

Enhancing the positive impact of the Danish Investment Fund for Developing Countries' human rights efforts

During February-April 2017 the Danish Institute for Human Rights conducted a review of the Danish Investment Fund for Developing Countries' (IFU's) current efforts to avoid and address actual or potential adverse human rights impacts in its investments. The review maps IFU's current approach against the UN Guiding Principles on Business and Human Rights (UNGPs) and finds that while IFU does indeed have an extensive range of human rights related controls in place, these do not fully enable IFU to achieve or demonstrate compliance with the UNGPs. To fill existing gaps DIHR suggests that IFU takes a more purpose driven approach to working with the UNGPs, including by linking implementation of the UNGPs to IFU's development impact.

Recently, a number of developments in IFU's international and domestic context have stressed the need for IFU to ensure effective implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). This includes important developments in IFU's legal framework, in the composition of its portfolio and in the global agenda on sustainable development. These developments make it even more relevant for IFU to align its practices with the UNGPs.

This article presents main observations by the Danish Institute for Human Rights (DIHR) on the extent to which IFU's current policies and procedures comply with the expectations set out in the UNGPs. Where gaps are identified, recommendations have been made on how to move forward.

Opportunity for a purpose driven approach to the UNGPs

Whereas previously, the UNGPs have to some extent been seen as a resource intensive compliance agenda for IFU, the emergence of the Sustainable Development Goals (SDGs) provide a framework for taking a purpose driven approach to the UNGPs and treating their implementation as a strategic value driver for IFU.

With the SDGs at the heart of its mission, IFU has an opportunity to position and report its implementation of the UNGPs as a direct contribution to its strategic purpose. As such, linking improved

implementation of the UNGPs to IFU's development outcomes could bring new energy and motivation to working with the UNGPs. IFU's current development of an action plan to improve its human rights performance, and not least a forthcoming strategy process for IFU as such, makes it an opportune time for IFU to recalibrate and strengthen its focus on human rights.

Building on existing good practice

Implementing measures on sustainability and human rights are by no means a new phenomenon in IFU. Rather, this has been part of IFU's DNA from the very beginning. Over the last 10 years or so, IFU has done a lot to systematise and improve its operational approach in this area. The UNGPs have directly inspired IFU to revise and amend its approach in several areas e.g. by updating its sustainability policy and handbook to include the UNGPs, by aligning one of its main tools for engaging with investees, the CSR Self-assessment Tool, with the UNGPs, and by integrating elements of the UNGPs in other tools and templates as relevant. In 2014, IFU also published its own grievance mechanism to better align with the UNGPs' expectations in this area. As such, there are a lot of strong elements to IFU's existing approach.

While IFU has a comprehensive setup of sustainability policies and procedures incl. on human rights, much of its approach was developed prior to the UNGPs i.e. not designed with the expectations of the UNGPs in mind. Much of IFU's approach is for good reason aligned with standards and approaches established by other development finance institutions (incl. IFC and EDFI standards), however these too have received critique for not always being fully aligned with the UNGPs. Finally, the fact that IFU's investments, up until now, have almost always included a Danish partner has led IFU to work on an assumption of trust that the investees generally were performing well in this space and had the capacity to implement IFU's requirements. When seen against a backdrop where IFU's legal, policy and operational context is evolving and in which the UNGPs require a more systematic approach, it is clear that there is a need to ramp up IFU's efforts in the area.

Improvement areas

In short, the UNGPs require businesses incl. IFU to **commit** to respecting human rights, e.g. via a publicly available policy statement; to carry out human rights due diligence across all activities and business relationships i.e. identify actual and potential adverse human rights impacts, prevent and mitigate them, track and monitor the effectiveness of actions taken and communicate and report on how they address actual or potential impacts; and provide for or cooperate in the remediation of any actual adverse impact that the business causes or contributes to.

IFU and the policy commitment

IFU's Sustainability Policy has been updated in light of the UNGPs and includes reference to respecting all human rights and addressing adverse impacts that the investment may cause or contribute to. It also includes reference to remediation and grievance mechanisms. At the same time, the policy is missing important elements to the UNGPs – e.g. it does not directly include the importance of *avoiding* negative impacts in addition to addressing those that do arise, and it does not make clear that the scope of the policy includes impacts that the investment may be *directly linked to, e.g. via its business relationships*, which is a key part of the UNGPs. IFU is planning to publish a separate policy commitment on human rights later this year.

IFU and human rights due diligence

IFU undertakes a range activities to ensure that investees, from the very beginning of the collaboration, are required to meet certain standards. This is done deliberately to ensure that IFU uses its leverage in the negotiation phase to ensure that projects are built on a solid foundation. IFU's current ability to track and demonstrate the effects of its important initial efforts are currently relatively limited, as is its activities to support and ensure implementation and follow-up throughout the life-cycle of a project.

Although IFU has done a lot to align with the UNGPs, alignment within specific and important areas of the due diligence requirements are missing e.g. with regards to engaging with affected rights holders when identifying and addressing impacts; prioritizing efforts based on an assessment of *severity* of human rights risks and impacts; ensuring that the full range of human rights risks are taking into consideration; and being transparent on IFU's involvement with human rights risks and its efforts to address these – also at the project level. Further risks associated with a range of IFU's business relationships including the business relationships of investees are not fully covered by IFU's current approach. These relationships include investees' contractors and suppliers, co-investment partners, and portfolio investment companies.

IFU and access to remedy

IFU has little experience so far in the field of remediation of negative human rights impacts. Positively, IFU has launched its own grievance mechanism via its website to enable stakeholders to file a complaint. However, the grievance mechanism is not fully aligned with the expectations set out in the UNGPs. For example, it does not indicate openness to addressing adverse impacts that IFU is causing or contributing to. It also does not indicate that IFU could have adverse impacts that are not related to the investments, e.g. as an employer. Lastly, IFU's grievance mechanism conflicts or is unclear on several of the items commonly referred to as 'the effectiveness

criteria' of the UNGPs. These include ensuring the legitimacy, accessibility and equitability of the mechanism.

The way forward and selected recommendations

Addressing the gaps identified above will involve a focus on policies, procedures and practical implementation. Where actions will need to be prioritised, IFU should be guided by the general aim of ceasing, preventing and mitigating adverse impacts in the most effective way possible, starting with those actual or potential impacts that are most severe for the impacted rights holders. I.e. actions to improve due diligence in relation to high risk supply chains, or enhancing access to remedy, might be prioritised over actions in areas with less immediate effect. Building and using leverage with a wider set of business relationships is one way of increasing the effects of IFU's efforts, not least as a minority investor.

It is recommended that IFU continues to enhance internal capacity and capability to lift the task ahead in order to harvest the fruits of a renewed focus on the UNGPs. Among other things, this could include developing material(s) to enable investment professionals to understand and act on the UNGPs in their day to day activities, re-defining the workshare between investment professionals and the sustainability unit; further developing the human rights expertise of IFU's sustainability unit as well as among investment professionals; and eliminating any disincentives the organisation might have to treat human rights risks with the same level of professionalism that it treats financial risks.

It is further recommended that IFU continues to bring its policies and procedures closer to the specific requirements of the UNGPs. IFU's current plans around updates of the Sustainability Policy and Handbook scheduled for 2018 provide good opportunities to prioritize alignment and consolidation of IFU's approach to human rights.

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