

SCORING OPIC ONE YEAR ON

Few Lessons Learned in OPIC's Response
to Disastrous Project in Liberia



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EXECUTIVE SUMMARY



THIS SCORECARD is a one-year assessment of the performance of the Overseas Private Investment Corporation (“OPIC”) in response to findings and recommendations made by its Office of Accountability (“OA”) regarding its investment in Buchanan Renewables (“BR”).

In January 2014, hundreds of Liberian farmers, charcoalers and workers filed a complaint about harm caused by OPIC’s investment in BR. OPIC’s President and CEO requested that the OA conduct a review to assess the credibility of allegations, the application of relevant policies to the project and the adequacy of OPIC’s policy framework. In September 2014, the OA released its report, finding many of the allegations of harm credible and making a number of recommendations in order to avoid such harm recurring in the future. In the year following publication of the OA report, OPIC has issued two formal responses, including several commitments aimed at addressing concerns raised in the report. These responses, however, have lacked detail and OPIC has not published many relevant policies and procedures, making it difficult, if not impossible, to track its reform efforts.

Based on publicly available information and brief additional comments received from OPIC, we conclude that OPIC has largely failed to make significant, lasting improvements in response to the OA report.

Of the 170 available points in our methodology, OPIC only achieves 35 points: an average of two out of 10 for each issue.

In order to comprehensively address the policy and procedural gaps identified by the OA report and to ensure improved performance in future investment projects, OPIC must, as a matter of priority:

- **Supplement its existing risk management systems** to specifically and effectively screen, assess and manage risks that a project will not achieve its projected development benefits;
- **Complete its planned review** of the Environmental and Social Policy Statement (“ESPS”), with meaningful public consultation and ensure that this ESPS review comprehensively addresses the policy gaps identified by the OA;
- **Formalize enhanced monitoring processes** for high risk projects;
- **Urgently recruit and hire a Director of the OA** who is appropriately qualified and promote awareness of the OA’s services;
- **Take steps to ensure robust adherence** to internal project approval procedures, particularly for high priority projects;
- **Improve due diligence processes**, particularly for projects involving greenhouse gas emissions and for risk assessments of the personnel involved in projects; and
- **Publish all relevant policies and procedures** to ensure the transparency of its processes and to enable an assessment of their effectiveness.



Until these steps are taken, OPIC risks repeating the mistakes it made in Liberia and again leaving vulnerable communities worse off as a result of its investments.

INTRODUCTION



Background Information Regarding the Complaint and Investigation

On 22 January 2014, hundreds of Liberian farmers, charcoal producers and workers submitted a complaint to OPIC demanding redress for OPIC's funding of BR's biomass project,¹ alleging that it caused serious human rights, labor and environmental abuses, including sexual abuse by company employees of local women.²

Between 2008 and 2011, OPIC approved three loans to BR for a total of US\$216.7 million.³ BR's project proposed cutting down rubber trees for biofuel, rejuvenating family farms and creating sustainable energy for Liberia. The complaint explains that instead of providing development benefits, the project left hundreds of Liberians *worse off* than they were prior to OPIC's investment. For example:

- Indigenous, smallholder farmers who had subsisted on income from their rubber trees were left struggling to satisfy basic needs after the project cut their trees and failed to provide alternative livelihood support;
- Charcoal producers were forced to compete with BR for the rubber trees on which their livelihoods depended, and BR employees demanded bribes – and sex from women – for leftover wood that BR had promised to give local producers for free; and
- Workers faced rampant labor rights violations, including inadequate protective equipment, inadequate care following debilitating workplace accidents and sexual harassment and abuse.

In early 2013, BR abandoned its project and terminated its contractual relationship with OPIC. Despite no longer having any legal arrangement with the company, and thus no obligation to investigate under the OA's procedures,⁴ in February 2014, OPIC's President and CEO Elizabeth Littlefield requested that the OA conduct a 'lessons learned' review of the project.⁵

The OA conducted its investigation between February and September 2014. It reviewed project-related documents, conducted a site visit and held interviews with OPIC staff and external stakeholders. The OA expressly notes that its ability to investigate the complaints was constrained by a number of factors, including a lack of data and documentation on key issues.⁶ Accordingly, the OA only attempted to "reduce uncertainty around key allegations."⁷ The OA also chose not to investigate all of the concerns raised in the complaint, instead selecting those that it considered most relevant to systemic issues at OPIC.⁸

As discussed in more detail in Section III, the OA report found credible harm to all three complainant groups. The OA report also made a number of findings and recommendations regarding OPIC's policies and procedures, aimed at improving OPIC's performance in future investments.

The OA report was one of the last acts of the outgoing OA Director, Keith Kozloff, who completed his term on 30 September 2014.⁹ Since that date, the OA Director role has remained unfilled, leaving the OA entirely unstaffed.

¹ Buchanan Renewables also operated under the name Buchanan Renewables Energy ("BRE") and is referred to as such in several OPIC documents.

² The complaint letter and accompanying report are available at <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/OPIC-Complaint-Letter.pdf> and <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/Fueling-Human-Rights-Disasters-smaller-file.pdf>. To date, despite repeated requests, OPIC has taken no steps to provide remedy for those harmed as a result of its investment in BR in Liberia.

³ The investments were made to Buchanan Renewables Fuel and Buchanan Renewables Power, subsidiary companies of BR. Further details of the investments are available in the OA report. See Overseas Private Investment Corporation Office of Accountability, *OA Review: Buchanan Renewable Energy Projects in Liberia* (Sept. 2014), pp. 5-7, available at [https://www.opic.gov/sites/default/files/files/OA%20Buchanan%20Report\(1\).pdf](https://www.opic.gov/sites/default/files/files/OA%20Buchanan%20Report(1).pdf) ["OA report"].

⁴ See OPIC OA, *Operational Guidelines Handbook for Problem-Solving and Compliance Review Services* (2014), ¶4.2.2, available at https://www.opic.gov/sites/default/files/files/final_draft_OA_guidelines.pdf.

⁵ This directive is annexed to the OA report. OA report, Annex 14.1.1.

⁶ OA report, pp. 17, 23, 31-32, 36.

⁷ *Id.* at pp. 5-6, 16.

⁸ OA report, note 3.

⁹ See OA Director's Fiscal Year 2014 Letter, available at <https://www.opic.gov/sites/default/files/files/oa-director-letter-fy14.pdf>.

OPIC's Response and Congress' Concerns

OPIC published a Management Response to the OA report, which welcomed many of the recommendations, but did not commit to any detailed reform or acknowledge the harm to the Liberian communities.¹⁰ In subsequent communications, OPIC advised that it did not intend to provide redress to those communities because BR had exited Liberia and OPIC no longer had a relationship to the project.

Congress, concerned about the OA report and the harm caused by the BR project, included provisions in an explanatory statement to the Consolidated and Further Continuing Appropriations Act, 2015 that required OPIC to report to Congress within 90 days on its plan to

implement the OA's recommendations.

