

Written Statement of GLJ-ILRF to U.S. International Development Finance Corporation for Public Hearing of June 6, 2023.

Dear colleagues,

Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) has reviewed the U.S. Development Finance Corporation's proposed Environmental and Social Policy and Procedures (ESPP) and submits this written statement to the June 6, 2023, public hearing.

In partnership with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), GLJ-ILRF has worked to secure workers' rights at hotels financed by development finance institutions (DFIs) for several years and acquired deep expertise in the application of DFIs' labor safeguards. Our report, [*Hotel Workers' Rights in Development Finance: Realizing Performance Standard 2*](#), published in February of this year, details violations of workers' rights at 50 International Finance Corporation (IFC)-financed hotels in twelve countries and our efforts to redress those violations through engagement with IFC and its clients.

GLJ-ILRF also works to secure labor rights along global supply chains, using innovative mechanisms such as enforceable brand agreements to secure internationally recognized workers' rights. GLJ-ILRF is committed to working with DFIs to develop stronger mechanisms for securing workers' rights and for achieving inclusive development.

Labor Rights.

We appreciate the ESPP's thorough attention to labor rights and believe DFC investments can be a crucial part of the administration's broader efforts to raise labor standards across the globe.

To that end, we applaud the ESPP provision requiring that projects involving new facilities be designed to meet the Applicable Standards (§ 2.3.2). This requirement is crucial to ensuring

that DFC investments exert a long-term influence towards rights-respecting management practices.

Likewise, we applaud DFC's attention to forced labor, child labor, and occupational safety and health risks in the supply chain, and we firmly concur with DFC's recognition that, where these risks are posed, supplemental screening is necessary (§ 2.4.5). Emphasis on workplace safety and health are especially critical amidst the current COVID-19 crisis and following the International Labor Organization's recognition of the right to a safe and healthy workplace as fundamental. We encourage DFC to make use of the global labor movement's networks in assessing these risks and developing its responses.

Further, we commend DFC's inclusion of sector-specific standards in the ESPP (§2.4). We have found a sectoral perspective essential in implementing safeguards and in developing and experimenting with new implementation policies. We encourage the DFC to experiment further with sector-specific policy interventions and to consider adding the International Labor Organization to list of potential sources of supplemental standards. *Id.* We would also note that sector-focused unions and global union federations can be important sources of information and insight in developing these standards.

DFC Due Diligence and Past Practices.

We are encouraged by DFC's commitment to thoroughly screening projects to ensure that only those able and willing to comply with the Applicable Standards receive DFC support. We believe, however, that DFC's due diligence could be strengthened to achieve its goal more effectively.

Due diligence, to be effective, must not be solely prospective in focus. However, the proposed ESPP requires no inquiries into clients' and their partners' past business practices that would clarify the likelihood of compliance. DFC clients should be required to disclose their own

and their business partners' past performance in environmental and social matters, especially on other projects financed by development finance institutions. Disclosure of past complaints and any adverse legal determinations on environmental and social matters are the minimum of information necessary to provide a basic evaluation of DFC's partners on a given project.

Information about past practices is critical to assessing the bona fides of those DFC considers supporting. Because of poor information-sharing practices among DFIs and a lack of inquiry into past practices, businesses may obtain support even when they have violated domestic laws, disregarded DFI safeguards, or demonstrated an inability or unwillingness to pursue compliance in the past.

Client Obligations and Timelines.

We are encouraged by DFC's emphasis on compliance with the Applicable Standards and client stakeholder engagement. However, we believe that small additions to the ESPP—especially deadlines for beginning stakeholder engagement and achieving compliance—would go a significant way towards ensuring that stakeholder engagement effectively contributes to risk management and compliance.

Stakeholder engagement is a key mechanism for assessing project-related environmental and social risks. We applaud the inclusion of a Meaningful Consultation requirement that extend beyond the requirements of Performance Standard 1. In our experience, Performance Standard 1's vague description of client obligations has resulted in inadequate stakeholder engagement efforts, leading to the discovery of significant risks only after the period during which they could be most efficiently addressed.

