



Environmental and Social Policy

Summary of Stakeholder Comments and FinDev Canada
Response

February, 2020



Canada's newly created development finance institution (DFI) opened for business in January 2018. Managing environmental and social (E&S) risks and contributing positively to climate mitigation and adaptation are key to FinDev Canada's operations and its strategy. At its outset, FinDev Canada had in place an interim E&S Policy, but was keenly aware of the need to develop something more suitable to a DFI.

FinDev Canada embarked upon this process in mid-2019 with the engagement of external experts to assist in the process. Aware of stakeholder interest, as well as the power of stakeholders to positively contribute to policy development, FinDev Canada was committed to seeking input from external stakeholders.

In order to develop a draft E&S policy for stakeholder consideration, FinDev Canada undertook a number of steps:

- discussion with the FinDev Canada Advisory Council on September 11, 2019;
- distribution to stakeholders of an Issues Paper developed by the multinational consulting firm, Ergon Associates, which formed the basis of discussion at a stakeholder workshop held in Montreal on October 09;
- numerous internal meetings to discuss the need for an improved policy, to identify critical issues and implications; and finally,

FinDev Canada issued a draft Environmental and Social Policy for stakeholder consideration on November 19, 2019. The period for stakeholder comment was open until January 07, 2020.

Nine entities representing government, civil society and consulting provided written feedback reflected in over 70 comments. The table below summarizes key concerns and how these were addressed.



STAKEHOLDER COMMENT	FINDEV CANADA RESPONSE
ENCOURAGEMENT	
<p>Stakeholders expressed positive comments about several aspects of the policy but most notably with:</p> <ul style="list-style-type: none">→ the explicit mention of human rights defenders in the definition of Vulnerable Peoples→ an explicit statement on using leverage as an institution→ the approach and commitment to comprehensive due diligence→ well drafted and very comprehensive→ appropriately targeted and built from the lessons of other entities→ the broad application of the policy to all financing operations and through the investment cycle→ E&S risks are not considered in isolation, but are integrated into overall due diligence resulting in a holistic financing decision	<p>We welcome these encouraging words.</p>



STANDARDS	
<p>Confusion expressed regarding how FinDev Canada will apply its practices</p> <p>Stakeholders felt they would benefit from examples or a description of the E&S Performance Benchmarks</p> <p>Greater specificity was sought on applicable laws to which FinDev Canada must comply</p>	<p>It felt that this level of detail would be more appropriately included in a Guidance/Implementation Note to provide guidance on policy implementation.</p> <p>Also, as FinDev Canada's portfolio of transactions grows, the Project Summaries provided on its website will provide this type of clarity.</p> <p>The baseline compliance standard is national law, with additional elements from IFC Performance Standards (PSs), where appropriate. This will be clarified in a supporting Guidance/Implementation Note (to be developed).</p>
TIMEFRAME FOR CONSULTATION	
<p>Inadequate time was allowed for stakeholders to analyze issues and provide comments</p> <p>Lack of robust public outreach to stakeholders, initial lack of transparency regarding access to the draft policy, notably outreach to a limited number of organizations, policy not easily identifiable on FinDev Canada website, limited time available for feedback</p>	<p>The timeframe was twice extended, ultimately to January 07, 2020.</p>

HUMAN RIGHTS	
Draft policy did not make an explicit commitment to ensure respect and protection of human rights; the draft provides a focus on risk posed to the investment, rather than risk to those negatively impacted by the investment	Policy was adjusted to make explicit reference to human rights. Human rights are integrated into the policy's discussion of Principles and Implementation, the latter section which incorporates the UN Guiding Principles and directs FinDev Canada and its clients to identify and address human rights impacts, including impacts on those who might be negatively affected by the investment.
FinDev Canada should hold itself to a higher standard of accountability and publicly report on human rights issues, i.e., policy needs an articulated commitment to a mechanism for transparent reporting on human rights due diligence process outcomes	This is covered in the transparency and reporting provisions of the policy. In terms of the specific mechanisms for disclosure as well as the information on transaction-specific HRDD outcomes, this is to be determined and should be articulated in Internal Procedures.
An expanded list of relevant human rights standards would be desirable, e.g. match the ODA Accountability Act. Also, Canada is party to seven of the core international human rights conventions and many others.	The list of Good International Practice standards is indicative, not exhaustive, and lists some of the standards / legal instruments that are most relevant to FinDev Canada's work.
Align with standards on free, prior and informed consent (FPIC)	FPIC would be addressed as part of the E&S Performance Benchmarks (including the IFC Performance Standards) and could be supplemented by specific guidance on FPIC.