The provisions also directed OPIC to staff its vacant OA through an open and competitive process.¹¹ OPIC's response to Congress, however, similarly lacked important details about relevant reforms.¹²

Even more critically, the role of Director of the OA remains unfilled more than 15 months after the departure of Mr. Kozloff and more than a year after the Congressional direction to recruit his replacement. As a result, communities, like those in Liberia, have no independent forum within OPIC to lodge a formal complaint about OPIC projects.

Methodology

INFORMATION REVIEWED

The findings and recommendations included in the scorecard are taken directly from the OA report. As previously mentioned, the OA did not address all of the concerns raised by complainants and framed many of its findings in terms of more or less certainty or credibility. It follows that the scorecard is framed in similar terms and is limited to findings with a sufficient degree of certainty or credibility.

Regarding OPIC's response to the OA report, the key publicly available sources of information are its Management Response and its Report to Congress. We also reviewed a range of other publicly available documents, including: information regarding relevant OPIC policies;¹³ OPIC open Board Meeting Minutes; OPIC Annual Reports; the Federal Register, for relevant notices; published Congressional testimony; and third-party reports on OPIC's performance, including the

recent reports of the Office of Inspector General of the U.S. Agency for International Development ("USAID OIG")¹⁴ and the Government Accountability Office ("GAO").¹⁵

This scorecard focuses on publicly available information because our ultimate objective is to assess and verify reform, rather than simply record OPIC's self-reported performance. The lack of published information has hindered our investigation of OPIC's performance and led to reductions in OPIC's score, as explained in more detail below.

A draft of the scorecard was shared with OPIC to allow the agency an opportunity to provide greater detail and evidence of reforms undertaken. In our cover letter with the draft, we asked OPIC specific questions designed to clarify whether and how OPIC's reported reforms met the concerns of the OA. Although we appreciated the agency's timely response, OPIC did not provide

¹⁰ See OPIC Management Response to the Office of Accountability Review: Buchanan Renewables Fuel and Energy Projects in Liberia (Sept. 2014), available at [https://www.opic.gov/sites/default/files/files/Management%20Response%20to%20Buchanan%20Renewables%20Fuel%20and%20Energy%20Projects%20in%20Liberia\(2\).pdf](https://www.opic.gov/sites/default/files/files/Management%20Response%20to%20Buchanan%20Renewables%20Fuel%20and%20Energy%20Projects%20in%20Liberia(2).pdf).

¹¹ Explanatory statement to the Consolidated and Further Continuing Appropriations Act, 2015, available at <https://www.congress.gov/crec/2014/12/11/CREC-2014-12-11-bk2.pdf> at H9954.

¹² See OPIC, *Report in Response to the FY15 Consolidated and Further Appropriations Act (H.R. 83)* (16 Mar. 2015), available at <https://www.opic.gov/sites/default/files/files/report-to-congress-03172015.pdf> ["Report to Congress"].

¹³ OPIC publishes its Environmental and Social Policy Statement ("ESPS") and the associated Procedures Manual. See OPIC, *Environmental and Social Policy Statement* (15 Oct. 2010), available at https://www.opic.gov/sites/default/files/consolidated_esps.pdf; and OPIC, Office of Investment Policy's Environmental and Social/Labor and Human Rights Group, *Procedures Manual* (2012), available at <https://www.opic.gov/sites/default/files/files/opic-procedures-manual-2012.pdf> (Note that this document is date-stamped 2012, but has potentially been updated since then). OPIC describes other investment policies (such as economic analyses, development impact assessment, character risk due diligence and monitoring) but does not publish the formal policies or procedures on these matters.

¹⁴ Office of Inspector General, U.S. Agency for International Development, *Assessment of the Overseas Private Investment Corporation's Development Outcome and Compliance Risks* (Report No. 8-OPC-15-002-S, 15 May 2015), available at <https://oig.usaid.gov/sites/default/files/audit-reports/8-opc-15-002-s.pdf> ["USAID OIG report"].

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sufficient detail or copies of any policies or guidelines that would enable us to verify its changes and substantially modify the scorecard. While OPIC asserted that it “continue[s] to engage with Congress, our external auditors, and our internal control systems to address the issues raised by the OA report,” its reluctance to make relevant information publicly available fails to recognize the public’s important stakeholder interest in the performance of this agency. Our letter to OPIC and its response are **annexed** to this report.

SCORE ALLOCATION

Within the scorecard, we have allocated points out of 10 for OPIC’s response to each of the identified findings and recommendations. The 10 points are split between three criteria: commitment (up to four points); implementation (up to four points); and transparency (up to two points).

As to commitment, we asked whether the scope of any pledge or expressed commitment to reform meets the scope of the problem or recommended solution identified by the OA report. Four points are available where a commitment matches or exceeds the identified problem or recommendation.

As to implementation, we asked whether the problem or recommendation identified by the OA has *in fact* been addressed. Four points are available where implemented reform matches or exceeds the identified problem or recommendation.¹⁶

Finally, as to transparency, we asked whether the public is able to objectively examine and assess the

relevant policy, procedural or institutional change. Two points are available where the relevant policy or procedure (or other underlying, formal documentation) is publicly available.¹⁷

We identified 17 key findings or recommendations in the OA report and grouped those under the following headings: harm to communities (30 points available); failing to achieve positive development impacts (40 points available); environmental, social, cultural and human rights risk (60 points available); and other due diligence and monitoring concerns (40 points available). Accordingly, OPIC could achieve a maximum of 170 points by responding fully to each of those findings or recommendations.



¹⁵ U.S. Government Accountability Office, *Overseas Private Investment Corporation, Additional Actions Could Improve Monitoring Processes* (GAO-16-64, December 2015) available at <http://www.gao.gov/assets/680/674142.pdf> [“GAO report”].

¹⁶ We appreciate that scoring under the implementation criterion may follow the scope of OPIC’s commitment to reform, as assessed under the first criterion. For example, if OPIC does not agree to full-scope reform, its score will be discounted for both commitment *and* implementation. We believe that there are good reasons for this result. First, both criteria are necessary because there is a potential gap between commitment and implementation. Together, they ensure that OPIC is not rewarded if it makes broad commitments but fails to implement those and also that OPIC is rewarded if it undertakes more extensive reforms than those to which it committed. Second, any overlap between the two criteria is justifiable because scope is important when assessing both: OPIC should not receive equal credit for implementing a modest reform as for implementing a major reform. Like the score for commitment, the score for implementation ought to reflect the scope of the reform vis-à-vis the identified problem or recommendation.

¹⁷ We use this narrow definition of transparency for two reasons. First, less formal means of transparency (such as public statements or private correspondence) are already reflected in the scores for commitment and/or implementation. For example, where OPIC has explained by way of letter or report the relevant policy, procedural or institutional reform, we have credited OPIC for that reform – and implicitly, for that degree of transparency – under the commitment and/or implementation criteria. The explicit transparency criterion is only intended to reward more formal, comprehensive transparency. Second, publication of the underlying policy or procedure allows the public to assess and verify self-reported reform.

