Officer

Ms. Claire Avett, Vice President, Office of Development Policy

**Objections and Comments on Draft Transparency Policy and
DFC Board of Directors Public Engagement Policy**

Dear Mr. Herscowitz,

We are writing to express our profound disappointment with the process and substance of the draft *Transparency Policy* and *Board of Directors Public Engagement Policy* opened for public comment by the United States International Development Finance Corporation (DFC).

As organizations that support communities around the world to participate in and shape the development decisions that impact them, we know firsthand that meaningful access to information and stakeholder engagement are vital to ensuring rights-respecting and truly sustainable development. We have also witnessed the devastating impacts that can occur when the fundamental building blocks for transparency and accountability are absent. The United States has historically been a leader in advocating for the highest environmental and social governance standards in development finance; the proposed draft policies and public consultation are a sharp departure from prior U.S. practice as they fail to meet the minimums expected from a development finance institution operating with public resources.

We remind DFC that its enacting legislation, the BUILD Act, stipulates that DFC “...*us[e] best practices with respect to transparency and environmental and social safeguards.*”¹ We therefore ask DFC to extend the comment period by an additional 45 days, broadcast the comment period more widely, and incorporate our substantive recommendations that set out the minimum well-established access to information and disclosure practices adopted by other development institutions.

¹ BUILD Act, SEC.1411 (6)

The Comment Period Needs to Be Extended and More Widely Announced.

The process for the so-called “consultations” is inappropriate. The first issue is that the 14-day comment period is too short to be meaningful and is out of step with prior good practice. The only reasonable interpretation for why the comment period is so short is that DFC does not in fact want the public to comment. This is ironic given that one of the policies is about public engagement. Further, DFC and its predecessor have instituted longer comment periods in the past. For example, for the Overseas Private Investment Corporation’s (OPIC) 2016 consultations on the draft Environmental and Social Policy Statement, OPIC allowed 60 days for public comment.² Recently, DFC gave the public 30 days to comment on its proposed changes to the nuclear provisions in the Environmental and Social Policy and Procedures³ and on the Impact Quotient.⁴

The second issue is that the opportunity to comment is not widely known. To our knowledge, there has not been a public email or announcement about the consultation, and if there was, we did not receive it. Moreover, the consultation process was launched on November 4, 2020 - the day after an important and contentious election that occupied both national and international attention. It is again ironic and unfortunate that the transparency and public engagement policies would be developed with limited transparency and public engagement. Given their importance, these policies deserve input from those most affected by them.

The Substance of the Policies Require Critical Amendments.

Beyond the serious shortcomings in process, the substance of the draft policies do not remotely meet well-known good practice and minimum standards. Both policies should be completely re-written. The most egregious shortcomings of both policies include: (1) codifying grossly inadequate disclosure periods; (2) omitting guidance on the substance of disclosures; and (3) failing to set out a process for public comments. We submit the below substantive recommendations but note that had we more time and notice, we would have considered providing more.

Transparency and Access to Information

To begin, it is inappropriate for an institution such as DFC to adopt a *Transparency Policy* instead of an *Access to Information Policy*, as is best practice across peer development banks.

² OPIC, “Revised Policy for Public Comment” (Sep. 2016), <https://www.accountabilitycounsel.org/wp-content/uploads/2020/01/revised-policy-for-public-comment--opic--overseas-private-investment-corporation.pdf>.

³ DFC, “DFC Begins Public Comment Period on Proposed Change to Nuclear Energy Policy” (June 10, 2010), <https://www.dfc.gov/media/press-releases/dfc-begins-public-comment-period-proposed-change-nuclear-energy-policy>.

⁴ DFC, “DFC Announces New “IQ” Development Impact Measurement Tool” (July 25, 2020), <https://www.dfc.gov/media/press-releases/dfc-announces-new-iq-development-impact-measurement-tool>.

Unlike a *Transparency Policy* which assumes institutional prerogative to provide access to information, an *Access to Information Policy* is based on the human right to information, and acknowledges the institutional obligation of accountability to the public in disclosing information. DFC, as a development finance institution operating with public resources and as a representative of the United States, a champion of civil and political human rights, must adopt a policy that recognizes this obligation and prioritizes communities' right to information. Further, the *Transparency Policy* is vaguely worded, and fails to outline the key principles and concrete commitments governing DFC's practice of information disclosure and stakeholder engagement. Select time-bound disclosure requirements are dispersed between both the *Transparency* and *Public Engagement* policies, creating an additional lack of coherence. DFC should develop an *Access to Information Policy* that adopts and embeds the internationally endorsed principles on access to information, including the principle of maximum disclosure, which dictates that all information held by DFC be subject to disclosure, unless falling under a narrow list of clearly defined exceptions.⁵ These principles should guide the construct of the ensuing *Access to Information Policy*, ensuring that provisions do not leave room for subjective or discretionary interpretation.

