

# EVALUATION DEPARTMENT



REPORT 11/2018



## UNGP, Human Rights and Norwegian Development Cooperation Involving Business

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# Preface

Support to private sector development is an explicit priority in Norwegian development policy. The involvement of Norwegian, international and local business is considered essential. In addition, partnerships with businesses is defined as central to achieving the Sustainable Development Goals (SDGs).

Furthermore, the Norwegian government strongly emphasizes human rights commitments in our foreign and development policy. Promotion, protection and respect for human rights are central to achieving our development goals.

This evaluation looks at the coherency between these two prioritized areas in Norwegian development policy. Thus, the purpose of the evaluation is to contribute to knowledge of how human rights are promoted, protected and respected in the development cooperation involving businesses.

In line with the mandate for the Evaluation Department, the evaluation is meant as a basis for further discussions of how to protect human rights in development cooperation. The evaluation process has brought to light differences of opinion and interpretation between various stakeholders, and some of these opinions are captured in an annex to the main report.

We hope the publication of this report will encourage a constructive and inclusive debate about the implementation of human rights in development cooperation involving business, and that the report and the debate can lead to further coherency between our human rights and private sector objectives.



**Per Øyvind Bastøe,**  
September 2018

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The evaluation team consists of Geir Sundet (team leader), Anette Rønnov and Anja Svendsen Østgård from KPMG, Reza Lahidji from Menon Economics and Frode Elgesem from Elgesem advokatfirma, and Njål Høstmælingen as quality assurer. The team was supported by Helen Kijo-Bisimba from the Legal and Human Rights Centre in Tanzania, and by Joao Nhampossa in Mozambique.

# Executive summary

The promotion of human rights is a long-standing priority in Norwegian development cooperation. Support to private sector development has become an increasingly central part of Norway's aid programme, and there is a growing consensus that the private sector is a key driver of economic development.

Although there is widespread support for the role of private business in supporting sustainable development, there are also cautionary voices against the perceived and real perils of globalisation to poor populations. Reports of human rights challenges and land grabbing by international investors in poor countries show that there is no guarantee that companies will act responsibly.

The overarching questions asked by this evaluation are to what extent the United Nations Guiding Principles on Business and Human Rights (UNGPs) are implemented in Norwegian development cooperation, and how Norwegian development aid involving business promotes, protects and respects human rights.

The UNGPs were unanimously endorsed by the Human Rights Council in 2011, and today serve as the global standard for states' duty to protect human rights against abuses from businesses, as well as businesses' own responsibility to respect human rights. In order to manage human rights risks involved in business operations, UNGPs describe and require human rights due diligence (HRDD). This is a process to identify, prevent, mitigate and account for how adverse impacts on human rights are addressed.

The Norwegian Government has committed to ensuring the implementation of UNGPs in its support for businesses involved in development assistance. UNGPs set out guiding principles for:

- › **The state** to protect human rights, e. g. through its regulatory and policy functions. UNGPs expect states to take additional steps to protect against human rights abuses by businesses that receive substantial support and services from state agencies. This may include requirements for HRDD.

- › **Companies** to respect human rights, including a duty to undertake HRDD and remedy any adverse human rights impacts that they cause or contribute to. **State-owned and state-controlled businesses** are subject to the same level of corporate responsibility.

- › **The need for access to appropriate and effective remedies.** States must, as part of their duty to protect against business-related human rights abuse, take appropriate steps to ensure that those affected by such abuses within its territory and/or jurisdiction have access to effective remedy. This could be done through judicial, administrative or other appropriate means.

In accordance with its Terms of Reference, this evaluation assesses the systems and performance of six Norwegian public entities in relation to the implementation of UNGPs in Norwegian development cooperation, and how development aid involving businesses affects human rights. These entities are: the Ministry of Foreign Affairs (MFA), Norway's embassies,

the Norwegian Agency for Development Cooperation (Norad), Norfund, the Norwegian Export Credit Guarantee Agency (GIEK) and Innovation Norway. This evaluation includes two country case studies, Tanzania and Mozambique, based on findings from five projects in each country.