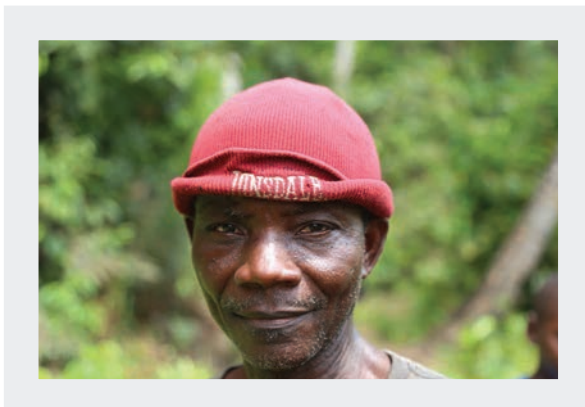
RESULTS



Harm to Communities

OA Findings and Recommendations	How has OPIC Responded?	Score
<p>Farmers: It is “likely” that some smallholder farmers are currently financially worse off than if the BR project had not happened (pp. 23-24).</p> <hr/> <p>Charcoalers: It is “credible” that charcoalers experienced more restricted access to wood, impacting their livelihoods and rendering them vulnerable to abuse (p. 31).</p> <hr/> <p>Workers: There is support for the credibility of allegations that BR workers suffered serious labor rights violations, including unsafe working conditions and race and gender discrimination (pp. 36, 59).</p>	<p>OPIC remains unwilling to discuss any redress for the affected communities, arguing that OPIC is not in a position to provide redress because BR is no longer operating in Liberia.</p>	<p>0 / 10 OPIC receives no points for each of the three findings. Despite the OA report’s findings of credible harm to local communities, OPIC has taken no steps to remedy that harm.</p>
<p style="text-align: right;">Harm to Communities Subtotal</p>		<p style="text-align: center;">0 / 30</p>

The OA found it likely or credible that the three complainant groups suffered harm as a result of the project. The OA report, however, does not explicitly address redress for those communities, reflecting the OA’s understanding of its mandate for this particular investigation: OPIC’s President and CEO requested that the OA assess the credibility of the complaints made, but limited its request for recommendations to “OPIC’s approach to future projects.”¹⁸



Nonetheless, having received the OA’s findings of likely harm, it is reasonable to expect OPIC to respond to them. OPIC claims that it is committed to accountability.¹⁹ However, while investigating complaints and providing communities with a forum to voice, record and affirm their concerns about a project are important aspects of accountability, they are not in and of themselves sufficient. Remedy – whether in the form of compensation or other appropriate redress – is equally important. OPIC should not consider its ‘job done’ by learning lessons from its mistakes: those mistakes have caused harm and should be remedied. By refusing to engage in any discussion about remedy, OPIC scores poorly on this issue, receiving zero out of a possible 30 points.

¹⁸ See OA report, Annex 14.1.1.

¹⁹ “OPIC is committed to transparency and accountability.” OPIC, *Corporate Sustainability Statements*, available at <https://www.opic.gov/opic-action/renewable-resources/OPIC-Corporate-Sustainability-Statement>.

Failing to Achieve Positive Development Impacts

OA Findings and Recommendations	How has OPIC Responded?	Score
<p>Development impact risk management: OPIC's risk management system failed to explicitly assess the (elevated) risks that the project would not achieve its projected development benefits (pp. 9, 12, 68).</p> <p>Recommendation: OPIC should supplement its existing risk management systems. OPIC should consider explicit screening and assessment of the risk that a project will not achieve positive development impacts, with enhanced monitoring and internal resources for projects with elevated risk (pp. 9-10, 69-72).</p>	<p>OPIC reports that it has strengthened how it screens and monitors projects, including introducing a review of client management capacity. OPIC also reports that in 2014, it created an internal risk management committee to monitor and assess potential agency risk related to client, credit, reputation and resources. However, OPIC has not explicitly addressed risk assessment for projected development impacts as recommended by the OA.</p>	<p>2 / 10</p> <p>OPIC's response provides insufficient detail of its enhanced processes and of how they specifically manage risk of not achieving projected development impacts. Relevant investment screening policies are not publicly available. OPIC therefore only receives one point each for commitment to and implementation of client management capacity screening.</p>
<p>Resources: If internal resources are insufficient for enhanced client engagement and monitoring of high risk projects, OPIC should decline its support (pp. 10, 71).</p>	<p>OPIC reports that it has taken steps to ensure sufficient capacity and resources are available for project review and monitoring and that it is hoping to expand those in the 2016 budget cycle. Recruitment for additional environmental and labor/human rights analysts was expected to be finalized by mid-2015.</p>	<p>3 / 10</p> <p>OPIC's increase in specialist resources is positive, but it has not expressly committed to incorporating resource considerations into approval decisions for high risk projects. OPIC receives two points for commitment to increase resources and one point for its implementation to date.</p>
<p>Engagement with civil society: OPIC should explore opportunities to engage (either itself or its client) with civil society (particularly in host countries) on a project-specific basis, to promote positive development outcomes (pp. 10-11, 72-73).</p>	<p>Although initially responding positively to this recommendation, OPIC does not refer to civil society in its Report to Congress and has provided no further information on this point.</p>	<p>1 / 10</p> <p>Despite an initially positive reaction, the extent to which OPIC has responded to this recommendation is unclear.</p>
<p>Engagement with other donors: When faced with a fragile country and sector, or a client with limited experience, OPIC might seek strategic partners with grant, technical assistance or in-kind resources that complement its own financing (pp. 11, 72-73).</p>	<p>While its Management Response welcomed this recommendation, OPIC's Report to Congress simply states that OPIC is exploring opportunities to engage with donor resources on projects like those in Liberia.</p>	<p>2 / 10</p> <p>OPIC receives points for its positive reaction and its reported exploration of opportunities for strategic engagement, but the lack of detail prevents a more favorable assessment.</p>
<p>Failing to Achieve Positive Development Impacts Subtotal</p>		<p>8 / 40</p>



The risk that OPIC's projects will not achieve their projected development benefits is a major feature of the OA report and the subject of some of its most detailed recommendations. This risk is related to, but distinct from, both credit risk and environmental and social risk. A project might be financially profitable, and comply with environmental and social standards, yet not achieve its projected, positive development impacts. This result is unacceptable because development is a core feature of OPIC's statutory mandate.²⁰

The OA describes risk assessment for *development impacts* as a "gap" in OPIC's existing risk management system. Among other reasons, the OA explains that: projected development benefits are currently based on self-reports from clients or prospective clients (OPIC does not conduct an explicit *ex ante* assessment of those reports); OPIC's risk management system is principally focused on credit (financial) risk, the management of which only indirectly supports development impacts; and there may in fact be internal tensions between allocating credit risk and ensuring development impacts, with the result that credit risk is managed to the detriment of development outcomes.²¹ The OA report expressly recommends that the OPIC CEO task an appropriate internal group to develop an approach for supplementing existing risk management systems to be activated for projects in which there are elevated risks of not achieving positive development impacts.²²

Although OPIC asserts that it has strengthened how it screens and monitors projects, its responses continue to focus on credit risk and environmental and social risk, without addressing the specific development impact concerns identified by the OA. A telling example of OPIC's continued emphasis on credit risk is found in the Management Response to the OA report, which states: "The Report suggests that OPIC could benefit from a better system for ensuring that development objectives are realized ... Development outcomes are only realized when projects succeed financially."²³ OPIC goes on to argue that prior efforts, such as enhanced credit procedures, adoption of the International Finance Corporation ("IFC") Performance Standards ("PS") and improved monitoring, together provide OPIC with "an additional tool to support projects in meeting their development objectives."²³ At the transaction level, OPIC says that it is undertaking enhanced due diligence for projects with heightened social risks, including a review of OPIC clients' capacity and resources to appropriately monitor the identified challenges.

