

August 24th, 2018

The DIHR's response to IFU's call for inputs regarding the update of its Sustainability Policy

The Danish Institute for Human Rights (DIHR) welcomes the opportunity to provide comments on IFU Investments' (IFU) revised Sustainability Policy.

A number of developments in IFU's international and domestic context have stressed the need for IFU to ensure responsible business conduct, not least in the area of human rights. These include developments in IFU's legal framework¹, in the composition and volume of its portfolio and in the global agenda on sustainable development. These developments make it crucial for IFU to ensure that it acts with due diligence, not least to avoid and address all human rights infringements with which it can be involved through its own operations, or via its project companies, funds and other business partners.

Although the policy is meant to serve as an umbrella policy covering not only human rights, but also environmental sustainability and corporate governance, the update of the Policy demonstrates IFU's commitment to clarify its human rights responsibility and to align its due diligence practices with the substantive and procedural standards outlined in the UN Guiding Principles on Business and Human Rights (UNGPs). The comments and recommendations below are intended to assist IFU in strengthening the application of the human rights lens in the draft Policy and ensure a closer alignment with international standards.

1. Ensure human rights are further mainstreamed in the policy and / or through a standalone Public Position Statement

The Policy frames IFU's mission and overarching framework around its contribution to the Sustainable Development Goals (SDGs). The SDGs, as outlined in the 2030 Agenda for Sustainable Development Goals, are firmly grounded in human rights principles. The 2030 Agenda recognizes that the SDGs provide a means to realize human rights for all² and includes goals and targets that reflect the normative content of various human rights standards. Moreover, the SDGs expand the traditional understanding of development to include a focus on inequality and discrimination, unjust distributions of power and the needs of vulnerable right-holders.

¹ In Danish: Lov om ændring af lov om internationalt udviklingsamarbejde, art. 9(1)

<https://www.retsinformation.dk/Forms/R0710.aspx?id=185977>

² See the various references to human rights in the General Assembly Resolution A/RES/70/1 *Transforming our world: the 2030 Agenda for Sustainable Development*, e.g. The 17 Sustainable Development Goals "seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls." (Preamble); "The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome" (para 10); the new Agenda is "to be implemented in a manner that is consistent with the rights and obligations of states under international law." (para 18).

Given the clear inter-linkages between the SDGs and human rights³, as well as the emphasis given to the UNGPs in the amended law on international development cooperation, the DIHR recommends a stronger mainstreaming of human rights in the current draft Policy.

This could for example be by including specific information around measures taken to ensure respect for human rights is implemented by IFU as well as by project companies and funds, thereby making clear how the integrated sustainability approach does not hinder IFU from meeting the requirements of the UNGPs.

Below are specific recommendations on how IFU could further mainstream human rights principles:

- Ground the Policy in universal human rights values by specifying that the vision of sustainable development IFU espouses is that of *inclusive, equitable and participatory* development.
- Further specify what the implementation of the UNGPs entails, e.g. clearly articulate IFU's responsibility to avoid and address all types of involvement in human rights abuses, expand the scope of the current human rights coverage to clarify that all internationally recognized human rights are potentially relevant to its activities.
- Include references to "human rights impacts" alongside "environmental and social impacts" throughout the Policy. This should send a strong message that while human rights due diligence builds upon existing ESG practice, it also brings about changes to its traditional paradigm by benchmarking impacts against international human rights standards and prioritizing risks to rights-holders.
- Developing and referring to a distinct position statement on human rights could be an alternative or complementary measure to ensure appropriate clarity and transparency around IFU's specific efforts on human rights.

2. Ensuring relevance, clarity and consistency

The current draft policy is rich in information and comprehensive. This however also comes with the risk of failing to give information detailed enough for stakeholders to understand the exact implications of the policy and hold IFU to account. Further, while trying to build an overall policy that has to cover as broad an agenda as sustainability, IFU neglects to show its adherence to critical components of the areas included, not least in relation to human rights.

For example, while the policy indeed references key international frameworks and documents of importance, it includes less information on the practical implications thereof and leaves the reader with questions as to which fundamental standards and principles are at the core of IFU's practical approach and which are more foundational and serves as reference points.

The policy also includes a lot of terminology and at certain stages fails to be consistent in applying the technical terms and concepts. As such, the DIHR recommends that IFU (1) minimizes the use of general statements and commitments to allow for further unpacking of their implications (2) ensure consistent and clear application of terminology included (3) develop a complementary glossary to ensure target audiences (including project companies and project affected rights holders) will be able to understand the Policy and its practical implications.

³ <https://www.humanrights.dk/our-work/sustainable-development/human-rights-sdgs>

3. Human Rights based prioritization

The DIHR is aware of the necessity to prioritize sustainability related due diligence efforts and IFU's use of risk categorization to support this. The UNGPs require an assessment of human rights *severity* - as a basis for the prioritization of due diligence measures. The Policy would benefit from further specifying how IFU's general prioritization as well as risk categorization practice are aligned with the UNGPs' concept of severity and risks to people. The policy would also benefit from deleting concepts (including 'significance' and 'serious incidents') that carry the risk of diluting or confusing the degree to which IFU will prioritize based on human rights risks.

4. Stakeholder engagement – including of affected stakeholders and their representatives

The DIHR recommends the addition of several references to better align IFU's stakeholder engagement policy commitment with the UNGPs, not least through including project affected stakeholders among the stakeholders referred to. In terms of IFU's own stakeholder engagement, we encourage IFU to consider developing and implementing its own stakeholder engagement plans throughout the investment cycle, including in the appraisal and monitoring phases. Such an approach would allow IFU to identify human rights risks early on and better evaluate the sustainability commitments and capacity of project companies. In terms of IFU's requirements for direct investment, the Policy is silent on the UNGPs' expectation that all companies should engage with and meaningfully consult potentially affected stakeholders. The DIHR would therefore recommend the inclusion of a specific reference on this important aspect in the section "Sustainability requirements for direct investments".

5. Transparency and accountability

The draft paragraph on transparency and accountability currently fails to recognize the implications of UNGPs principle 21 including at a minimum, to report formally on IFU's identification of potential or actual severe impacts at the project level and its efforts to ensure that these are avoided, addressed and potentially remediated. Similar to how IFU currently addresses specific information sharing around the tax issue, the DIHR recommends IFU to also include details around its information sharing on human rights risks going forward.

6. Grievances and remedy

The DIHR welcomed IFU's launch of a grievance mechanism and takes note of its inclusion in the Policy. According to the UNGPs, the responsibility to respect entails the remediation of any adverse human rights impacts businesses might cause or contribute to. The DIHR would encourage IFU to further clarify in the Policy if the grievance mechanism is equipped to provide remedies in cases of findings of breaches with its policies and standards that caused or contributed to adverse impacts. Moreover, the UNGPs outline a set of effectiveness criteria for non-judicial grievance mechanisms, i.e. legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning. The DIHR recommends that IFU commits to continually assessing its grievance mechanism against these criteria and include references in the Policy to this end.

The Danish Institute for Human Rights

24.08.18