

Written Statement on the U.S. International Development Finance Corporation

Submitted by the AFL-CIO

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Written Statement

The AFL-CIO welcomes the creation of the United States International Development Finance Corporation (the DFC). Now more than ever, as the world looks to foster economic stability and new opportunities for growth in the face of a global pandemic, we urge the DFC to create a new investment agenda that prioritizes decent work -- the creation of long-term, well paid jobs and universal social protection to ensure resilient and healthy communities, including access to healthcare, unemployment benefits, retirement savings, paid leave, child and eldercare, and utilities including water, electricity and telecommunications.

Creating decent work is particularly critical in low-income countries, where informality, in-work poverty and insecure working arrangements already dominate, and there is a lack of basic social protections to guard against economic shocks. Developing countries do not simply need more jobs, they need better jobs - jobs that sustain families, create internal consumer demand and foster a sustainable tax base through which business contributes to social services.

As we have stressed in prior testimony,¹ which we hereby incorporate by reference, the DFC must build a systematic, robust approach to project design and implementation that not only mitigates negative human rights impacts, but aims to maximize positive development outcomes, particularly the creation of long-term jobs with fair wages and working conditions.² While avoiding human rights violations is essential, we urge the DFC to think beyond compliance and actively craft projects that provide tangible development benefits. This requires active stakeholder engagement from the outset, robust project assessment, accountable, transparent oversight processes and appropriate staffing.

Stakeholders Must Have An Active Role in Project Design and Oversight

¹ AFL-CIO, Written Statement at OPIC Annual Hearing (March 13, 2018) available at https://aflcio.org/sites/default/files/2020-05/BUILDAct_Written%20SubmissionFinal.pdf

² See also from the International Trade Union Confederation: Recommendations for IDA-19 <https://www.ituc-csi.org/ida-19>; and The development effectiveness of supporting the private sector with ODA funds (2016) available at https://www.ituc-csi.org/IMG/pdf/tudcn-dfi_study_web_en.pdf; Ergon Associates, Decent Work and Development Finance (2019) available at <https://www.edfi.eu/wp/wp-content/uploads/2019/04/Report-Decent-Work-and-Development-Finance-March-2019-2.pdf>

The DFC must develop a transparent approach to stakeholder engagement that starts in the earliest stages of project development and extends throughout the life of the project. Workers and community members should have the chance to voice their own priorities and objectives, and to see those incorporated into project design. The local community is generally in the best position to know what kind of projects are feasible and what risk avoidance measures are necessary. This should not be a rubber stamp exercise, it should be a collaborative process to maximize development impact. Relevant trade unions, including those in the appropriate sectors and areas, must be consulted on eligibility, risk assessment and project oversight.

Workers and community members, both intended beneficiaries and those potentially impacted, should know what promises have been made by potential partners and the intended outcomes of a project. The impact notification should include any and all claims made by the project partner and projections by the DFC with respect to development impact, including those relating to jobs, benefits and services. This information should be widely disseminated through mediums best suited to the community, in all commonly spoken languages, including any migrant worker populations.

The DFC must incorporate worker and community oversight into project compliance and review, including training all project workers and managers, including any subcontractors, on labor standards and complaint mechanisms. The DFC must continually afford full transparency around monitoring to allow local stakeholders to assess whether promised benefits or expected outcomes materialize, as well as identify and respond to violations if they do occur.

We know from years of studying development that it is difficult to get stakeholder engagement right. The Corporation has discretion to convene civil society and private and public sector actors, and should use this mandate to develop a set of transparent, consistent processes for stakeholder engagement.

We note with concern that the DFC has already taken a step in the wrong direction on the transparency front, when the agency recently announced it will not comply with the requirements of the Sunshine Act. We believe that the contention that the Sunshine Act does not apply to the DFC is incorrect as a matter of law, and more importantly, it is detrimental to efforts to build robust due diligence mechanisms, which are clearly required in the BUILD Act. We reiterate how important it is that decision-making processes be open to scrutiny by stakeholders, particularly the communities that will be potentially impacted.

Assessment Criteria Must Identify Responsible Businesses, Maximize Tax Revenue for Partner Countries and Provide Stakeholders with Detailed Information About Any Projects

The DFC must assess a project's potential to deliver long-term, living wage employment and maximize domestic tax revenue for partner countries. To support economic growth and sustainable development in the long term, low-income countries must establish fair systems of taxation and employer contributions into social programs to support the workforce, alongside international corporate tax reform and tackling illicit financial flows. The lack of social protection in low-income countries has left many in dire poverty, and impedes private sector growth.³ The DFC has a role to play in addressing these dynamics by identifying and investing in companies that will make lasting commitments to create secure, well-paid jobs, and pay taxes.

DFC eligibility criteria should prioritize responsible business conduct and transparency. Specifically, the DFC should require businesses to publicly disclose any past or current workforce disputes, claims or complaints; past workplace injuries and fatalities; tax history; corporate structure, including beneficial ownership; supply chain relationships, including all contractors, subcontractors, franchisees or other actors; and workforce information, including salaries disaggregated by gender and race.