Without more information, however, these responses fail to answer the specific risk management concerns identified by the OA. As already explained, the management of financial and environmental and social risks is important, but is not sufficient, to secure development outcomes. At no point has OPIC publicly committed to an explicit, robust assessment of the ability of projects to achieve *projected, positive development impacts*.

²⁰ See Foreign Assistance Act of 1961, §231 (as amended); see also USAID OIG report, p. 6.

²¹ OA report, pp. 9, 68-69.

²² *Id.* at pp. 9-10, 69-72.

²³ OPIC Management Response, p. 4.

²⁴ *Id.*

The recent reports of the USAID OIG and GAO, published in May 2015 and January 2016 respectively, reinforce this conclusion. The USAID OIG report identifies OPIC as having “medium” vulnerability of not meeting its statutory requirement to “achieve social and economic development in target countries,” because: (1) OPIC’s contribution to development might be reduced by overemphasizing financial considerations;²⁵ and (2) development scores assigned to each project rely on self-reported estimates and might be inaccurate.²⁶ The OIG’s review of OPIC investment documents and interviews with senior OPIC officials gave the impression that “OPIC is a bank focused on credit risk and self-sufficiency...as long as OPIC gets repaid, social or economic development impact is assumed to have taken place.”²⁷ The OIG referred to an example where a project’s development score was based in part on the client’s assertion that it would hire 70 employees, yet bank officials told the OIG that after receiving funding, the client did not hire any employees.²⁸

The GAO report also found that OPIC’s reliance on client-reported data, combined with limited resources for data verification (including limited site visits post-approval), may result in OPIC having inadequate or inaccurate information about a project’s development impact.²⁹ The GAO report refers to OPIC’s commitment to ensure sufficient capacity and resources to review and monitor high risk projects, in response to the OA report, but warns that “[w]ithout analyzing the risk to information quality inherent in its project monitoring process,” OPIC cannot be assured that it is satisfying its monitoring objectives and achieving its program goals.³⁰ These findings are consistent with the gaps identified by the OA and affirm our conclusion that OPIC has not yet made significant improvements on this issue.



Finally, while the recommendations of greater engagement with strategic partners, civil society and other donors appear to have been received positively, OPIC has not provided any details regarding its plans for improved engagement.

Accordingly, despite its reported improvements to project risk screening and monitoring, OPIC scores poorly under this heading, achieving only eight out of 40 available points. This result is intensely disappointing given that achieving positive development impacts is a core feature of OPIC’s mandate.

²⁵ USAID OIG report, p. 5. In response to OPIC Management comments, the OIG report further states that: “we contend that financial success does not necessarily translate into development impact and that too much emphasis on financial success could both increase the risk of negative unintended consequences and detract from OPIC’s maximum development potential.” *Id.* at p. 14.

²⁶ *Id.* at p. 5.

²⁷ *Id.* at p. 7.

²⁸ *Id.* The report goes on to add that these statements “suggest a risk that OPIC development scores provided by the Office of Investment Policy could overestimate development impact and that its clearance requirements might not be enforced.” *Id.*

²⁹ GAO report, pp. 40 and 43. GAO reviewed a sample of 21 OPIC projects, only three of which received an OPIC site visit after the projects became operational. Of those three projects, two had their development scores downgraded following the site visit because the project was not meeting its projected development goals. The third project received a higher overall score after the site visit. See *id.* at pp. 38-39. GAO notes that although the IFC, like OPIC, relies on client-reported data for some monitoring, unlike OPIC, the IFC conducts site visits to all projects in its portfolio on a regular basis. See *id.* at p. 42.

³⁰ *Id.* at pp. 41 and 43.



Environmental, Social, Cultural and Human Rights Risks

OA Findings and Recommendations	How has OPIC Responded?	Score
<p>Baseline data: OPIC failed to collect, or require its client to collect, baseline data necessary to track the impacts of the project (pp. 25-26, 28, 30-32).</p> <p>Recommendation: OPIC's Environmental and Social Policy Statement ("ESPS") needs to expand the scope of groups that might be considered vulnerable and when such groups are identified, OPIC should require that baseline socioeconomic data be obtained prior to the start of operations (pp. 32-33, 76).</p>	<p>None of OPIC's public responses address the collection of baseline data. OPIC publicly initiated its 2015 ESPS review in December 2015, but it remains to be seen whether the review will comprehensively adopt the OA's recommendations.</p>	<p>2 / 10</p> <p>OPIC has failed to directly respond to this recommendation, although the ESPS review provides an opportunity to consider the issue. OPIC receives two points for committing to and initiating the ESPS review.</p>
<p>Failure to recognize vulnerability of smallholder farmers: OPIC did not conduct sufficient due diligence or monitoring of the contractual relationship between BR and farmers to ensure that it was fair and protected this vulnerable group. Instead, it focused on ensuring that the contracts were protective of BR. This is an ongoing gap in OPIC's policy framework, where there is no requirement to ensure that vulnerable parties to a contract with an OPIC client receive legal or other support in the contracting process (pp. 25-26, 76).</p>	<p>OPIC's Management Response generally acknowledged that the OA report offered an opportunity to consider whether there are sufficiently strong protections in place for potentially affected persons.</p>	<p>2 / 10</p> <p>OPIC has failed to directly respond to this recommendation, although as above, the ESPS review may provide an opportunity to consider the issue. OPIC receives two points for committing to and initiating the ESPS review.</p>

