

June 6. 2019

RESPONSE TO IFU'S CALL FOR INPUTS REGARDING THE 2019 POLICY FOR HUMAN RIGHTS

The Danish Institute for Human Rights (the Institute) welcomes the opportunity to provide comments on IFU Investments' (IFU) draft Human Rights Policy. In its public comment to IFU's Sustainability Policy in August¹, the Institute recommended stronger prioritisation of human rights by IFU and highlighted the need to further mainstream human rights in the cross-cutting Sustainability Policy and/or in a standalone commitment on human rights. The draft Human Rights Policy is therefore a welcomed addition to IFU's sustainability policy framework.

The Institute however recommends that the current draft is revisited in order to fully harness the value of adding another standalone policy to IFU's policy framework on sustainability. The comments and recommendations below are intended to assist IFU in ensuring an accurate and holistic application of the human rights lens in the draft Policy including to provide an actionable Policy likely to improve IFU's alignment with human rights standards at the operational level.

ADD MORE CLARITY AND GRANULARITY TO ENSURE THE POLICY IS ACTIONABLE AND IMPACTFUL

The Human Rights Policy is presented as a sub-policy to IFU's cross-cutting sustainability policy, meant to elaborate and explain how IFU's legal requirement to comply with the UN Guiding Principles on Business and Human Rights (UNGPs) is *"implemented in practice"*. The draft, however does not offer external readers much insight into how, in practice, IFU operates with human rights due diligence in its day-to-day activities nor does it make clear to internal staff how they should be implementing the commitments made in IFU's investment processes.

To address this the draft would benefit from stronger alignment and synergy with the Sustainability Policy. For example, in the Sustainability Policy IFU commits to doing a 'a pre-investment assessment of potential adverse impacts on human rights' for all projects. Surprisingly the draft does not reiterate this requirement, nor does it expand on how this is implemented in practice, including by whom, how and with which tools and data collection methods, and what the outcome of the assessment will practically imply. IFU in the Sustainability Policy states that *"If the pre-investment assessment of potential adverse impacts on human rights shows that there is risk of severe adverse human rights impacts, which are not already managed in mitigation measures proposed based on IFC Performance Standards, IFU will complement the work with an assessment of these impacts in order to address them."*

¹ <https://www.humanrights.dk/news/institute-recommends-stronger-prioritisation-human-rights-ifu-its-sustainability-policy>

This requirement is also not reiterated nor expanded on in the draft. To address this, the Institute recommends that IFU clarifies in the draft Human Rights Policy, whether this entails that IFU commits to carrying out human rights impacts assessments (HRIAs) should the situation so require. Such clarification should include what the triggers for an HRIA would be and how IFU would be implementing potential HRIAs in practice.²

In the Sustainability Policy active ownership and efforts in the monitoring stage are included as part of the investment process, whereas in the draft Human Rights Policy it is separately included under 'IFU's Portfolio'. The reason why is not clear. Further, it is unclear why the draft Human Rights Policy refrains from referencing the importance of site visits and board memberships as critical elements in the monitoring stage also to ensure respect for human rights. Finally, the Policy would benefit from clarifying what consequences mal-performance on human rights in the monitoring stage can or will have. For example, clarifying whether IFU is likely to commission an ex-post HRIA or take other measures to apply its leverage and improve the situation where severe negative impacts are identified.

In general, the Institute recommends that IFU in the final version includes more granular content on the implementation of the commitments included. In addition to the areas highlighted above, the Institute recommends that this includes clarifying a) *how* human rights fit into the Sustainability Requirements stated in Annex A-D of the Sustainability Policy, b) *how* IFU ensures prioritization on the basis of severity of human rights risks, including what it means that its due diligence efforts "*will be focused*" on the salient issues included and how these issues have been identified³, c) *how* it ensures a human rights-based approach is taken to stakeholder engagement and d) *how* the grievance mechanism is aligned with UNGPs' effectiveness criteria (UNGP 31).

SPECIFY THE RELEVANCE OF HUMAN RIGHTS WHEN DESIGNING AND MEASURING DEVELOPMENT IMPACTS

In the draft Policy, it is stated that "*IFU understands that implementing respect for human rights adds value and competitiveness to IFU's investments*". However, beyond that statement, IFU does not elaborate on the relevance of human rights to its 'value additionality' as an investor or to its measurement of development impacts, for example. Aside from an introductory statement in the first paragraph, IFU does not clarify or expand on the link between human rights and the SDGs and what such link implies for IFU's due diligence processes. Adding more clarity could include commitments by IFU to:

- Proactively and systematically apply a human rights and SDG lens to investing, similarly to how IFU frames and engages with gender⁴, which is just one human rights aspect;

² For more information about the Institute's work on HRIA and HRIA methodology, please see:

<https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>

³ According to UNGP 18, identification of negative impacts should 'involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation'. It is unclear from the draft Policy whether IFU's list of salient issues is informed by dialogue with potentially affected stakeholders.