The six entities have different roles and responsibilities in relation to UNGP. The main responsibility for fulfilling the Norwegian State's duty to protect human rights lies with MFA and the embassies. All entities, including Norad and Innovation Norway, manage grants and support to businesses that create state-business nexuses where human rights due diligence may be required. Norfund and GIEK have a dual role, both as managers of substantial support to businesses (creating state-business partnerships where human rights due diligence may be required) and as business enterprises with responsibility to respect human rights, including a duty to undertake HRDD.

This evaluation finds that since the adoption of UNGP in 2011, the principles have been incorporated into policies and procedures guiding Norwegian development cooperation and support to commercial actors. MFA has played a key part in communicating this commitment to Norwegian businesses, professional associations and other partners.

However, this evaluation also shows that the implementation of the policies is still incomplete. High-level government pronouncements and commitments are not supported by procedures and actions that ensure human rights due diligence in line with UNGP standards in development projects and investments.

## KEY FINDINGS

***To what extent do the selected state agencies have policies, guidelines and procedures in place to be able to know and show that Norwegian development aid to the private sector protects and respects human rights?***

**There are strong and clear references in high-level Norwegian policy documents to UNGP and the duty to undertake human rights due diligence, especially in white papers and the National Action Plan, but the implementation and follow-up in these areas still has room for improvement.**

The emphasis in these overall policies, as well as the in the National Action Plan, is on awareness-raising among partners, including Norwegian companies, about UNGP and the need for human rights due diligence. There is much less attention on how to ensure that the principles are implemented.

The Norwegian National Action Plan is, like most other countries' action plans, thin on new and specific commitments. It does not explicitly explain when and how state agencies that support businesses – and businesses that receive support – in development cooperation are required to carry out human rights due diligence. This gap is particularly significant where businesses operate in contexts with a high risk of human rights infringements, as in the cases covered by this evaluation.

The procedures defined by MFA's system of grant management depend to a large extent on a formalistic and top-down approach. This provides limited guidance to project officers on what is required to ensure that human rights are protected and respected in state-supported development projects involving the private sector.

Norfund and GIEK have better systems in place, with more detailed procedures to ensure human rights due diligence among partners. Norfund has a significant weakness in that its own human rights commitment is not well established and Norfund does not recognise UNGP in its policies.

***To what extent do the selected state agencies assess the human rights risks and impacts of Norwegian development aid involving business enterprises?***

**There are significant gaps in the human rights due diligence performed by most entities in state-supported development projects and investments involving private sector actors. This is particularly true for MFA, the Norwegian embassies and Norad, and also Innovation Norway. These entities lack detailed procedures that can be adapted to a given context in order to conduct adequate human rights due diligence. They also lack procedures to track and monitor the human rights impacts of their operations during the delivery of development projects.**

Norwegian development cooperation is carried out in contexts that pose significant risks to human rights. Partner countries often have poorly functioning systems to safeguard decent labour conditions, land rights and other potential adverse impacts on local communities. This indicates that in cases where state entities provide substantial support and services to businesses as part of their development work, human rights due diligence should be required by both the state entity itself and the beneficiary businesses.

This evaluation finds that human rights risk assessments are conducted in these situations, but that they depend to a large extent on the local project partner's human rights due diligence. The state entities often lack adequate capacity, competence and contextual understanding to assess whether the quality of their partners' human rights due diligence is sufficient to meet the UNGP. There is also a general absence of strong systems to track the implementation of mitigating measures and to update risk assessments relating to business-related human rights impacts.

In concrete cases, state-supported business projects and investments have contributed to lifting the standards of human rights. Yet there are also examples of lost opportunities and there remains considerable scope for strengthening safeguards against negative human rights impacts in these kind of development partnerships.