Instead of championing established best practice, as currently drafted, both policies merely codify DFC's existing flawed information disclosure practices that fall far short of fulfilling communities' right to information and minimum standards met by peer development finance institutions. For example, the practice of disclosing information on non-high risk projects only 7 days before Board approval is highly inadequate, given that minimum standards set by the United States dictate at least 60 days. Similarly, while high-risk projects are set to be disclosed 60 days prior to Board approval, U.S. standards dictate a minimum of 120 days.⁶ DFC's practices preclude any opportunity for communities to participate in designing projects to meet their development priorities, or to even be fully informed so as to try and avoid harms. This barrier is

⁵ The list of principles, endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and the Organization of the American States (OAS) Special Rapporteur on Freedom of Expression, include:

1. The Right of Access
2. Automatic Disclosure
3. Access to Decision-Making
4. The Right to Request Information
5. Limited Exceptions
6. Appeals
7. Whistleblower Protection
8. Promotion of Freedom of Information
9. Regular Review

Article 19, "The Public's Right to Know: Principles on Freedom of Information Legislation", at https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

See also Global Transparency Initiative, "Transparency Charter for International Financial Institutions: Claiming our Right to Know", at https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

⁶ See the "Pelosi Amendment" 22 U.S.C. 262m-7

further compounded by the policy of updating information on approved projects only 45 days after the end of the quarter, especially since once approved, information on pending projects is removed from DFC's website. There is no justification for impeding the public's access to information that was once disclosed.

As found in a recent study on DFC's information disclosure practice, the substance of information disclosed by the institution also falls considerably short of international best practice, including at institutions where the U.S. itself is a leading shareholder and advocate for transparency.⁷ We enclose this study in its entirety as an Annex to this letter, and reiterate the importance of DFC's adoption of its recommendations in fulfilling communities' right to access information and participate in development decisions that affect them.

A commitment to transparency and access to information must ensure those who need the information most are able to receive and understand it. While the United States Freedom of Information Act (FOIA) is critical for increasing government transparency, pursuit of this avenue is often inaccessible, if not also procedurally burdensome and cost prohibitive, for most project-affected communities. DFC should provide for the creation of an access to information system that will provide a first point of access for information requests, to complement FOIA.

In line with the commitments set out in the BUILD Act, we urge you to address the serious shortcomings of this consultation and make good on the commitment to transparency, engagement, and accountability by immediately implementing the following recommendations:

- Replace the draft *Transparency Policy* with a robust *Access to Information Policy* which
 - Recognizes the public's right to information;
 - Adopts and embeds the aforementioned internationally endorsed principles on access to information;
 - Delineates a clear and narrowly defined list of exceptions to disclosure;
 - Outlines time-bound disclosure requirements for publishing information on pending projects that meet the minimum standards set by the U.S.;
 - Ensures project information is updated and publicly available throughout the project cycle;
 - Lists key environmental and social information to be disclosed for every project, including adverse impacts, safeguards triggered, and technical documents;⁸

⁷ International Accountability Project (IAP), "In Practice: Information Disclosure at DFC", April 2020, at: https://accountabilityproject.org/wp-content/uploads/2020/04/In-Practice_-Information-Disclosure-at-DFC-1.pdf

⁸ This information should include, but not be limited to:

- Anticipated Board date
- Date of disclosure (when project documents were first made publicly available)
- Project status, with updates throughout the project cycle

- Provides for the proactive translation of project information summaries and technical documents into the national languages, at minimum, of the investee country;
- Creates a system that provides a first point of access for information requests housed at DFC; and
- Is subject to a robust public consultation that follows international standards for public engagement.

Stakeholder and Public Engagement

The stakeholder engagement provisions included in the *Transparency Policy* do not go far enough to ensure that the general public has the opportunity to meaningfully engage in the development of DFC's policies and practices. Instead of an ad-hoc approach to consultations or processes that pick and choose which stakeholders can provide comment, DFC should commit to holding public comment periods on the development of and revisions to all major policies, including:

- Environmental and Social Policy Statement and Procedures⁹
- Impact Quotient
- Development Strategy
- Terms of Reference and Board Resolution for the Independent Accountability Mechanism
- Risk Policies
- Access to Information Policy and Directives

Each consultation should be announced through the Federal Register and posted prominently on DFC's website. The public comment period should last a minimum of 60 days, and drafts of the policies under consideration should be disclosed. In addition to offering an opportunity for public

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- Summary or overview of potential adverse environmental and social impacts, including project-specific impacts
 - List of environmental and social safeguards triggered for the project
 - Details on how potential harms will be mitigated and prevented, including associated documents outlining plans
 - Non-technical summaries and full-text of ESIA's
 - Information on consultations, including opportunities for ongoing consultation after Board approval, and associated documents such as stakeholder engagement plans
 - Contact information for the borrower or client
 - Contact information for DFC's project leads
 - Information on how to submit a request for access to information
 - Information on how to access DFC's accountability mechanism
 - Translations of project information summaries and technical documents in national and local languages

For further detail on these recommendations, see International Accountability Project (IAP), "In Practice: Information Disclosure at DFC", April 2020, at: https://accountabilityproject.org/wp-content/uploads/2020/04/In-Practice_-Information-Disclosure-at-DFC-1.pdf.