OA Findings and Recommendations	How has OPIC Responded?	Score
<p>Workers: More vigorous due diligence and monitoring of BR workers could have been easily justified, given the risks associated with a rapidly growing young company, weak governance, extremely high unemployment and a history of corruption and gender discrimination (p. 37).</p>	<p>In 2010, OPIC established a Special Consideration classification (“SC”), which may trigger enhanced monitoring for projects with heightened labor risks. OPIC reports that projects with a similar labor profile to the BR project would now be categorized as requiring SC.</p>	<p>8 / 10</p> <p>The SC classification is a commendable development. OPIC receives full points for commitment and transparency. We have only awarded two points for implementation, due to ongoing concerns about OPIC’s ability to monitor social impacts (discussed below).</p>
<p>Human rights: OPIC failed to provide detailed guidance to its client on human rights risks (pp. 51-52). The ESPS continues to fail to comprehensively systematize human rights considerations (pp. 54-55, 75-76).</p> <p>Recommendation: OPIC should establish procedures for enhanced screening, due diligence and access to redress for projects that pose elevated human rights risks. OPIC is encouraged to use the review of the ESPS to establish specific procedures, including criteria for projects requiring an independent Human Rights Impact Assessment and guidance on matching the human rights risk with enhanced requirements for a project grievance mechanism (pp. 12, 75-76).</p>	<p>OPIC reports that it has improved screening, due diligence and monitoring of human rights risks, including by engaging specialized consultants and by requiring more robust grievance mechanisms from its clients. OPIC also refers to its adoption of the 2012 amendments to the IFC’s PS, which expressly address human rights risks. However, OPIC fails to address the OA’s specific recommendations regarding gaps in the ability of the ESPS to systematize human rights considerations.</p>	<p>5 / 10</p> <p>While OPIC has taken steps to address human rights risks, it has not yet made those procedures publicly available or formalized those as part of the ESPS (although these may be included within the upcoming ESPS review). Further, it appears that the current “draft” procedures continue to have gaps. OPIC receives two points for committing to and initiating the ESPS review, two points for implementation of other measures to address human rights risks and one point for transparency.</p>
<p>Environmental classification: The separate classification of the power plant and the biofuel projects potentially resulted in the under-classification of those projects, by avoiding an assessment of their combined impacts. Separate categorization might still have occurred under the current policy framework (pp. 56-57).</p>	<p>OPIC has not directly addressed this issue in its responses to the OA report. While other information indicates that OPIC has established guidance on cumulative impact assessments, that guidance is not publicly available.</p>	<p>2 / 10</p> <p>Based on limited publicly available information, it is unclear whether OPIC has resolved this issue. Because the ESPS review may provide another opportunity to address this issue, OPIC receives two points for committing to and initiating the ESPS review.</p>
<p>Access to redress: OPIC should strengthen access to redress for affected local stakeholders, including ensuring that a client’s project grievance mechanism is commensurate with the level of human rights risk and taking steps to promote awareness of the OA’s problem-solving services (pp. 55, 76).</p>	<p>OPIC reports that it is requiring more robust grievance mechanisms, with enhanced community engagement, enhanced ease of access and enhanced responsiveness to human rights complaints, but does not say how or where these enhanced procedures are formalized. OPIC has not addressed promotion of the OA’s services.</p>	<p>2 / 10</p> <p>OPIC receives one point each for commitment and implementation, on the basis of its reported improvements regarding project-level grievance mechanisms.</p>
<p>Environmental, Social, Cultural and Human Rights Risks Subtotal</p>		<p>21 / 60</p>

RESULTS

The OA found a number of gaps in OPIC's due diligence and monitoring of environmental, social, cultural and human rights risks. Some of these gaps persist even after OPIC's adoption of the ESPS and incorporation of the IFC PS, which include specific standards for environmental and social impact assessments ("ESIAs").

OPIC reports that it has improved its screening, due diligence and monitoring of potentially negative impacts, including through its prior adoption of the ESPS and the IFC PS (which now include human rights considerations), by engaging specialized consultants and by requiring more robust project-level grievance mechanisms from its clients. The most detailed and verifiable improvements pertain to labor-related risks, which benefit from specialized protections that preceded, and were acknowledged by, the OA report.³¹ As detailed in the scorecard, however, OPIC has largely failed to explicitly address gaps in screening and assessing non-labor risks.

For example, OPIC has made no express commitment to improving the collection of baseline data. This is a significant gap. As the OA explained, the "[c]ollection of social and economic baseline data is an essential part of environmental and social impact assessment for any groups potentially affected by a proposed project, whether negatively or positively."³² In relation to the BR project, had OPIC collected appropriate baseline data, it could have accurately assessed the full range of economic impacts instead of "relying upon the [ESIA's] unsubstantiated assertion that the project would have no adverse economic impact" and "at the least, measures to monitor and mitigate these impacts could have been included in the ESIA. Ideally, the project design could have been modified to avoid them altogether."³³

Without further information, we have also been unable to determine whether or how OPIC has improved its processes for screening, assessing and managing human rights risks. In its public reports, OPIC refers to its prior adoption of the ESPS and IFC PS as evidence of improved human rights risk assessment, however the OA clearly explains that these policies alone do not comprehensively systematize human rights considerations. For example, the OA explained that the ESPS does not clearly articulate when enhanced human rights due diligence is triggered.³⁴ Moreover, OPIC's formal human rights review, referred to in section 3.5 of the ESPS, is based on the U.S. Department of State's binary (up or down) clearance, which only provides a clearance date, a brief description of how the project was cleared and a public project summary.³⁵ Finally, it is the OA's opinion that if there is a determination of an elevated risk of non-labor human rights issues, the resulting process is ambiguous.³⁶

OPIC's response to our request for comment on the draft scorecard,³⁷ and the subsequently-published GAO report,³⁸ record that OPIC has developed "draft" enhanced screening and monitoring procedures to better identify and manage human rights risks. However, OPIC failed to provide us with specific details of these procedures (such as their criteria or component steps) and failed to provide copies of any documents formalizing those procedures. Accordingly, we, and the public more generally, are unable to verify or assess OPIC's reported reforms. This concern is not trivial. For example, the GAO report states that "the [human rights] clearance process does not encompass a review of all the human rights contained in the Universal Declaration for Human Rights, and it only reviews those human rights that private companies can impact."³⁹

³¹ OA report, pp. 37-38.

³² *Id.* at p. 31.

³³ *Id.* at p. 25; see also pp. 12, 26, 31-33.

³⁴ *Id.* at pp. 54, 75-76.

³⁵ *Id.*

³⁶ *Id.* at pp. 55, 75-76.

³⁷ In particular, OPIC says that it is now deploying specialized social consultants as part of project due diligence, undertaking more frequent monitoring of high risk projects using independent consultants, requiring more robust project-level grievance mechanisms and ensuring that additional staff and resources are available to review and monitor high risk projects. See Annex 2.

³⁸ The GAO report describes the procedure as "draft guidance" for enhanced human rights risk screening, with that guidance to be finalized following public notice and comment as part of its ESPS revision. GAO report, pp. 31-32.

³⁹ GAO report, note 47.

This scope appears overly limited.⁴⁰ Further, the GAO report indicates that there are ongoing ambiguities in the draft guidance: where additional auditing of elevated human rights risk is required, “the draft guidance does not describe who is responsible for conducting this review or how it is to be documented.”⁴¹

Finally, it is unclear whether OPIC has amended its procedures to ensure that the combined environmental and social impacts of related projects are properly taken into account in project risk assessment. OPIC did not specifically address this issue in any of its responses to the OA report. However, the GAO report states that OPIC recently adopted additional “guidelines” for assessing the potential “successive, incremental, or combined” environmental and social impacts and risks of proposed projects or activities “in combination with other existing, planned, or reasonably anticipated future projects or activities.”⁴² That guidance is not publicly available. Without more information about the specific parameters of this guidance, we cannot assess whether the issue identified by the OA has been resolved.