Government entities cannot automatically rely on the human rights due diligence done by business actors. They need to ensure that they have the capacity and competence to assess the quality of third-party risk assessments, to track the implementation of mitigating measures and to monitor the risk picture.

***To what extent are grievance and remedy mechanisms in place? Are there sanctions if human rights violations have occurred?***

**Apart from GIEK, none of the reviewed entities has a specific mechanism to respond to and resolve human rights grievances arising from development projects. The state entities' existing grievance mechanisms are, first and foremost, targeted to handle allegations of corruption.**

All six state entities studied in this evaluation have contractual provisions for sanctions in cases of documented negative human rights impacts, but none of them could pinpoint any cases where sanctions had been made in such situations.

The Norwegian Organisation for Economic Co-operation and Development (OECD) National Contact Point for Responsible Business Conduct may also be seen as a grievance mechanism for adverse impacts on human rights but this only deals with complaints against multinational enterprises operating in or out of Norway. Therefore, the National Contact Point's mandate as a grievance mechanism is limited to state entities that are also business enterprises with international operations. No complaints have been lodged via this mechanism against

any of the entities covered by this evaluation. Further, the National Contact Point has no mandate to remedy any human rights violations, e.g. by providing compensation or imposing penalties.

GIEK has established a 'stakeholder feedback' mechanism for reporting concerns relating to human rights, among other issues, although awareness of this appears to be low among stakeholders.

Although some development projects have their own grievance mechanisms, the evaluated entities do not have strong and centralised systems in place for registering human rights grievances arising from development projects, or for using this information for systematic learning and further strengthening of systems.

***What is conducive to and what hinders alignment with the UNGP in Norwegian development cooperation? What are the most important points for improvement?***

**MFA has made important contributions to aligning with the UNGP in Norwegian development cooperation through enshrining the principles in its high-level policy framework. However, with the partial exception of Norfund**

**and GIEK, the examined state entities' policy commitments have not been translated into guidelines and procedures that define clear standards for human rights due diligence that are aligned with the UNGP.**

The most significant improvement that has been made in aligning Norwegian development cooperation with the UNGP has been incorporating UNGP into the national policy framework, including relevant white papers. The inclusion of human rights as a cross-cutting issue has also increased the focus on addressing human rights in state-supported development projects.

There is, however, a need to establish more operational and context-oriented guidelines for how to perform human rights due diligence. Moreover, better systems are required to track the status of human rights risks assessments and remedial actions in individual projects. The following recommendations provide key pointers for how this can be achieved.

## RECOMMENDATIONS

### **1. Further develop Norway's present aid management system for human rights due diligence to ensure that it is better informed by projects' specific geographic and sectoral contexts.**

The development administration's grant management manual and grant management schemes are formalistic and top-down, and lack operational directives to guide project officials in assessing the quality of human rights due diligence in development projects that involve business enterprises.

There should be a requirement for human rights due diligence that is informed by the specific country and sectoral context. This should consider the legal and institutional context, relevant business activities, the presence of vulnerable groups and whether any business partners pose added risks to human rights. This will require operational directives to guide project officers' assessments of human rights risks and the quality of human rights due diligence in supported projects. There also is a need for specific requirements for stakeholder consultations and dialogues, adapted to the specific context of each country, that can guide



and indicate whom to include in consultations and how they need to be documented.

The evaluated entities also need to strengthen their routines for reporting and documentation in order to establish a risk management log that incorporates human rights risks for each project. This should include updates of original risk assessments and the status of any mitigating actions.

There could be a role for Norad in spearheading the development of country-specific procedures covering human rights due diligence in relation to development initiatives involving businesses. These should be developed in collaboration with other agencies in each country, which could help to achieve a significant and lasting improvement in due diligence processes that are informed by the local context.

## **2. Strengthen the capacity and competence of Norway's embassies.**

Given the complexity of the UNGP and human rights issues, Norwegian embassies need increased capacity and competence to follow up on development projects and the skills to assess the nature of relevant human rights risks in their countries. A more systematic approach to competence building should be

developed to increase the understanding of specific human rights issues in each country and in relevant sectors, for instance through knowledge banks on issues such as workers' rights, land rights and gender equality.