⁹ Congress required OPIC to subject any revisions to the Environmental and Social Policy Statement to "public notice and opportunity to comment." [22 U.S.C. §219b](#)

comment, DFC should also hold in-person or virtual consultations for the general public to provide comment. After the conclusion of each consultation period, DFC should publish a matrix of all the comments received, whether the recommendation was adopted, and why (or why not).¹⁰

The *Public Engagement Policy* likewise needs strengthening to ensure that the public's engagement with the Board is robust. This is particularly important given DFC's announcement that it is exempt from the transparency and public participation standards in the Sunshine Act. Specifically, the public hearing schedule should be improved. The BUILD Act requires DFC to hold *at least* two public hearings a year.¹¹ OPIC held four public hearings a year as well as an annual hearing.¹² Given that the Board approves projects on at least a quarterly basis, public hearings should happen quarterly. Moreover, the format of the public hearing should be changed to make it more interactive. Currently, the public is given the opportunity to make oral or written presentations, but there is no opportunity for dialogue. The Board should be required to respond to the questions posed during the presentations. Additionally, a Q&A period should be built into the format of the hearing to provide any attendee to ask DFC and the Board questions. DFC should post a full transcript of the hearing online.

Conclusion

As a public institution, DFC has a responsibility to the American public and other stakeholders, particularly communities affected by its financing, to be as transparent and participative as possible. In both process and substance, this consultation on the *Transparency* and *Public Engagement* policies fails to meet the mark. As it stands, DFC runs the risk of adopting two weak policies that are not informed by the very people they are designed to benefit.

We strongly urge DFC to immediately implement the above recommendations, ensure that future consultation processes meet expected minimum standards, and maintain U.S. leadership in environmental, social, and human rights accountability, so that projects result in benefits to communities worldwide.

Sincerely,

Abibinsroma Foundation - *Ghana*

Accountability Counsel - *United States*

ARTICLE 19 - *United States / United Kingdom / Kenya / Senegal / Mexico / Tunisia / Brazil*

Bank Information Center (BIC) - *United States*

Buliisa Initiative for Rural Development Organisation (BIRUDO) - *Uganda*

¹⁰ OPIC published this [matrix](#) after the conclusion of its 2016 consultation on the Environmental and Social Policy Statement.

¹¹ BUILD Act, SEC. 1413(c)

¹² Foreign Assistance Act, SEC. 231A(c)

Center for International Environmental Law (CIEL) - *United States / Global*
Centre for Human Rights and Development - *Mongolia*
Community Empowerment and Social Justice Network (CEMSOJ) - *Nepal*
Conseil Régional des Organisations Non Gouvernementales de Développement - *RD Congo*
Culture Identity and Resources Use Management (CIRUM) - *Vietnam*
Environics Trust - *India*
Foundation for the Conservation of the Earth - *Nigeria*
Friends of the Earth United States - *United States*
Fundeps (Foundation for the Development of Sustainable Policies) - *Argentina*
Heartland Initiative, Inc. - *United States*
International Accountability Project (IAP) - *United States / Global*
Jamaa Resource Initiatives - *Kenya*
Lumière Synergie pour le Développement - *Sénégal*
Mazingira Network (MANET) - *Tanzania*
Oyu Tolgoi Watch - *Mongolia*
Pakistan Fisherfolk Forum - *Pakistan*
Réseau Camerounais des Organisations des Droits de l'Homme (RECODH) - *Cameroon*
Rivers Without Boundaries Coalition, Mongolia - *Mongolia*
SUHODE Foundation - *Tanzania*
Urgewald e.V. - *Germany*
Witness Radio, Uganda - *Uganda*
Youth for Environment Education and Development Foundation (YFEED Foundation) - *Nepal*

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ANNEX

In Practice: Information Disclosure at DFC

International Accountability Project

Updated April 2020

The [Early Warning System](#) team strives to ensure the accuracy of the data. This analysis has been shared with the United States Development Finance Corporation in advance of publication to allow opportunity for comment. While the Early Warning System team has made every attempt to research and present data accurately, it is often difficult to guarantee the complete accuracy of certain projects due to the lack of consistency and transparency in how various development institutions record and publish information. Where there is a lack of clarity in the information, the team has represented the information cautiously. The Early Warning System team is committed to correcting any identified errors at the earliest opportunity.

At the end of 2019, a new US development bank, the United States International Development Finance Corporation (DFC) was created, merging the Overseas Private Investment Corporation (OPIC) with the United States Agency for International Development's Development Credit Authority. The new institution more than doubles OPIC's previous investment cap, allowing for equity in addition to debt investments, and expanding its lending to non-American companies. With this expanded scope, the DFC will have an increased footprint on the development finance landscape worldwide, and a corresponding impact on communities who may be affected by their projects globally.

As the [International Accountability Project](#) (IAP) and our partners have repeatedly witnessed, the profound impact of development projects warrants that the policies and operations of development banks be robust and reflect international best practice and international human rights standards.

