



## Comments on FinDev Canada’s Environmental & Social Policy:

**A disappointing start for Canada’s new agency meant to facilitate private sector investment in “challenging markets that come with a high degree of inherent risk.”**

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### ➤ Failures in transparency and consultation

Late in 2019 FinDev Canada, quietly reached out to a limited number of organizations it had selected to invite feedback on its draft [Environmental and Social Policy](#). The draft policy was not made publicly available on the agency’s web site at the time, and the timeframe for feedback was just two weeks. Thanks to protest by some of the organizations to which FinDev had reached out, the deadline for comment was extended, just before the Christmas holidays, to January 7, and the draft policy was posted on the agency’s web site. However, FinDev did not make an effort to reach out to a wider number of civil society organizations for comment.

*The lack of robust public outreach for feedback on its Environmental and Social policy, coupled with initial lack of transparency regarding access to the draft policy, as well as the unacceptably short timeframe for feedback, all point to a disappointing start for a new government organization that says it is “committed to actively engaging with stakeholders.”*

### ➤ Failure to ensure respect and protection of human rights

The draft Environmental and Social Policy is weak with respect to human rights. The draft does not reflect a commitment by FinDev Canada to ensure that corporations live up to their responsibility to respect human rights – defined as “do no harm”<sup>1</sup> – and that Canada live up to its *duty* to protect human rights.

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<sup>1</sup> The [UN Guiding Principles on Business and Human Rights](#) (UN Guiding Principles) state that corporations “should avoid infringing on the human rights of others” (Principle 11). The Special Representative of the Secretary-

Human rights do not appear in the “Purpose and Scope” of FinDev’s draft policy, which includes its “Mandate.” Rather, the agency states as its purpose to “minimize and manage adverse impacts” from private sector investments in “challenging markets that come with a high degree of inherent risk.” Risk is addressed throughout the draft policy and in Annex I, which focusses on risk, primarily as risk to the investment, rather than as risk to those impacted by the investment.

Human rights due diligence, where it is raised, is primarily discussed as an undertaking of FinDev itself, not as a requirement by the agency that all corporations that receive funding or other forms of support through FinDev must undertake a thorough human rights due diligence review.

***FinDev should require all recipients of its financing and support to undertake and publicize regular and comprehensive human rights due diligence reports<sup>2</sup> that encompass the activities of both the recipient corporation and its subsidiaries, contractors, and business relations, as these relate to the FinDev funding or support.***

Human rights are first discussed in the draft policy under its second section on “Principles.” Further to the above, the following concerns, among others, arise from this and subsequent sections where human rights are discussed:

- FinDev currently does not have its own human rights policy, but rather relies on a human rights policy that was adopted for the first time by EDC in 2019 (Annex III).<sup>3</sup> EDC’s human rights policy has already faced [criticism](#).

***Given its particular development mandate FinDev should develop its own comprehensive human rights policy in consultation with stakeholders.***

- FinDev’s current identification of relevant human rights instruments in section 2.1 falls short even of that set out by the ODA Accountability Act: “International human rights standards means standards that are based on international human rights conventions to which Canada is a party and on international customary law” even though the agency claims that its “Development Impact Framework aligns with the objectives of the Official Development Assistance Accountability Act.” FinDev needs to explicitly recognize and reflect in its policies what was recognized by the [UN’s Special Representative of the Secretary-General](#) as early as 2008 that: “*business can affect virtually all internationally recognized rights. Therefore, any limited list will almost certainly miss one or more rights that may turn out to be significant in a particular instance, thereby providing misleading guidance.*”

## ➤ **Failure to ensure access to remedy**

Projects funded or otherwise supported by FinDev will all run the risk of infringing on and abusing human rights. However, its draft policy fails to recognize the human right to access to remedy and the agency’s own responsibility in this regard.

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General and author of the UN Guiding Principles clarified that: “To respect rights essentially means not to infringe on the rights of others - put simply, to [do no harm](#).”

<sup>2</sup> A model for such public human rights due diligence reports can be found in the reporting [requirement of France’s Duty of Vigilance legislation](#).

<sup>3</sup> FinDev’s draft policy notes that some sections of EDC’s human rights policy do not apply to FinDev, but from the [draft document](#) provided for review it is not clear which sections would not apply to FinDev.

In Section 4, point 29,<sup>4</sup> FinDev commits to the creation of an “independent complaints and accountability mechanism” but the scant and wholly inadequate description of this proposed mechanism focusses on complaints in regard to the agency’s failure to comply with its own policies – not complaints regarding human rights abuses suffered as a result of projects funded or supported by FinDev. The issue of right to remedy for these harms suffered is not discussed at all in this section. Section 30<sup>5</sup> devotes two brief sentences to the fact that FinDev will expect its clients to set up project level grievance mechanisms. It appears from this that the agency expects to offload its responsibility to ensure access to equitable remedy for projects harmed by its clients to these same clients.

The only brief section of FinDev’s draft policy that deals directly with the issue of the human right to access to remedy is Section 2.3 of EDC’s Human Rights Policy (Annex III in FinDev’s draft policy).<sup>6</sup> EDC’s approach to the right to access to remedy is also completely inadequate and inadequately defined. EDC says it will act in cases of “severe human rights impacts” without defining how “severe” will be determined. The nature of this action appears to be primarily “to encourage” EDC’s clients to “provide appropriate forms of remedy.”

***In recognition of the fact that projects funded or supported by FinDev will all run the risk of infringing on human rights, the agency needs to ensure it develops, in public consultation with stakeholders, an independent, robust and transparent grievance mechanism that can determine facts in cases brought before it and ensure equitable remedy, for example through the creation of a reserve fund, for those who have been harmed by a project funded or supported by FinDev.***

MiningWatch Canada has developed expertise in non-judicial grievance mechanisms, both at the state level – the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) and Canadian Ombudsperson for Responsible Enterprise (CORE) – as well as through our field work on project-level grievance mechanisms. We would consider participation in a robust stakeholder engagement process to develop an appropriate grievance mechanism aimed at providing access to equitable remedy for those who have been harmed by projects funded or supported by FinDev.

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<sup>4</sup> The entire text reads: *Grievance and complaints. FinDev Canada is committed to establishing an independent complaints and accountability mechanism which will allow affected parties to raise issues with FinDev Canada for alleged non-compliance with its policies in its financing operations, with the objective of fostering trust and resolution between parties. The mechanism will be accessible, and complaints resolved in a manner that is fair, timely, consistent and transparent.*

<sup>5</sup> The entire text reads: *Investment level grievance mechanisms will be defined by the E&S Performance Benchmarks. Clients will be required to implement mechanisms and demonstrate their effectiveness.*

<sup>6</sup> The entire text reads: *2.3 Enabling Remediation When severe human rights impacts occur, our approach to remedy is based on our determination of how EDC may be connected to the impact through our business relationships. EDC will play an appropriate role in enabling remedy for those rights-holders that have been harmed. We recognize that in most cases this will mean using our leverage to encourage responsible parties to provide appropriate forms of remedy. When an issue involving one of our customers is brought forward to Canada’s National Contact Point (NCP) or the Canadian Ombudsperson for Responsible Business [sic] (CORE), EDC will take reasonable steps to cooperate in these processes and will also encourage our customers to do so.*