⁴ As clarified in IFU's draft Gender Policy

- Identify risks and salient issues holistically, including by taking all human rights into consideration, engaging with potentially affected rightsholders, and being informed by the global challenges identified by the SDGs when doing so;
- Take action to identify root causes associated with human rights challenges inherent to sectors or countries of operation and take both operational and systemic action to address them including through partnerships and use of leverage; and
- Ensure internal communication, coordination and oversight across SDG and human rights efforts, including in annual reporting.

In summary, the Institute recommends that IFU further clarifies how it wishes to utilise human rights to ensure that its investments generate development impacts and contribute to the SDGs, demonstrating the understanding of human rights as more than a risk management framework. Positively, this will allow IFU to clarify how its human rights efforts are part of responding to the observations included in the recent Evaluation⁵ around ensuring and documenting development outcomes.

INCLUDE A CONSISTENT REPRESENTATION OF HUMAN RIGHTS, INCLUDING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPs)

The draft Policy includes a variety of technical standards, terms and concepts but at certain stages fails to apply these consistently and accurately. This can be illustrated through three different examples:

- The draft Policy states that *“When implementing the UNGPs, IFU will also consider the International Bill of Human Rights[...]”*. This, however, is not a meaningful representation of the frameworks, because implementing the UNGPs automatically includes avoiding and addressing negative impacts on all rights included in the International Bill of Human Rights.
- The draft Policy includes different language to describe IFU’s position on human rights. Examples include: *“IFU must integrate the United Nations Guiding Principles on Business and Human Rights (UNGPs) in its activities, according to Danish law on IFU”*; *“IFU’s commitment to human rights and the UNGPs is a further development of IFU’s engagement in the United Nations Global Compact”*; *“Respect for human rights is important to IFU”*; and *“IFU considers respect for human rights to be a minimum standard”*. It is recommended that IFU implements a more consistent message anchored in its legal obligation to respect human rights and amends language applied accordingly. Such clarification should include assessing whether statements in for example the following paragraph have the required strength: *“It is **expected** that IFU’s staff and project companies, partners, suppliers and third-party contractors directly linked to its operations, products or services will observe and respect human rights. Furthermore, IFU **expects** its employees and all supported project companies to actively encourage those involved in their business activities to adopt the **same or similar standards**”*. Relatedly, the draft Policy states: *“It is IFU’s assessment that UNGPs 16-24, 29, and 31 are especially relevant to IFU.”* However, as Denmark’s development

⁵ <https://www.ifu.dk/news/evaluering-af-ifu-er-offtelligjort/>

finance institution, IFU should acknowledge the heightened responsibility of operating in the state-business nexus (as detailed by UNGP 4). As a result, it is not a matter of relevance or prioritisation, but rather a requirement that IFU operates in compliance with the UNGPs⁶.

- The draft Policy states *“Where IFU identifies that the funds or project companies have caused or directly contributed to adverse human rights impacts, IFU will take action and engage in appropriate remediation processes directly or indirectly in cooperation with other stakeholders.”* There is, however, no concept of ‘direct contribution’ in the UNGPs, but rather of ‘contribution’ and ‘direct linkage’. More importantly, the expectation emerging from the UNGPs is that when IFU itself causes or is directly linked to negative impacts, even if via funds or project companies, it should provide for or cooperate in the remediation of these negative impacts. Hence, the current language reflects a conceptual difference, which is not fully aligned with the UNGPs.

In summary, the current version includes slight misrepresentations of authoritative standards and frameworks. The Institute recommends that IFU identifies and addresses all such incomplete or incorrect representations of the requirements IFU is mandated to comply with in the final version.

CONTINUE THE DIALOGUE WHEN MOVING TO IMPLEMENTATION AND ACTION PLANNING

The draft Policy states that *“IFU will develop and maintain an action plan of which tools and procedures are necessary to address these UNGPs.”* However, it does not indicate whether this action plan will be made public or relevant external stakeholders will be invited to input into such action planning. The Institute encourages IFU to continue to share its progress and learnings, and engage in dialogue around the implementation of its new sustainability policy framework, including the draft Human Rights Policy.

Further, while an action plan can be useful to ensure that additional measures are taken within a certain period to support implementation of the new policies, such policies will need to be thoroughly embedded and integrated into IFU’s regular ‘way of working’. Such alignment can only happen if the commitments made become part and parcel of how IFU does business. The action plan should therefore identify and address the main barriers and drivers, to ensure full integration of the UNGPs throughout IFU’s operations and activities.

Copenhagen, June 6, 2019

⁶ Section 9(1) of the Act on International Development Cooperation, December 2017.