IAP welcomes the mandate set out in the DFC's enacting legislation, which directs the new institution to "use high standards of transparency and environmental and social safeguards."¹ **This commitment must begin with a strong foundation in communities' right to seek, receive and impart information, as equal partners in development.** Having early access to information can mean the difference between a community learning about a project when the bulldozers arrive, and a community engaging with investors to co-design a project that avoids harm and creates real benefits. In practice, **the right to information goes far beyond simple information disclosure - it ensures that communities are equipped with the necessary information to substantively engage**

¹ Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act of 2018), Section 101 (providing for the Statement of Policy).

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and participate in the development processes that will ultimately affect their lives and environment.

To this end, IAP and our partners monitor the online disclosure practices of several development finance institutions through the [Early Warning System](#) initiative, to better understand what project information is being disclosed, when it is being shared, and ultimately, how accessible the information is for communities; the purported beneficiaries of development projects. Most recently, we engaged with the [European Bank for Reconstruction and Development](#) and the private sector lending arm of the Inter-American Development Bank, [IDB Invest](#), to share comments and recommendations on their disclosure practices, as part of their public consultations on their respective access to information policies.

In light of the transition to the DFC, we have analyzed the bank's disclosure practices while operating as OPIC, with the objective of assessing the information made available online for potentially-affected communities to access. Although the DFC as a new institution has only recently become operational, its approach to information disclosure appears to follow the approach and practice set by OPIC. **We share our assessment in the spirit of encouraging robust and people-centered information disclosure policies and practices at the new DFC, which reflect leading international standards and best practice.**

Our Methodology

Our analysis tracks the information disclosed on OPIC's website for **158 projects disclosed from January 1, 2018 through October 4, 2019**, using the Bank's [self-reported list of active projects](#) from 2018 and 2019.² We monitored OPIC's disclosure practices by reviewing and assessing the information available on each project's webpage, as of February 2020, based on the following criteria, which is aimed at maximizing community access to information.

Specifically, our methodology tracks for each project:

- The number of days available for communities to access information before an investment decision is made (also known as the Board date);³

² For the relevant periods of this analysis, there were 5 projects disclosed on the [self-reported list of OPIC projects](#) for which the project links provided did not function. Through research online, we were able to locate those 5 project summaries on different webpages on the OPIC website and have therefore, included these projects in the analysis.

³ As noted in the text below, OPIC did not provide the disclosure date for the projects in this dataset and did not consistently provide the board date of approval. Without this information, it was impossible to assess the

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- Whether a summary or overview of potential adverse environmental and social impacts was disclosed;
- Whether project-specific adverse environmental and social impacts were disclosed;
- Whether it was clearly specified which environmental and social safeguards were triggered for a project;
- Whether details were given on how potential harms would be mitigated and prevented;
- Whether documents outlining plans or systems for addressing risk and identified adverse impacts were available;
- Whether non-technical summaries of environmental and social impact assessments were available;
- Whether the full text of environmental and social impact assessments were available;
- Whether documents outlining stakeholder engagement plans and consultation plans were available;
- Whether information on consultations, including opportunities for ongoing consultation after Board approval, was disclosed;
- Whether contact information for the borrower or client was provided;
- Whether contact information for OPIC's project leads was provided;
- Whether information on submitting a request for access to information was provided;
- Whether information on the Borrower's grievance mechanism was provided;
- Whether information on OPIC's accountability mechanism was provided;
- Whether project information summaries were available in languages other than English; and
- Whether any technical documents (not including project summaries) were available in languages other than English.

Before delving into our findings, we acknowledge two limitations with regard to this criteria:

First, recognizing that most disclosure practices and policies could be strengthened to prioritize communities' right to access information, our criteria is not based on or solely limited to the parameters of existing policy requirements; accordingly, this analysis does not evaluate compliance with OPIC policies. Instead, our analysis seeks to assess OPIC's disclosure practices against criteria which, if met, would establish the foundation for the meaningful fulfillment of communities' right to information. The specific criteria is derived from our experiences working directly with communities affected by development bank projects, and the work of IAP and our partners to make project information accessible through the [Early Warning System](#).

number of days communities have to access information before Board consideration of a project.

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Second, we evaluated this criteria based on the **principle of early access to information**. Communities have the right to know and to be meaningfully consulted before any investment decision is made, and the right to remedy, should they suffer harm from projects. As the *United Nations Declaration on the Right to Development* provides, an essential element to the realization of the right to development is the recognition that [“\[t\]he human person is the central subject of development and should be the active participant and beneficiary of the right to development.”](#)

Our experiences have demonstrated that communities' legitimacy and local expertise can better the design of potential projects, anticipating and mitigating adverse impacts, to ensure that projects achieve positive impacts that also further community development priorities. Correspondingly, our methodology primarily focuses on the minimum information communities should expect to access when a project is still in its **proposed stage**, given that the ideal would have communities participate in conceptualizing, designing, and contributing to projects that are explicitly aimed at fulfilling their development priorities, in harmony with larger societal goals.⁴

As a final note on methodology, our findings only address information disclosed through OPIC's webpage, its primary medium of communication. While outside the scope of our analysis, it bears noting that reliance on a website as the primary means of disclosure in and of itself sets a significant limitation on the accessibility of the information disclosed for many communities without ready access to the internet. Moreover, it would be unrealistic to consider that communities that do have access to the internet are constantly monitoring projects in the pipeline of various development finance institutions. In order to meaningfully fulfill the right to information, the new DFC should take steps to ensure that information reaches communities potentially impacted by its projects through means accessible to them, before a project is considered for investment.