Stakeholder engagement is most effective when conducted as early as possible, giving project managers ample opportunity to adjust their plans to mitigate and avoid risks. The absence

of a deadline for clients' stakeholder engagement efforts, however, gives us the concern that clients will miss their best opportunity to adapt business plans to the realities confronting stakeholders on the ground, who are generally far more familiar with the environmental and social risks posed by individual projects.

We are also concerned by the absence of a firm deadline for achieving compliance with the Applicable Standards. While each project presents its own compliance difficulties, the absence of a timeframe deprives compliance efforts of urgency and impetus. Projects may cause or contribute to significant harm in a short period of time. DFC's ability to influence the conduct of projects may also wane over time. Lacking a compliance deadline, therefore, DFC may find itself associated with significant harms without the ability to correct project practices. Such deadlines should be published so that stakeholders may contribute to DFC's assessments of projects progress towards or achievement of compliance.

Additionally, we believe that it is vital that clients understand that projects must comply with all the Applicable Standards—not simply those specifically noted in their contracts or in environmental and social action plans. We encourage DFC to ensure that clients do not misunderstand the scope of their obligations.

Contracts.

In our experience, many businesses receive development financing without a sufficient understanding of their environmental and social obligations and without adequate preparations for implementing their commitments. This has presented a particularly critical impediment to achieving compliance where clients contract away authority to manage and/or operate parts of the projects to other firms who have not engaged with DFC staff or made clear commitments to ESPP compliance.

To address those risks, we believe DFC should require its clients, in their project-related contracting, to retain the authority to achieve compliance with ESPP requirements. Alternatively, DFC could require that clients include ESPP compliance as a material requirement of their contracting with businesses working on DFC-supported projects (§ 6.1.6).

In the ESPP, we encourage DFC to provide more detail concerning the contractual remedies available to DFC in case of noncompliance. Doing so will highlight the consequences of noncompliance and encourage project teams to take compliance obligations seriously and plan accordingly (§ 6.0.5).

Employment Impacts.

We applaud DFC's attention to employment impacts in its impact-tracking mechanisms, specifically the Impact Quotient. Employment impacts, including indicators of job quality, are a crucial part of DFC's overall development impact, and positive employment impacts are essential to achieving inclusive development. We encourage the DFC to expand on that commitment and require employment impacts assessments for all Category B projects. The proposed ESPP currently indicates that only some Category B projects will receive a full employment impacts assessment (§ 4.2.3).

We encourage DFC to use its data collection and project assessment requirements to encourage clients to adopt plans and practices that generate inclusive development. For all projects, no matter the category, DFC should require that clients present employment impacts assessments before the projects go before the Board and on a regular basis thereafter. By requiring continued attention to the effects of management decisions on workers, DFC can advance a commercial culture that is attentive to the rights and interests of workers and oriented towards achieving inclusive development.

Country Eligibility.

We find great value in the country eligibility restrictions that the BUILD Act of 2018 imported into the DFC project selection process. Robust application of this standard is crucial for building and maintaining the United States's position as a leader in workers' rights in development finance.

Ensuring that DFC financing is limited to those countries making robust progress in meeting international labor standards is essential to the Administration's broader efforts to uplift workers' rights. If the DFC were to invest in countries without strong labor rights commitments, that act would diminish other nations' incentive to act on labor rights, conflict with the administration's broader priority to elevate workers in international commercial affairs, and risk entrenching anti-worker practices in developing world businesses.

We encourage the DFC, in making its labor-based country eligibility decisions, to embrace the higher standard of the BUILD Act. While the Generalized System of Preferences requires only that a country have or be taking steps to afford internationally recognized worker rights, the BUILD Act provides that countries must be "taking steps to adopt and implement laws that extend internationally recognized worker rights." *Compare* 19 U.S.C. § 2467(b)(2)(G) *with* 22 U.S.C. § 9671(d)(1). The BUILD Act's formulation is more concrete, more easily applied, and more likely to encourage project host countries to maintain an ongoing commitment to securing workers' rights in changing circumstances. In no event should the DFC invest in countries that are unable to meet the lower GSP standard.