The development of better tools for informing human rights due diligence would enable embassies to increase their capacity and competence within existing human resources restrictions. The efficiency of this approach would be further enhanced by collaborating with other agencies to develop these tools. As noted above, Norad could play a part in this.

## **3. Establish new, and strengthen existing, grievance mechanisms relating to adverse human rights impacts arising from Norwegian development funding.**

The existing grievance mechanisms in the evaluated state entities are typically used for reporting suspected corruption rather than raising human rights concerns. Although officials refer to the OECD National Contact Point as a grievance mechanism for complaints related to Norwegian development cooperation, this is not adequately communicated externally to relevant stakeholders. Furthermore, the National Contact Point's mandate is limited.

The entities studied in this evaluation need to revisit their approach to grievance mechanisms for adverse human rights impacts arising from development initiatives. They need to set up mechanisms that are clearly communicated and accessible to stakeholders in partner countries, including at project level. They also need to establish formal registers of grievances and invest in learning in this area.

Large and high-risk development projects require a more proactive approach to grievance mechanisms. The use of independent actors as watchdogs is a model to explore further. An example of this is the use of civil society as a reference group in the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) project in Tanzania. It is recognised that the watchdog role carries risks, particularly for non-state actors, which is why it is important that such a role is backed by a clear and strong mandate.

In order to fulfil Norway's obligations as an OECD member, the OECD guidelines and its grievance mechanism should be promoted throughout Norway's development partnerships with businesses. The possibility of submitting a complaint about alleged negative human rights impacts by a Norwegian multinational enterprise should be made well known through embassies and public agencies that work

in the field of private sector involvement in development and promotion of Norwegian businesses.

**4. Norfund should strengthen its policies and procedures by adopting a better defined human rights commitment in line with UNGP and recognising them in its policy on human rights.**

The Norwegian Government expects Norwegian businesses to know and follow UNGP and the OECD guidelines for responsible business conduct. Norfund should refer to this expectation in its own policy statement on human rights as the basis of improving its own policies on environmental and social responsibility and corporate governance. Norfund should aim to continuously improve its alignment with UNGP and its human rights due diligence on investee companies, supply chains and other business relationships.

**5. Norfund and GIEK should strengthen systems for tracking human rights risks in their development work with businesses.**

GIEK includes supply and value chains in its human rights due diligence scope, whereas there is a need for Norfund to do the same. Both organisations' approaches to tracking

human rights impacts and updating human rights risk assessments need to become more systematic. This revised approach should not only cover negative human rights impacts that have already been identified, but also identify and address emerging impacts. Moreover, procedures to ensure that cases needing a remedial process are identified and adequately resolved in practice should be developed further. These processes should also be communicated to stakeholders.

**6. Innovation Norway should develop a complete human rights due diligence system in relation to development initiatives.**

Innovation Norway needs to systematically develop a complete human rights due diligence system incorporating the elements reviewed in this report to identify, assess, prevent and mitigate human rights risks arising from development initiatives. It should track the performance of its private sector development partners, communicate on how it addresses its human rights impacts, and provide remedies to negative impacts on human rights when necessary.

# 1. Introduction

The promotion of human rights is a long-standing component of Norwegian development cooperation. At the same time, a significant part of Norwegian development cooperation is going to private sector actors, or projects where private business plays a key part.

Although there is wide-spread support for the role of private business in supporting sustainable development, there are also cautionary voices raised against the perceived and real perils of globalisation to poor populations. Reports of human rights abuses and land grabbing by international investors in poor countries are reminders that there is no guarantee that companies will necessarily act responsibly.

The promotion of business and support of private sector actors comes with a responsibility to ensure that human rights are safeguarded. This is particularly the case in countries where systems for safeguarding the rights of people affected by investments and projects involving private sector actors function poorly.