Our Findings & Recommendations on OPIC's Disclosure Practices

Risk Category	# of Projects
A	15
B	47
C	78

⁴ Based on the available information on OPIC's website, the 158 projects in the dataset were all approved at the time of analysis and writing.

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D	16
<i>Unknown or Unassigned</i>	2

Our analysis of OPIC’s disclosure practices shows that the institution has some strong disclosure practices of note. These include consistently indicating which environmental and social safeguards are applicable for all projects categorized as high risk (Category A), which account for 15 of the 158 projects in the dataset (9%), and with a few exceptions, for those categorized as substantial or medium-risk (Category B), accounting for 38 of the 121 (29%). In addition, for the period relevant to this analysis, OPIC consistently shared at least minimum information about measures implemented to mitigate environmental and social risks, 151 out of 158 projects (95%). These points are further discussed below.

Despite these positive practices, however, the overall quality of information disclosed is inadequate, and falls considerably short of fulfilling communities’ right to information, thereby erecting substantial barriers to access and meaningful participation for project-affected communities. To date, the newly operational DFC is following the same disclosure practices OPIC adopted. As a development finance institution, the DFC can and should do much more to ensure that communities have safe, timely and accessible information early in the lifecycle of a project, in order to facilitate meaningful participation and ensure positive, sustainable development outcomes that fulfill local priorities.

Strengthen Overall Accessibility of Information Disclosed and Timing of Disclosure to Prioritize Community Access

Despite consistently disclosing project information summaries for all projects and Environmental and Social Impact Assessment packages for projects deemed high risk (Category A), **the overall accessibility of information disclosed by OPIC is poor.** Specifically, while project information summaries are published for [all projects](#), the substance of the disclosure is inadequate and should be strengthened.

To begin, the date these documents were first made publicly available (known as the date of disclosure at other development finance institutions) is not disclosed, nor is the date the project was (or would be) approved by OPIC’s Board (known as the Board date at other development finance institutions) made available. In addition to this, the status of each project in its lifecycle is not clearly indicated, making it difficult to clearly differentiate between projects that are in the earlier stages and those that have reached the end of their lifecycle. There are crucial nuances lost

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in between projects that are only approved or pending, in relation to those that are already disbursing funds or those that are considered closed.

For communities seeking to understand opportunities for engagement with individual projects, these nuances are integral to ensuring their complete comprehension of a project and fulfilling their right to information throughout the project lifecycle. For example, projects in a proposed stage offer communities the opportunity to participate in the design, while those that are nearing completion should ensure communities are informed and able to engage in monitoring and contributing feedback on implementation and impact.

Although OPIC previously separated its pending projects from those that are active, the DFC's website does not clearly retain this distinction. We note that after sharing this analysis with the DFC for comment, a link to projects pending Board approval appeared on the "[Board of Directors](#)" webpage, a few days before the scheduled Board meeting. However, this link has since become unavailable, although the [webpage](#) is still accessible, without any information published. Given the inconsistency of this disclosure, we continue to recommend that the **DFC publicly disclose all projects in the pipeline, regardless of perceived risk category.** We further recommend that communities be given as much time as possible, ideally at least 120 days in line with international best practice, in order to meaningfully engage in the proposal stage of a project. **The DFC should also ensure that the status for individual projects is clearly disclosed and kept updated throughout the life of a project. Dates relating to disclosure, updates to project information, and the date of project approval should also be clearly disclosed.**