In applying either country-level eligibility standard, DFC should place great emphasis on the achievement of internationally agreed labor standards. Such an approach ensures that DFC's work aligns with that of other US government agencies and international bodies, strengthening the signal sent to host countries seeking DFC investment.

We encourage the DFC to clarify its use of the term “GSP eligible” in the ESPP, given that the program is currently inactive pending congressional action to renew the statute.

Stakeholder Input and Disclosure Policies.

DFC should ensure that it gives ample opportunity for external parties to contribute to its assessments of project-level labor rights risks and its country-level “taking steps” determination. Risks to workers’ rights vary not only by national jurisdiction, but also by locality and sector and over time. DFC’s processes should seek out and incorporate the inputs of trade unionists, labor rights activists, and others in assessing environmental and social risks. Their expertise and connections to local communities provide particularly crucial insights for DFC when evaluating the labor rights risks associated with both countries and projects. The proposed ESPP’s inclusion of the ITUC annual reporting as a source for country eligibility reviews suggests that DFC already understands the essential role of workers’ organizations and others in delivering this information. We would encourage DFC to go further and incorporate the sectoral analyses provided by relevant unions and global union federations when evaluating environmental and social risks.

We are concerned that the proposed ESPP and the associated Board of Directors Public Engagement Policy would effectively deny DFC the benefits of the vital information outside stakeholders have to offer when making its project- and country-level assessments. For most projects, the proposed ESPP and the Board’s Public Engagement Policy give the public only seven days of notice before the Board votes. Seven days is not sufficient time for external parties to generate and communicate crucial information on labor rights risks and for DFC to incorporate such information into its own project assessment processes. These pre-approval disclosures are particularly vital, as addressing labor rights issues becomes significantly more difficult after project approval.

The disclosure timing problem is particularly acute with respect to the documentation-intensive process of assessing country-level eligibility. If stakeholders have only seven days of notice that DFC intends to invest in a country that presents labor rights eligibility concerns, they will be unable to assemble the documentation and information needed to provide substantive input on country-level eligibility determinations.

Consulting with stakeholders and lengthening the disclosure period may cause delay, in our view, but the delay is well worth it. Ensuring that outside organizations can provide substantive feedback before DFC commits to a project ensures that due diligence officers have the information needed to perform their function and steer DFC clear of costly, reputation-damaging violations of the ESPP. Once DFC has committed to providing support, its ability to influence project conduct is much diminished, and early engagement ensures that the decision to provide support is made with all relevant information to hand.

We also note our concern that changes in the wording of the proposed ESPP may limit DFC's ability to access the information housed in the global networks of labor and human rights activists. The ESPP allows DFC to consult with "independent experts" in its due diligence and monitoring processes (§§ 4.00.6, 4.0.8, 6.0.2, 6.0.4, 6.1.5, 8.2.3). Previously, the DFC was permitted to consult with "knowledgeable third parties." Given that many trade unions and human rights activists may or may not be considered independent, we believe the DFC should permit consultation with "independent experts *and* knowledgeable third parties." That change would ensure that DFC can access these vital networks and access the information needed to perform effective assessments.

Looking Forward

We encourage DFC to work towards the development of remedy and responsible exit policies. A remedy policy is crucial for fulfilling DFC's obligation under the UN Guiding Principles to redress human rights violations, while a responsible exit policy would backstop ESPP requirements and ensure that premature project exits do not leave harms unaddressed.

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Thank you for the opportunity to comment on the proposed ESPP. We hope that DFC will seize this opportunity to lead the development finance community towards better solutions for workers and greater and more inclusive development impacts.

Sincerely,

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