The DFC should also independently analyze companies' track records on labor relations, including any past or current workforce disputes, claims or complaints and health and safety records. Independent worker interviews should be included in the assessment of business practices. Businesses with a poor track record on labor relations should be excluded from financing. Conversely, preference should be given to businesses with a positive history of industrial relations -- such as the existence of a collective bargaining agreement, memorandum of understanding with unions, global framework agreement or other negotiation with workers.

These practices must extend to any projects or agreements resulting from DFC's use of the Defense Production Act (DPA) authorities delegated by President Trump's recent Executive Order. The urgency to increase production to meet the COVID-19 crisis is real, but cannot be an excuse to disregard transparency and human rights requirements.

The DFC should also complete an independent supply chain assessment that evaluates the overall business model of any potential borrower. Too many industries rely on precarious, unsustainable models that shift risks onto workers and lower-tier suppliers. Particularly now, with many global supply chains experiencing extreme disruption, the DFC cannot risk perpetuating these models and fostering more poverty and financial instability among the most vulnerable workers. Supply chain assessment should examine wage rates, subcontracting of core activities, buyer practices and contracting terms including risk factors like narrow margins and grossly inequitable payment terms for suppliers, and tax contributions to governments.

³ Social Protection Inter-Agency Cooperation Board, Joint Statement on the Role of Social Protection in Responding to the COVID-19 Pandemic *available at* https://www.ilo.org/secsoc/press-and-media-centre/statements/WCMS_740551/lang--en/index.htm

The DFC should join international efforts to mitigate the worst impacts of the COVID-19 crisis on global supply chain workers. The DFC should include highly specific conditionality to ensure good practices, and monitoring and reporting to track performance. In particular, projects must be designed to promote the following: 1) maintenance of regular wages for workers, 2) sufficient financing to actual manufacturing employers, 3) improved buying practices between global buyers and their suppliers, 4) payment of taxes to producing country governments by global buyers and 5) support for the creation of robust and sustainable social protection systems that do not rely long-term on donor countries or development finance.

Robust Oversight Mechanisms Must Identify Violations and Assess and Apply Lessons Learned

The DFC needs robust oversight mechanisms, not just to identify potential violations but to analyze the real-world impact of projects, to determine whether projected benefits actually materialized and to assess the overall outcome of a project. Oversight mechanisms must be accessible and transparent to ensure continued consultation with, and accountability to, the communities that are the intended beneficiaries of a project.

The DFC needs to both engage in more active, in-house monitoring through the use of site visits and an organized approach to collecting follow-up documentation, and empower local communities to monitor and report on compliance. Compliance officers must have the ability to initiate their own investigations, make on-site visits, and conduct confidential interviews with workers and their representatives, as well as with local labor ministry officials and ILO representatives. All project workers and frontline managers, including subcontractors, must be trained on their rights and the client company's commitments, particularly on freedom of association and health and safety. Trainings must include how to access complaint mechanisms.

Worker training and engagement is a proactive approach that is both more effective and cheaper, and avoids breakdowns in expectations within the client company. The DFC should engage any unions present in project monitoring. In the absence of a union, the DFC should work with companies and workers to create a health and safety committee, with a mandate that includes workplace violence and harassment, with elected worker representatives who have been trained on labor standards.

Companies must commit to delivering on promised benefits, and to make continual public disclosures throughout the life of the project. The DFC should collect updated information on projects and create public post-implementation assessments, combining information on compliance with environmental and social standards as well as development impacts.

Borrowers should be required to make periodic public disclosures on actual job creation, including disaggregated breakdowns of gender and minority hiring; wage and benefit rates; and working conditions throughout the life of a project. These should be compared to initial projections. Companies should disclose all workplace injuries and fatalities, and any workforce complaints filed with national authorities or the DFC's complaint mechanism. The DFC should conduct its own independent verification, including consulting workers and communities, and use this information to determine whether the project was compliant with environmental and social standards and whether promised benefits materialized and intended impacts occurred, with an eye towards fine-tuning project design towards investments that have the most positive overall outcomes.

Staff the DFC with Labor Experts

Fulfilling the DFC's Congressional mandate on labor and other human rights protection requires staffing the DFC with experts in worker rights and industrial relations throughout all levels of the organization. Labor had a dedicated seat on the OPIC board, and Congress explicitly decided to preserve this knowledge base when it outlined relevant experience for non-governmental DFC board members. We firmly believe that at least one board member must have direct labor experience.

In addition to senior leadership, oversight committees - including the Development Advisory Committee and the Risk Committee - and staff charged with project assessment and implementation must include individuals with a background in evaluating risk and compliance with labor standards from a worker perspective. This should include establishing a team devoted to health and safety, in line with the one at the European Bank for Reconstruction and Development. There should be staff with expertise in development, environmental sustainability including just transition, and gender equity. Given the serious labor and human rights abuses that have occurred on OPIC programs in the past, it is critical that experts are included in the assessment and reorientation of processes to ensure that mistakes of the past are not repeated.

Conclusion

The work of the DFC is more critical than ever. We urge you to focus efforts on projects that deliver long-term gains to workers and communities, and to advance appropriate mechanisms for project appraisal, oversight and results measurement to deliver on those goals. I hope that we can work together to ensure the creation of robust selection criteria and oversight and monitoring mechanisms to ensure future projects enhance labor rights, support resilient economies and deliver tangible benefits for workers and communities.