

## RE THE REVIEW OF FINDEV CANADA'S ENVIRONMENTAL & SOCIAL POLICY

15 DECEMBER 2023

The Danish Institute for Human Rights (the Institute) welcomes this opportunity to share input to inform the FinDev Canada's review of its Environmental & Social (E&S) Policy. The high-level observations below are based on the Institute's recent and ongoing work on development finance and human rights, including through direct collaborations with development finance institutions (DFIs) as well research and analysis. The select input does not purport to represent an exhaustive assessment of the FinDev's E&S Policy from a human rights perspective.

### Financial intermediaries

We take note of the scope of the E&S Policy which includes both direct and indirect finance (i.e. finance channeled through various types of financial intermediaries). Several DFIs adopted specific E&S safeguards for financial intermediaries in response to the growth of intermediated finance in their overall portfolio and the specificities of intermediated finance when compared with direct finance.<sup>1</sup> In intermediated finance, DFIs have less visibility into the end use of their funds and the potential E&S risks associated therewith, and tend to rely to a larger degree on the environmental and social management systems of their clients. The Institute recommends that FinDev Canada consider providing more information about the implementation of its E&S Policy when investing via financial intermediaries. For example, information can be provided about:

- the type of transactions, activities, clients usually supported via financial intermediaries,
- how the E&S Performance Benchmarks apply to the clients of financial intermediaries,
- the role of FinDev Canada in reviewing and/or supervising the due diligence carried out by financial intermediaries' on select clients and/or sub-projects,
- the FinDev Canada's monitoring approach to financial intermediaries and the type of information reviewed at the sub-client/sub-project level,
- the FinDev Canada's disclosure approach in respect to the E&S risks at the sub-project/sub-client level.

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<sup>1</sup> Such as e.g. the World Bank, the African Development Bank, the European Bank for Reconstruction and Development and FMO.

Providing more detail and specificity on these and other elements would provide much clarity to external stakeholders on how FinDev Canada tailors its E&S risk management approach in the case of intermediated finance.

### **Remediation**

The Institute takes note of the chapter on accountability in the E&S Policy as well as the section on ‘Enabling remediation’ in the Human Rights Policy. The responsibility to provide remedy for human rights abuses is a key component of the corporate responsibility to respect human rights as defined in the UN Guiding Principles on Business and Human Rights (UNGPs). We would encourage FinDev Canada to provide more specificity as to how it envisions its role in enabling remediation where adverse impacts connected to its investments might occur. Specifically, we would encourage the use of the framework of involvement with adverse impacts introduced by the UNGPs (‘cause, contribute to, direct linkage’) as one of the criteria when considering FinDev Canada’s responsibility in this area. Under this framework, businesses, including financial institutions such as DFIs, that *cause or contribute to* an adverse human rights impact through their actions and omissions have a responsibility to provide remediation to affected stakeholders. Businesses that are solely *directly linked* to adverse impacts have a responsibility to exercise leverage on their business partners for remediation.

Such clarifications are important considering the heightened attention paid to the so called “remedy gap” in development finance whereby numerous individuals and communities affected by development finance projects have received inadequate or no remediation for the harms experienced. In that regard, we direct your attention to the 2022 report by the Office of the High Commissioner for Human Rights (OHCHR) “[Remedy in Development Finance: Guidance and Practice](#)” that outlines some of the human rights concerns in respect to current policies and practices on remediation across DFIs and encourage you to draw upon the recommendations therein in light of the revision of the E&S Policy. Specifically, that report recommends that DFIs publicly commit to contributing to remedy in situations in which they have contributed to harm and be guided by the UNGPs when assessing involvement in harms and proportionate responsibility for remedy.<sup>2</sup>

### **Responsible exit**

We take note of the reference to exit in the Annex 5 in the E&S Policy and the the statement that a high-risk E&S classification is likely to accelerate the decision to withdraw from an investment. We believe early or unplanned exits require a more nuanced approach and an explicit consideration of the E&S

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<sup>2</sup> See OHCHR, *Remedy in Development Finance: Guidance and Practice* (2022), p. 115

and human rights risks of an early termination of business relationships. For example, an exit can deprive FinDev Canada of any chance of exercising future leverage and might further exacerbate the harm caused to rights-holders, e.g. exiting a project whilst there are ongoing grievances and/or complaints against the client might increase the risks of adverse impacts not being remediated if the client is unable or unwilling to engage in legitimate remediation processes. In the report mentioned above, the OHCHR recommends DFIs to develop responsible exit frameworks that minimize unintended adverse impacts and address responsibilities for remediation where appropriate and provides a set of principles that could inform such frameworks.<sup>3</sup> A responsible exit approach also require embedding E&S and human rights assessments in routine exists to take stock of the client’s E&S performance and identify potential gaps that might require DFIs to continue exercising leverage, including, for example, when selecting future buyers (in the case of equity investments).

### **Digital transition**

The Institute welcomes FinDev Canada’s identification of human rights risks related to digitalisation as an emerging risk area. Digital activities and businesses can have adverse impacts on a whole gamut of human rights, with impacts on privacy/data protection, freedom of expression, non-discrimination, being particularly salient. However, such impacts are generally not adequately reflected in DFIs’ environmental and social risk safeguards, including the IFC Performance Standards<sup>4</sup>, raising concerns about the extent to which DFIs are equipped to manage such risks in their growing digital portfolios. We encourage FinDev Canada to use the opportunity of its E&S Policy review to clarify the approach to managing human rights risks in digital investments. Specifically, it would be important for the E&S Policy to specify as a minimum:

- whether the Exclusion List includes digital risks (noting growing calls to ban certain types of technology such as facial recognition),
- the international standards used to assess digital risks in investments, including the risk categorisation approach to digital investments, and
- the E&S requirements for clients in the technology sector given the inadequate coverage of digital rights and downstream impacts in the IFC Performance Standards.

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<sup>3</sup> See OHCHR, *op.cit.*, p. 96.

<sup>4</sup> See OHCHR, *Benchmarking Study of Development Finance Institutions’ Safeguard Policies* (February 2023), p.112-117 and Annex 1- *Benchmarking of IFC Performance Standards against human rights*, [OHCHR Benchmarking Study HRDD.pdf](#)

Over the last years, the Institute published analysis, guidance and tools on human rights risks related to digitalisation that can be relevant for this exercise.<sup>5</sup>

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<sup>5</sup> See [Development finance for digitalisation: Human rights risks in Sub-Saharan Africa | The Danish Institute for Human Rights](#) (March 2023), [Human rights impact assessment of digital activities | The Danish Institute for Human Rights](#) (November 2020), [Digital Rights Check - Digital Rights Check \(bmz-digital.global\)](#)