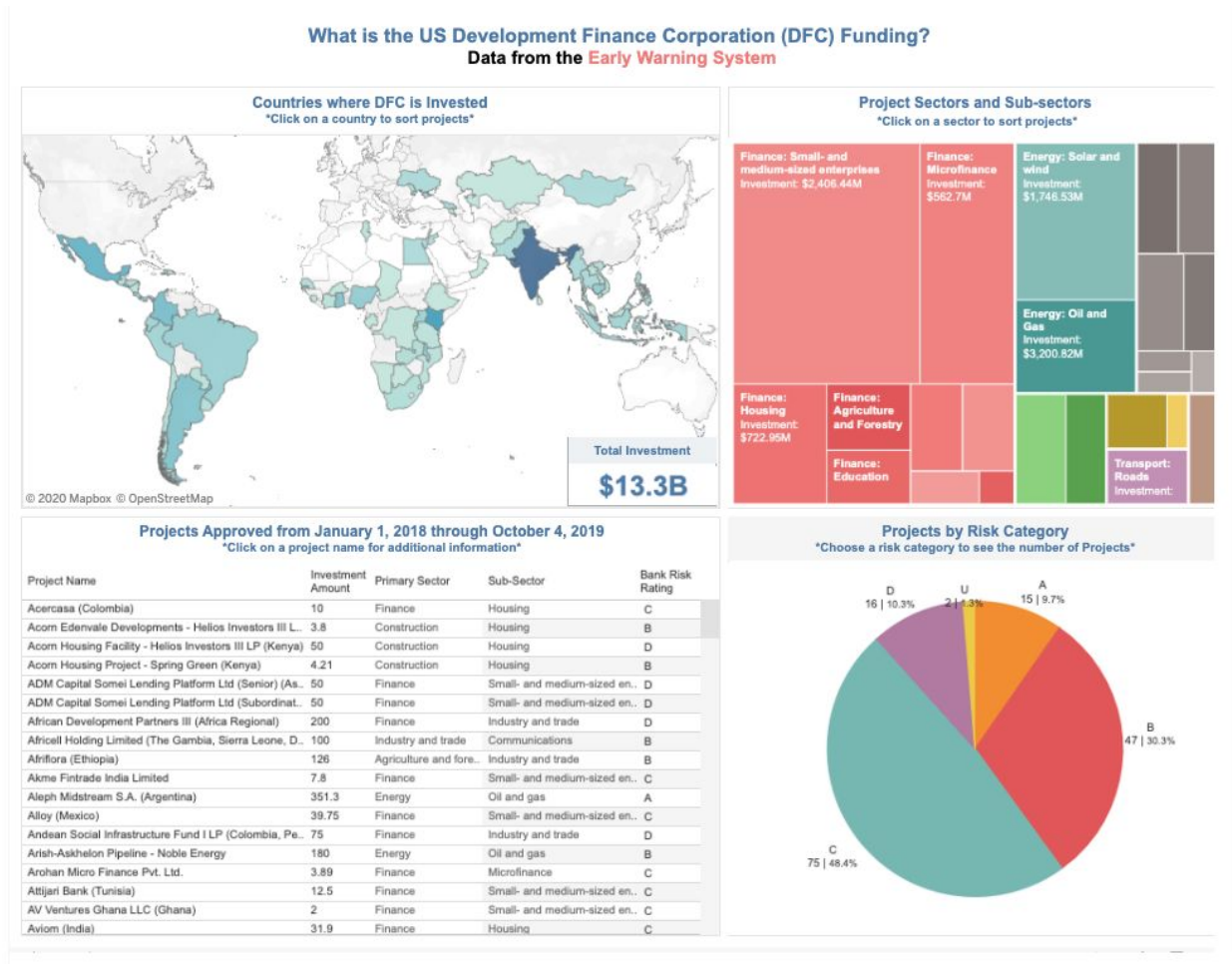
The current layout of OPIC's - and now the DFC's - website also serves as a barrier to access insofar as it makes it difficult to easily match project information summaries with corresponding environmental and social documents, which are disclosed on a [separate webpage](#) without links to the final project information summary. Projects with [Board resolutions](#) are also separated, some of which have broken links corresponding to the final project information summaries.

The enabling legislation of the DFC requires it to "maintain a user-friendly, publicly available, machine-readable database with detailed project-level information," including descriptions of support provided, annual report information provided to Congress, and project-level performance metrics, along with a "clear link to information on each project" online.⁵ Unfortunately, under OPIC's practices, people and communities seeking to access complete information about a project are required to connect dots and hunt through the institution's online infrastructure in order to obtain critical information. **The DFC should ensure that its publicly available database of project**

⁵ BUILD Act of 2018, Section 1444.

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information is consolidated and clearly prioritizes easy access, with the aim of fulfilling people and communities' right to information about projects that impact their lives.



Interactive visualization of DFC's portfolio of projects analyzed in this dataset: <https://bit.ly/DFCAnalysis>

Availability of Project Information and Documents in Languages other than English

- Whether project information summaries were available in languages other than English
 - Yes - 0
 - No - 158

- Whether any technical documents (not including project summaries) were available in languages other than English
 - Yes - 7
 - No - 151

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Compounding the barriers in accessing information discussed above, our findings show that **none of the 158 (0%) project information summaries were available in languages other than English, and only 7 out of 158 projects (4%) included technical documents in languages other than English.** Of further concern is that with the exception of one, all the technical documents available in languages other than English were Annexes to Environmental and Social Impact Assessment packages, featuring documents originating in another language - not a translation.