<p>State support for defenders of human rights in accordance with Canada's "Voices at Risk"</p>	<p>Policy adjusted to make a more explicit statement on human rights defenders (see Stakeholder engagement and vulnerable peoples or groups).</p> <p>Voices of human rights defenders is also addressed explicitly in EDC Human Rights Policy (see Annex III).</p>
<p>Overemphasis on one set of rights (women's rights). It is central to a human rights approach that all rights are equal and universal</p>	<p>The emphasis on women's rights reflects FinDev Canada's strategy. This does not however mean that other rights will be treated with any less seriousness and attention.</p>
<p>Lack of recognition of the substantial human rights challenges that will be faced, especially when operating in the states with poor human rights track records. The proposed reliance on "constructive dialogue" is insufficient.</p>	<p>Language has been added to the policy regarding enhanced client support to human rights paragraph.</p>
<p>Policy should reference FinDev Canada clients' responsibilities with regard to their supply chains and their general responsibility to respect human rights</p>	<p>Operational level considerations are primarily addressed via the Performance Benchmarks (e.g. IFC Performance Standards addresses supply chains). This includes specifics on supply chains in defined circumstances. If further Guidance for clients on due diligence for supply chains is required, this would be more appropriately addressed in a Guidance/Implementation Note to provide guidance on policy implementation.</p>



<p>Need to provide for specific language needed in loan documentation related to human rights</p>	<p>Section 1.6 "Compliance" of the policy notes investment documentation will establish for clients the process and timeframe for compliance with E&S Performance Benchmarks. The definition of "E&S" includes human rights.</p>
<p>Greater reference needed on protection of voices of human rights defenders, including an assessment of the environment for their security, protection against reprisals, and their access to an independent accountability (complaints) mechanism</p>	<p>This is captured in ES Performance Benchmarks (e.g. the IFC PS) but could also be elaborated in further Guidance/Implementation Note.</p> <p>Voices of human rights defenders is addressed in EDC Human Rights Policy (see Annex III).</p>
<p>An articulated commitment to independent monitoring implementation of the human rights performance would be welcome</p>	<p>This would be a normal part of transaction monitoring; a Guidance/Implementation Note can specify this requirement for independent monitoring, where applicable.</p>
<p>Annex III reproduces and adopts EDC's Human Rights Policy under Roles & Responsibilities. Does the role of policy monitor fall to the EDC Director, Environment and Social Risk Management?</p>	<p>Policy monitoring will be a shared responsibility between FinDev Canada and EDC.</p> <p>FinDev Canada recognizes that it may benefit from its own stand-alone human rights policy, however in the meantime, prefers to rely on EDC's policy which was developed with input from internationally</p>



<p>FinDev Canada needs its own stand-alone policy</p>	<p>recognized human rights experts, many of whom worked on the UN Guiding Principles on Business and Human Rights. The EDC Human Rights Policy is suitable as a starting point. Application of the EDC Human Rights Policy will illustrate where a stand-alone policy might better suit the purposes of a DFI like FinDev Canada.</p>
<p>No reference to human rights in Purpose & Scope; focus on risk to the investment, rather than risk to those negatively impacted by the investment</p>	<p>The policy language has been adjusted to make it clear that human rights are covered as part of its scope.</p>
<p>No requirement for clients to undertake a thorough human rights due diligence review encompassing the activities of both the client, its subsidiaries, contractors, and business relations, as these relate to the FinDev funding or support</p>	<p>The requirements to conduct due diligence, including human rights due diligence, are captured in the section "Implementation – human rights".</p> <p>Specific due diligence requirements, including coverage of different rightsholders, are elaborated in the performance standards.</p>



GUIDANCE/IMPLEMENTATION NOTE	
<p>Greater clarity would be appreciated regarding how FinDev Canada evaluates the governance framework of potential clients with respect to their achievement of environmentally sustainable objectives.</p> <p>The policy could elaborate more on how it will be implemented in practice, including how benchmarks will be applied.</p>	<p>We envision that this will be dealt with in a separate Guidance/Implementation Note, and by building a bank of illustrative examples.</p> <p>Language has been added to Stakeholder Engagement section.</p> <p>A Guidance/Implementation Note with additional detail will be developed.</p>
<p>The Policy does not reference Environmental and Social Action Plans (ESAPs), despite their critical importance</p>	<p>The use of ESAPs are referenced in Annex I – “Due Diligence”.</p>
<p>Will the Guidance/Implementation Note be made available?</p>	<p>Upon request</p>
<p>Access to adequate qualified technical environmental expertise to evaluate and monitor E&S risks during screening and</p>	<p>FinDev Canada will make every effort to recruit qualified E&S professionals.</p>