OPIC may plan to address such issues and formalize any enhanced procedures as part of its recently-initiated review of the ESPS.⁴³ OPIC had committed to conduct this review in 2015,⁴⁴ however the first meeting with civil society organizations was not held until 9 December 2015. A draft revised ESPS is not yet available for review or comment. While the ESPS review provides an important opportunity to incorporate recommendations of the OA and to formalize any improved procedures, the delay and lack of detail of proposed changes means that – with the exception of labor risks – OPIC generally scores poorly on these issues, receiving only 21 of a possible 60 points.⁴⁵



⁴⁰ The IFC itself notes in its Guidance on Performance Standard 1 that: “The key human rights concepts can be found in the International Bill of Rights, consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). [Noting that other core international human rights treaties focus on women’s rights, torture, children’s rights, migrants, enforced disappearance and persons with disabilities, and that based on their circumstances, clients may need to consider these and other instruments of international human rights and humanitarian law]. While states have the primary duty to implement the obligations contained in these instruments, private sector companies have a responsibility to respect these human rights in their operations. Several important business and human rights analyses recently examined the relevance of rights in the International Bill of Rights to projects, and concluded that, while the possibility that businesses can impact all human rights expressed in the International Bill of Rights cannot be ruled out, there are certain rights that are of particular relevance to the conduct of business.” International Finance Corporation, *Environmental and Social Performance Standards Guidance Note 1* (1 Jan. 2012), ¶GN44, available at http://www.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated_GN1-2012.pdf?MOD=AJPERES.

⁴¹ GAO report, p. 31.

⁴² *Id.* at p. 32.

⁴³ As indicated to GAO, in relation to the enhanced human rights procedures. See GAO report, p. 31.

⁴⁴ Report to Congress, p. 1.

⁴⁵ Without adequate explanation, OPIC decided to abandon a detailed draft human rights policy in favor of the vague, incomplete procedures contained in the ESPS during its drafting in 2010. Based on this experience, we remain skeptical that human rights considerations will be comprehensively addressed during the 2015 ESPS review. For more information, see Accountability Counsel’s summary of our policy advocacy on this point, available at <http://www.accountabilitycounsel.org/policy/existing-mechanisms/opic/past-policy-initiatives/>.

Other Due Diligence and Monitoring Concerns

OA Findings and Recommendations	How has OPIC Responded?	Score
<p>Information channels: The OA found a substantial disconnect between the information received by OPIC through its formal monitoring channels and the allegations in the complaint (including allegations which the OA found credible). Depending on local conditions, OPIC should consider options for improving information availability, both from affected stakeholders and from clients (pp. 71-72).</p>	<p>Although OPIC reports that it has improved monitoring procedures, it does not comprehensively respond to the information gap described by the OA. It is also not clear where or how OPIC's improved monitoring procedures are formalized.</p>	<p>2 / 10 OPIC receives one point each for commitment and implementation, on the basis of its reports of improved monitoring procedures. Notwithstanding those improvements, the GAO report indicates that significant monitoring issues remain.</p>
<p>Risk management: OPIC's system for managing credit and project risk can be strained where a project is a high priority for OPIC management (pp. 41, 45-46).</p> <p>Recommendation: OPIC should consider amending its policies to ensure robust adherence to credit and policy risk processes as a counter-weight for projects that have been given a high priority. The OA suggests a number of changes to avoid OPIC management "shepherding" proposed projects through approval processes and to limit OPIC's external advocacy for clients prior to disbursement (pp. 11, 73-75).</p>	<p>OPIC states that it has strengthened its project review processes with revised credit procedures and directives. It does not identify specific changes, except to say that its procedures now emphasize the importance of a management capacity assessment. Credit risk and project review procedures are not available on OPIC's website.</p>	<p>2 / 10 OPIC's response does not detail how its credit procedures and directives have been revised or whether those reforms meet the specific concerns of the OA. OPIC receives one point each for commitment and implementation, on the basis of its reported improvements.</p>
<p>Reputational risks: A BR senior executive posed potential reputation risks for OPIC, due to his prior professional activities. Individuals within OPIC were aware of those activities but did not report them (pp. 61-62).</p> <p>Recommendation: OPIC should consider whether policy and procedural changes are needed to mitigate reputational risks, including improving its character risk due diligence ("CRDD") process and establishing a cooling off period for OPIC contractors (pp. 76-77).</p>	<p>OPIC refers to reputational concerns as one aspect of its enhanced screening procedure, but does not specify whether or how those changes address the specific issues raised by the OA report. The CRDD procedure is not publicly available.</p>	<p>2 / 10 OPIC receives one point each for commitment and implementation, on the basis of its reported improvements to reputational screening.</p>
<p>Carbon accounting: The OA found that OPIC's accounting and due diligence policies regarding greenhouse gas ("GHG") emissions are "at least confusing and potentially misleading to the public" (pp. 49-50, 76-77).</p> <p>Recommendation: OPIC should ensure that its due diligence and accounting policies are clear and consistent (pp. 76-77).</p>	<p>OPIC does not expressly respond to this recommendation.</p>	<p>0 / 10 Without any information, we cannot award any points to OPIC.</p>
<p>Other Due Diligence and Monitoring Concerns Subtotal</p>		<p>6 / 40</p>



Our assessment of OPIC's response to these findings and recommendations is significantly constrained by the lack of detail in OPIC's published responses and the lack of publication of relevant investment policies and procedures. For example, carbon accounting is not mentioned in either of OPIC's two public responses to the OA report. OPIC reports that it has strengthened its project review, credit and monitoring procedures and improved reputation risk screening, but generally does not specify what those improvements involve, where they are formalized or how any improvements relate to the specific issues identified by the OA.

While OPIC advises that it requires more frequent monitoring of high risk projects by independent consultants, this does not comprehensively address the information gap identified by the OA. On the contrary, GAO recently reported that OPIC's project monitoring remains substantially based on client-reported data, with little on-site or off-site verification by OPIC staff.⁴⁶ For the limited number of projects where a site monitoring visit has been carried out by OPIC staff, the lack of any specific

timeframe for documentation of that visit has resulted in reports written several years after the visits occur.⁴⁷ GAO therefore concluded that OPIC's current monitoring processes may not provide adequate information to support its program goals:⁴⁸ indicating that the information gap identified by the OA very much persists.

We also cannot review the relevant project review, credit, monitoring or reputation risk policies or procedures to verify any changes because these policies or procedures are not available on OPIC's website.⁴⁹ Furthermore, OPIC did not respond with additional information when this was requested.⁵⁰

Without more detailed information, OPIC scores poorly on these issues, receiving only six out of a possible 40 points.

⁴⁶ See, in particular, GAO report, pp. 40-42, and the discussion at p. 9 and note 29 above.

⁴⁷ GAO report, p. 39.

⁴⁸ *Id.* at p. 43.

⁴⁹ The only policies and procedures published in full on OPIC's website are the ESPS and its associated Procedures Manual. This Procedures Manual does not extend to broader (non-environmental and social) project review or monitoring systems.