As a development finance institution that regularly invests in non-English speaking contexts, the DFC must increase the linguistic and technical accessibility of the information it discloses by ensuring that its project information summaries are available in the relevant national language, at a bare minimum, and that it provides translated Environmental and Social Impact Assessment packages to ensure the meaningful fulfillment of the right to information.⁶

Disclosure of Environmental and Social Risks and Mitigation Measures

- *Whether a summary or overview of potential adverse environmental and social impacts was disclosed*
 - Total Yes - 85
 - Yes, however used stock language - 22
 - No - 73
- *Whether project-specific adverse environmental and social impacts were disclosed*
 - Yes - 61
 - No - 77
- *Whether details were given on how potential harms would be mitigated and prevented*
 - Total Yes - 151
 - Yes, however used stock language - 68
 - No - 7

Our analysis showed that **only 85 of the 158 projects (53%) provided an overview of the adverse environmental and social impacts likely to result from a proposed project.** Of the 85 projects that disclosed potential adverse environmental and social impacts, 22 only used stock language covering the general risks associated with the relevant sector. Further, **project-specific impacts were disclosed in only 61 out of 158 projects (38%).** As stated previously, most projects disclosed

⁶ Ideally, these documents would also be translated and available into the local languages and dialects of potentially affected communities.

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(151 out of 158, or 95%) had at least minimal information regarding how risks would be mitigated, although 68 out of the 158 (43%) only used stock language.⁷

As a whole, this level of disclosure for information on environmental and social risks and mitigation is insufficient to fulfill communities' right to information. Communities have the right to know and understand the complete picture of a project - including both the perceived benefits and risks - before a project is approved so that they can meaningfully contribute alternatives and solutions to mitigate or avoid potential adverse impacts, and ensure that any intended benefits align with their development priorities. While stock language provides a general understanding, project-specific impacts and mitigation measures are essential to enable meaningful community engagement in the design and implementation of projects, regardless of risk category.

Disclosure of Applicable Environmental and Social Safeguards

- *Whether it was clearly specified which environmental and social safeguards were triggered for a project*
 - Yes - 86
 - No - 72

Within the Bank's accountability framework, safeguard policies dictate community entitlements under a project and the standards by which they can reasonably hold the development finance institution to account. Knowing which standards and policies are considered applicable to a project is essential for communities to meaningfully engage, in addition to the rationale for triggering certain safeguards and deeming others inapplicable.

With respect to this criteria, only **86 out of 158 projects (54%)** clearly specified which environmental and social safeguards (Performance Standards) were triggered for a project, covering nearly all projects designated by OPIC as high and substantial or medium risk (Category A and B). However, this means that just over half of OPIC's portfolio did not clearly disclose which safeguard policies and entitlements applied to a project. This is concerning, particularly given that the majority of these projects are Category C and D, mainly covering financial intermediary investments, [a lending instrument that has garnered much criticism from civil society for its lack of](#)

⁷ An [example](#) of stock language often used in project information summaries includes:

"OPIC's statutorily required language regarding the rights of association, organization and collective bargaining, minimum age of employment, and prohibition against the use of forced labor, will be supplemented with provisions concerning nondiscrimination, hours of work, the timely payment of wages, and hazardous working conditions. Standard and supplemental contract language will be applied to all workers of the Project, including any contracted workers."

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[transparency and accountability](#). While we noted instances of minimal information disclosed on sub-projects, we strongly suggest that DFC disclose and routinely update information on sub-projects for all financial intermediary projects with the same objective of fulfilling communities' right to information, including by indicating applicable safeguards and relevant sectors, in addition to the other points discussed in this analysis.⁸

Disclosure of Environmental and Social Documents

- *Whether documents outlining plans or systems for addressing risk and identified adverse impacts were available*
 - Yes - 11
 - No, but referenced in project information summary - 100
 - No, with no reference in project information summary - 47

- *Whether non-technical summaries of environmental and social impact assessments were available*
 - Yes - 4
 - No - 153
 - No, but referenced as not required in project information summary⁹ - 1

- *Whether the full text of environmental and social impact assessments were available*
 - Yes - 14
 - No - 135
 - No, but referenced in project information summary - 8
 - No, but referenced as not required in project information summary - 1

Communities should have the opportunity to fully understand the environmental and social impacts of a project, analyze the technical assessments produced within their own rubric of local expertise, provide recommendations that often highlight overlooked complexities, and suggest alternatives that better the overall project design. This optimal scenario is made more likely when key environmental and social documents, including assessments, are disclosed in full, ideally also with non-technical summaries to enhance accessibility.

⁸ An [example](#) of minimal information disclosed on sub-projects includes:

"The overall project plan has been screened as Category D. All subprojects covered under the MIC are screened as Category C and are therefore pre-cleared because these investments are financial transactions."

⁹ This refers to instances where the project summaries explicitly state that an ESIA is not required. In this instance, [the project stated that "no environmental impact assessment is required."](#)

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Unfortunately, OPIC's disclosure practices are alarmingly inadequate in this regard. Specifically, **only 11 out of the 158 projects (6%) disclosed plans or systems for addressing and mitigating adverse impacts.** On this point, it is worth noting that 100 of the 158 project summaries (63%) that did not disclose a document referenced an existing or future document. However, at the time of analysis and writing -- when all projects had been approved -- the full text of these plans had not yet been disclosed. Similarly, **non-technical summaries of environmental and social impact assessments were disclosed for only 4 out of 158 projects (2%), and the full text of the environmental and social impact assessments was made available for just 14 of the 158 projects (8%).** A further 8 out of 158 (5%) projects referenced the existence of these assessments, without accompanying disclosure.