<p>implementation will be key to the successful implementation of the E&S Policy</p>	
<p>Maintain an Exclusions List</p>	<p>This is a common practice for other DFIs and was in an early version of the draft E&S Policy. FinDev Canada will consider publishing this as a separate document.</p>
<p>Categorization of risks across four categories, rather than three, is non-standard</p>	<p>The policy has been amended to reflect the standard risk categories A, B and C which is commonly accepted by DFIs and international financial institutions as prescribed by the IFC Performance Standards.</p>
<p>GRIEVANCE MECHANISM</p>	
<p>Inadequate definition of grievance/remedy mechanism</p>	<p>FinDev Canada recognizes that a grievance mechanism is accepted good international practice for a DFI and will take steps, in consultation with stakeholders, to develop one over the year.</p>
<p>Grievance mechanism should define a right to remedy, and offer a remedy for those who may have suffered human rights abuses as a result of projects supported by FinDev Canada</p>	<p>In 2020, FinDev Canada will undertake a specific assessment and consultation on these issues.</p>



<p>Caution is warranted against using EDC's approach</p>	
<p>Develop, in public consultation with stakeholders, an independent, robust and transparent grievance mechanism, and ensure equitable remedy for those who have been harmed by a project funded or supported by FinDev Canada</p>	<p>As above</p>
<p style="text-align: center;">CLIMATE CHANGE</p>	
<p>An earlier draft E&S Policy contained a more robust section on climate change, including an expectation that proponents of large infrastructure projects provide estimates of greenhouse gas emissions. FinDev Canada should be able to quantify the amount of greenhouse gases avoided or mitigated.</p>	<p>Iterative assessment should call out higher obligations in client benchmarks for climate change issues where identified.</p> <p>Additional guidance will be provided in the Guidance/Implementation Note to be developed.</p>
<p>Rather than a general reference to climate change, it would be beneficial to include "pollution prevention and resource use efficiency" given that climate change is one of three of the organization's emphasis. Resource</p>	<p>The policy language has been modified to reflect this recommendation.</p>



use efficiency would cover energy as well as water use.

Under E&S risks, consider reference to chemical management, an important environmental consideration.

These considerations refer to risk management as opposed to risk itself

COMMENT CATEGORY	DESCRIPTION						
Climate change (4 comments received)	stakeholders referred to climate issue						
Grievance mechanism (8 comments received)	stakeholders referred to issues related to grievances/complaints						
Human rights (24 comments received)	stakeholders referred to need for additional content on human rights						
Guidance/Implementation Note (20 comments received)	stakeholders referred to need for additional information that would more practically be contained in a guidance note						
Language/Editorial (3 comments received)	stakeholders sought clearer language, terminology, clarity in the text, or correction						
Links with EDC (2 comments received)	stakeholders referred to applicability of EDC policy framework						
Standards (7 comments received)	stakeholders referred to norms, standards, international conventions						
Timeframe and/or breadth of consultation (4 comments received)	stakeholders referred to inadequate time or notification for comments						



Advisory Council

The Council provided guidance to FinDev Canada's senior management to help frame the issues related to the proposed development of an Environmental and Social Policy at its meeting on 11 September 2019. Council members encouraged FinDev Canada to keep in mind that as a smaller DFI, it has an opportunity to stand out, e.g. on gender, but for practical reasons, should leave other areas.

Council members recommended against starting from the perspective of compliance, in recommending an approach focused on inclusion. The policy should be realistic, while at the same time adopting the highest standard possible taking into consideration benchmarks of other DFIs. FinDev Canada should demonstrate impacts that can be measured well beyond its quantitative support. The organization has an opportunity to stand out, not due to size, but because it will have certain unique elements in place.

Within the development finance ecosystem, FinDev Canada can be an influential player if it is a 'pathfinder', rather than a mere follower doing what others do.

In order to identify high impact transactions, FinDev Canada staff will need to develop a culture that uses a wide aperture for deal origination. FinDev Canada should help its clients move along a sliding scale toward improved performance, incentivizing behaviours for staff and clients. FinDev Canada will need a toolkit to accompany clients as they develop their capacity.

FinDev Canada's Development Impact Framework and its E&S Policy will need to work together in a coherent fashion, overlaying its development impact approach (impact lens investing, including gender) with the E&S Policy. This would constitute a dual policy approach with interaction between the two policies. Resulting client commitments to Action Plans may present areas to enhance client performance, including on gender equality.

In concluding the discussion, the Managing Director recommended adopting a phased approach wherein some elements would be excluded at this early stage, e.g. governance.

Board of Directors

FinDev Canada's Board of Directors considered the policy at its meeting on 10 December 2019. Discussion sought clarity on the Board's role and accountability for



the policy, how exceptions would be handled, the nature of comments and concerns raised by external stakeholders, consideration of a stand-alone human rights policy, and a process to keep the Board apprised of the ongoing monitoring of the policy's implementation and E&S issues.