⁵⁰ See Annexes 1 and 2.

CONCLUSION



Harm to Communities 0 / 30

Failing to Achieve Positive Development Impacts 8 / 40

Environmental, Social, Cultural and Human Rights Risks 21 / 60

Other Due Diligence and Monitoring Concerns 6 / 40

Total 35 / 170

ONE YEAR ON, OPIC has demonstrated few 'lessons learned' from its disastrous experience in Liberia. While it has published two statements asserting that it has taken the OA report and its recommendations seriously, those statements are characterized by a lack of detail and little transparency about exactly what actions have been taken. Similarly, when we sought further information from OPIC for the purpose of this report and scorecard, it did not provide sufficient answers to our specific questions or provide evidence of reported reforms. Without further, publicly available evidence, we can only conclude that OPIC has failed to adequately respond to the OA report and to make necessary improvements to ensure that its future projects perform better – particularly with regard to protecting communities and ensuring positive development outcomes – than its investment in BR. Worse still, OPIC continues to refuse to acknowledge the harms caused to communities in Liberia: the catalyst for the OA report. Those communities demanded accountability and have been sorely let down.

These gaps should not persist more than one year after publication of the OA report. In order to truly learn from its mistakes it made in Liberia, OPIC must as a matter of priority:

- **Supplement its existing risk management systems** to specifically and effectively screen, assess and manage risks that a project will not achieve its projected development benefits, with appropriate verification of client-reported data. OPIC's currently superficial approach to those risks is unacceptable, given that development is a core feature of OPIC's statutory mandate;
- **Complete its planned review** of the ESPS, with meaningful public consultation;
- **Ensure that the ESPS review results in:** a clear requirement to collect baseline socio-economic data for all potentially vulnerable groups prior to the start of operations; protections for vulnerable parties contracting with OPIC clients; clear criteria and processes for enhanced human rights due diligence; and effective assessment of the cumulative environmental and social impacts of separate but related projects. These are significant policy gaps identified in the OA report and should not remain outstanding;
- **Formalize improved monitoring processes** for high risk projects and provide more detailed guidance to clients on matching the level of risk with enhanced requirements for project-level grievance mechanisms;
- **Urgently recruit and hire a Director of the OA who is appropriately qualified and promote awareness** of the OA's services. It is indefensible that the OA has remained without a Director for more than 15 months, and for more than a year after Congress directed OPIC to staff this office, particularly following a report that highlighted serious concerns about OPIC's policies and processes;
- **Ensure that its approaches to due diligence and portfolio accounting of a project's GHG emissions are clear and consistent** with each other;
- **Take steps to ensure robust adherence** to internal project approval procedures, especially for high profile projects, including by limiting OPIC's external advocacy for clients prior to disbursement;
- **Improve its due diligence of risks posed by personnel involved in a project and establish a cooling off period** for OPIC contractors; and
- **Publish all relevant policies or procedures** to ensure the transparency of its processes and to enable an assessment of their effectiveness.

ANNEXES



Annex 1

November 9, 2015

Via Electronic Mail

Ms. Elizabeth Littlefield
President & CEO
Overseas Private Investment Corporation
1100 New York Avenue NW
Washington, DC 20527
Email: elittlefield@opic.gov

Re: OPIC's Response to the Office of Accountability Review of Buchanan Renewable Energy Projects in Liberia

Dear President Littlefield:

We write regarding your agency's response to the findings and recommendations of the Office of Accountability Review of Buchanan Renewable Energy Projects in Liberia ("OA Report"). After the OA Report was released, Overseas Private Investment Corporation ("OPIC") Management, including yourself, responded positively to many of those recommendations and committed to implementing various policy and procedural improvements. As it has now been over a year since the release of the OA Report, we have set out to analyze and verify OPIC's progress in implementing the recommendations, culminating in a report and scorecard of OPIC's performance.

In completing this analysis, we have found it difficult to identify the status or scope of many reforms, especially where those reforms relate to policies or procedures that are not presently available on OPIC's website. In our effort to be as fair and as accurate as possible, we are writing to you while the report is still in draft form to request further information and clarification.

In the balance of this letter, we set out a number of specific questions and requests for information to which we would appreciate OPIC's response. We have also attached a draft, text-only version of the report, so that you can provide any other comments or corrections. We require any information or comments by **December 8 2015** for those to be incorporated into the final version of the report. We trust that much of the requested information will be readily accessible, as the information is likely to have been collated for OPIC's Report to Congress in March of this year.

Please provide information and clarification

Our questions and requests for information correspond to the OA Report findings and recommendations, as detailed further in our draft report.

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In addition to the specific requests below, we would also appreciate copies of any relevant policies and/or procedures that are not presently available online. This will allow us to better understand your responses and to verify the extent of OPIC's implementation of each recommendation. In the interests of transparency, you may also wish to ensure that the relevant policies and procedures are published on OPIC's website.

Ensuring positive development impact

One of the major recommendations of the OA Report was to improve OPIC's assessment and management of the risk that a project will not achieve its projected development benefits. The OA Report expressly recommended that the OPIC CEO task an appropriate internal group to develop a proposal to supplement existing risk management systems for projects in which there are elevated risks of not achieving projected development impacts (as distinct from credit or other risks). The OA also recommended that OPIC consider greater engagement with strategic partners and civil society on specific projects to support development outcomes.

OPIC reports that it has strengthened how it screens and monitors projects, including introducing a review of client management capacity. OPIC also reports that in 2014 it created an internal risk management committee to monitor and assess potential agency risk related to client, credit, reputation and resources. To assist with our assessment of this response, we respectfully request that OPIC:

1. Provide additional detail of OPIC's enhanced project screening and monitoring processes, including:
 - a. Which policies and/or procedures have been amended and how;
 - b. In what policy or procedure the review of client management capacity is formalized;
 - c. How those changes address the risk that a project will not achieve its projected development benefits (as distinct from credit or other project risks); and
 - d. Whether OPIC is committed to undertaking increased monitoring and allocating increased internal resources for projects with elevated risk of not achieving development benefits, and whether OPIC will decline support for such projects where internal resources are insufficient for enhanced engagement. If yes, please identify the policy or procedure that formalizes these commitments;
2. Clarify whether the internal risk management committee has undertaken any work concerning risk assessment for achieving development impacts (specifically), the outcome of that work (if any), and who are the members of this committee;
3. Whether and how OPIC is:
 - a. Seeking strategic support from other donors for projects with a fragile country or sector;
 - b. Engaging with civil society in host countries on specific projects; and
 - c. In each case, whether this approach is formalized in any policy or procedure.

Environmental, social, cultural and human rights risks

The OA Report also found a number of gaps in OPIC's due diligence and monitoring of environmental, social, cultural and human rights risks, even after OPIC's adoption of the

Environmental and Social Policy Statement (“ESPS”) and International Financial Corporation’s Performance Standards (“PS”). The OA Report specifically recommended a number of improvements to the ESPS and to OPIC’s due diligence and monitoring of environmental, social and human rights impacts.