Disclosure of Information on Engaging During Project Design and Implementation

- *Whether documents outlining stakeholder engagement plans were available*
 - Yes - 9
 - No, but referenced in project information summary - 14
 - No, with no reference in project information summary - 135

- *Whether a full consultation plan was disclosed*
 - Yes - 5
 - No - 148
 - No, but referenced- 5

OPIC's disclosure practice is also weak in providing access to information on stakeholder engagement and consultation - the details of how and when a community member can engage with a project. In our dataset, **only 9 out of the 158 projects (5%) disclosed the actual plans for stakeholder engagement. An additional 14 out of the 158 (8%) referenced the existence of stakeholder engagement plans, without actually disclosing the documents themselves.** Further, a full consultation plan was disclosed for only 5 of the 158 projects (3%), although another 5 projects (3%) referenced an existing or future plan.

Fulfilling the right to access information goes hand-in-hand with meaningful consultation and stakeholder engagement to ensure projects actually better the lives of those they affect. From the experience of IAP and our partners, inadequate consultation can result in or exacerbate existing environmental and human rights risks, resulting in social conflict and grievances. Without access to documents on the environmental and social impacts, action plans and policies, can communities truly be informed participants in consultations? Simply put, without access to the above information, communities are not enabled to meaningfully participate.

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Disclosure of Project Contacts and Information on Mechanisms to Access Information and the Independent Accountability Mechanism

- *Whether contact information for the borrower or client was provided*
 - Yes - 8
 - No - 150

- *Whether contact information for OPIC's project leads was provided*
 - Yes - 0
 - No - 158

Communities affected by development projects should also have access to contact details in case they would like to obtain additional information about a project or further engage. Unfortunately, for the vast majority of the projects in our dataset -- **142 out of 150 (94%)** -- **contact information for the borrower or client was not disclosed**. Contact information was only included in the initial project summary shared as part of the ESIA package for some Category A projects. Likewise, not one of the project summaries in the dataset (**0%**) **disclosed corresponding contact information for OPIC project leads**.

- *Whether information on submitting a request for access to information was provided*
 - Yes - 0
 - No - 158

- *Whether information on the Borrower's grievance mechanism was provided*
 - Yes - 62
 - No - 96

- *Whether information on OPIC's accountability mechanism was provided*
 - Yes - 0
 - No - 158

None of the 158 project summaries (0%) disclosed information on avenues to request additional project information, including any reference to the United States Freedom of Information Act (FOIA). **Similarly, none of the 158 projects (0%) information on OPIC's independent accountability mechanism**. **62 out of 158 (39%) referenced a Borrower grievance mechanism**. This disclosure practice is insufficient and falls far short of international best practice. Communities must know that they have access to remedy should they be adversely impacted by a DFC project, and that the institution itself has an mechanism they can access, independent from

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the Borrower. While information on a Borrower grievance mechanism is a welcome complement to information on the accountability mechanism, OPIC's disclosure practice for this criteria was inconsistent and appeared ad hoc.

Looking Forward: Ensuring the DFC Adopts Robust Information Disclosure Practices and Policies

OPIC's approach, as discussed in this practice analysis, compels the question, what is the purpose of disclosing this information, and for whom is it intended? Potentially affected communities should be the primary target for this information, with the aim of fulfilling their right to access information, and equipping them with the necessary information to meaningfully engage in the development process.

In the context of today's development climate, space is already often restricted for communities to voice their concerns about projects, or even request access to information, particularly in the regions where the DFC currently operates and hopes to increase investment. This makes the need to safeguard transparency and the right to access information more urgent, and accordingly, the institution's information disclosure practices and policies even more critical.

As this analysis demonstrates, OPIC's - and now the DFC's - disclosure practices are inadequate and fall far short of international best practice, including in relation to institutions where the US itself is a leading shareholder and advocate for transparency and participation.

Community access to information is further hampered by the absence of an institutional policy for proactive information disclosure, a practice that is implemented by most development finance institutions. While the United States Freedom of Information Act (FOIA) is critical for increasing government transparency, pursuit of this avenue is often inaccessible, if not also procedurally burdensome and cost prohibitive, for most project-affected communities. As such, the DFC should create an access to information system that will provide a first point of access to complement FOIA, including an access to information policy that governs proactive disclosure.

A commitment to transparency and access to information must also ensure those who need the information most are able to receive and understand it. Recognizing that it is unrealistic for local communities to visit the OPIC website each day to see if any proposed project may affect them, the [Early Warning System](#) team is closing this gap by summarizing and distributing projects proposed by OPIC and other development institutions to partners in country, as soon as possible, a responsibility that should be borne by the new DFC.

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We encourage the DFC to use the opportunity afforded by its inception to build upon and strengthen OPIC's disclosure policies and practices, including through a robust and open consultation process. In so doing, the new DFC can better prioritize communities, as the intended beneficiaries of and key stakeholders in development.

Please contact Ishita Petkar (ishita@accountabilityproject.org) with any questions.