OPIC reports that it has improved its processes, including by engaging specialized consultants and by requiring more robust grievance mechanisms from its clients. OPIC also committed to review the ESPS with public input this year. However OPIC’s reports to date have not specifically addressed a number of the OA’s more detailed recommendations. Accordingly, we respectfully request that OPIC:

1. Clarify whether OPIC has made any changes to its environmental, social, cultural and human rights risk assessment and management procedures in response to the OA Report, including:
 - a. Whether and how OPIC is requiring the collection of baseline socioeconomic data for all vulnerable groups prior to the start of operations;
 - b. Whether and how OPIC is recognizing the potential vulnerability of parties contracting with OPIC clients and ensuring that the contracting process is fair to those parties (including by ensuring that they receive legal or other support);
 - c. Whether the criteria triggering, and the resulting procedure and outcomes of, enhanced human rights due diligence (including Independent Human Rights Impact Assessments) have been established and clarified;
 - d. Whether and how OPIC has responded to the risk that the environmental impacts of separate but related projects can be under-classified, due to the absence of any requirement to consider the totality of the impacts;
 - e. How OPIC is ensuring more robust project-level grievance mechanisms. Please describe in detail how project-level grievance mechanisms have been improved and how compliance is monitored and enforced;
 - f. Whether and how OPIC has taken steps to promote awareness of the OA’s problem-solving services; and
 - g. In each case, please identify any specific policy or procedure in which those changes or steps taken are formalized.
2. Provide details of the planned ESPS review including:
 - a. Whether OPIC has initiated this review and, if yes, what work has been undertaken to date;
 - b. When the public consultation process will begin and what it will involve;
 - c. The schedule for any future steps in this process; and
 - d. Whether OPIC commits to incorporate into the ESPS additional protections addressing those matters in 1(a)-(e) above.
3. Explain why the role of Director of the OA remains unfilled, what steps OPIC has taken to fill this role, and the schedule for any future steps in this process.

Other due diligence and monitoring issues

Finally, the OA made a number of recommendations relating more generally to OPIC’s due diligence and monitoring policies.

OPIC reports that it has improved its monitoring, project review and screening processes, but it is not clear how those improvements respond directly to the OA recommendations. Accordingly, we respectfully request that OPIC:

1. Explain OPIC's improved monitoring processes, identifying specific changes to policies or procedures, and how those changes ensure greater information availability;
2. Whether and how OPIC is ensuring robust adherence to internal project approval procedures, especially for high profile projects, including by:
 - a. Protecting against the risk that OPIC management "shepherds" a project through internal processes;
 - b. Limiting OPIC's external advocacy for clients prior to disbursement;
3. Whether and how OPIC has improved its character risk due diligence process;
4. Whether OPIC has established a cooling off period for contractors and, if yes, what are the terms of that requirement;
5. Whether and how OPIC has amended its due diligence and accounting policies for greenhouse gas emissions to ensure that they are clear and consistent with one another; and
6. In each case, please identify any policy or procedure that formalize these changes.

Next steps

Our primary objective is to ensure that the OA Report's recommendations are implemented and that the agency serves as a leader in accountability. If OPIC has taken steps that we are not aware of, we would like to know this and to give appropriate credit in our report.

We welcome any factual corrections to the information found in the draft report. We also look forward to receiving the requested information and any additional comments. We will incorporate the additional information and comments as appropriate, although ultimately the report will be finalized as our assessment. We request that you provide any information or comments by **December 8 2015**, as after that date the report and scorecard will be finalized, printed and distributed to interested parties.

In case of any questions, please do not hesitate to contact me directly.

Sincerely,



Kindra Mohr
Policy Director
Accountability Counsel
kindra@accountabilitycounsel.org

cc: Margaret Kuhlow, Vice President, Office of Investment Policy



Annex 2

1100 New York Avenue, N.W.
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December 9, 2015

Ms. Kindra Mohr, Policy Director
Accountability Counsel
244 Kearny Street
Floor 6
San Francisco, CA 94108

Dear Ms. Mohr:

We received your letter to Elizabeth Littlefield dated November 9, 2015, regarding OPIC's response to the Review of Buchanan Renewable Energy Projects in Liberia by its Office of Accountability (OA Report). Ms. Littlefield asked that I respond to your letter on behalf of OPIC.

OPIC appreciates the spirit and objective of your letter to analyze and verify OPIC's progress in implementing the OA Report's recommendations, and to ensure that OPIC continues to serve as a leader in accountability. We continue to engage with Congress, our external auditors, and our internal control systems to address the issues raised by the OA Report and other lessons that we have learned through our careful monitoring processes.

With respect to the Buchanan transaction in particular, OPIC's experience in Liberia illustrated the risks posed by projects operating in post-conflict countries, and especially, the increased potential for human rights violations, labor abuse or unrest, environmental impacts to ecosystem services, and impacts felt by people potentially affected by a project in a weak legal and regulatory environment.

The Buchanan projects were first reviewed by OPIC under a set of policies and procedures that have been significantly improved. The significant changes we have made since 2010, for example, include the full implementation of OPIC's Environmental and Social Policy Statement (ESPS), which was developed through public consultation, and adoption of the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability, which are widely recognized as international best practice.

In response to specific recommendations made in the OA Report, OPIC developed enhanced screening procedures to better identify factors contributing to higher human rights related risk in post-conflict and other similarly high risk environments. In such environments, OPIC:



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- Requires more frequent monitoring by independent consultants, and more robust grievance mechanisms that enable those who may be harmed by a project to raise concerns;
- Deploys specialized social consultants with direct experience in sensitive human rights matters to project sites as part of project due diligence; and
- Ensures that additional staff and resources are available to review and monitor these types of complex projects.

Most significantly, OPIC has committed to review the ESPS itself. While, as noted above, we had already addressed many of the major findings of the OA Report project at the time of the Report, there are some recommendations that require a change to the ESPS and would benefit from stakeholder input. Stakeholder input on our ESPS is extremely important prior to any change in the policy. Therefore, we have begun that process of stakeholder engagement. The first step was extensive internal consultation within the Agency. As you are aware, we are now beginning the external consultation.

While this review continues, at the transaction level, OPIC has already strengthened how it screens and manages the risk of the kinds of negative impacts that the OA Report highlighted. For example, OPIC used the recommendations contained in the OA Report, combined with our experience at the transaction level, to draft enhanced due diligence guidance for Projects with heightened social risks. That guidance strengthens OPIC project screening to ensure social risks are identified and understood. As part of OPIC's now regular environmental and management system review, this screening also includes a review of OPIC clients' capacity and resources to appropriately mitigate and monitor the identified challenges in a higher risk environment. The result has been specific transactional implementation of risk-based requirements, such as the development of grievance mechanisms in advance of commitment, enhanced community engagement, and independent environmental and social consultants to support project monitoring.

We appreciate your interest in OPIC and our mission. We are committed to continuing to establish and support the use of best practices in environmental and social risk assessment as we implement our mission to catalyze private sector investment to help solve development challenges.

Sincerely,



Margaret L. Kuhlow
Vice President, Office of Investment Policy



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