The United Nations Guiding Principles on Business and Human Rights (UNGPR) was unanimously endorsed by the Human Rights Council in 2011. Within just a year after UNGPR was endorsed by the Human Rights Council, key standards and initiatives of global, regional and national reach were aligned with UNGPR, covering all geographic regions and business sectors.<sup>1</sup> UNGPR has today assumed the role as the global standard for the states' duty to protect human rights against abuses from businesses, as well as for businesses' own responsibility to respect human rights. The Norwegian government has committed to ensure that UNGPR is implemented in its support to business in development assistance.

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1 The European Parliament, Director-General for External Policies, Policy Department, Implementation of the UN Guiding Principles on Business and Human Rights, February 2017, section 2.3.

## 1.1 THE CONTEXT: HUMAN RIGHTS IN THE NORWEGIAN DEVELOPMENT COOPERATION AND UNGPR

The interplay between development cooperation and human rights is a long-standing concern in Norway. In 1977, a White Paper from the Parliament assessed the government's human rights policy.<sup>2</sup> More recently, the 2014 White Paper, "Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation," committed to promote human rights in international cooperation "through the systematic use of foreign and development policy instruments", among others by "engaging the private sector in efforts to safeguard and ensure respect for human rights, with reference in particular to the UN Guiding Principles on Business and Human Rights."<sup>3</sup> Norway has contributed substantially on the bilateral and multilateral level to the promotion of UNGPR. UNGPR has, therefore, assumed a central role in the Government's efforts to safeguard and ensure respect for human rights in development cooperation involving businesses.

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2 Meld. St. nr. 93 (1976–1977).

3 Meld. St. nr. 24 (2014–2015), p.11.

Within the area of development cooperation, UNGP is mainly relevant to donor-funded projects implemented by private corporations, whether Norwegian or foreign. Projects implemented by private partners (henceforth designated as “support to businesses”) represented 890 million NOK per year on average between 2010 and 2013, which is just above 3% of Norway’s official development assistance (ODA).<sup>4</sup> Approximately half of this support was provided by Norfund. GIEK, on the other hand, does not administer any ODA funds.

The support provided by other Norwegian agencies has been reduced from 430 million NOK per year on average between 2010 and 2013 to 240 million NOK on average between 2014 and 2017. In terms of sectors, Norwegian support to businesses across the world has a predominant focus on economic development and trade (about 64% of the total between 2010 and 2013) followed by environment and energy (15%), good governance (11%) and health and social services (4%).

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4 Source: NORAD, Norwegian Aid Statistics. The figure cumulates agreements with Norwegian and non-Norwegian private sector corporations, as well as contracts with consultancy firms, in all aid sectors (economic development, agriculture, energy, etc.). Since 2014, Norway’s official ODA portal does not provide details on Norfund’s investments, but simply the overall annual increases in Norfund’s capital. The data provided on Norfund’s site, on the other hand, is difficult to reconcile with the official ODA data before 2014, and therefore cannot be used as a consistent source on Norfund’s support to the private sector since 2014.

Grants directed to other partners, such as multilateral institutions or recipient country governments, can also involve businesses and therefore fall within the scope of the UNGP. An example from this evaluation is the case study of a trust fund managed by the World Bank with the purpose of investing in electricity infrastructure projects in Mozambique.

#### 1.1.1 UNGP

UNGP builds on three pillars, which provides different roles and responsibilities for *states* and *companies*:<sup>5</sup>

- › **1. The state’s duty to protect human rights –** States have legal obligations to protect against violations from third parties, including businesses. Their responsibilities include general measures like adequate policies, legislation, regulation and adjudication, as well as the provision of effective guidance to businesses.<sup>6</sup> Additional steps are required when there is a state-business nexus, as when state owned or state controlled agencies are providing substantial services or support to businesses.

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5 See Annex 4 for a more detailed discussion of the UNGP.

6 Note that UNGP has also been considered by the UN Committee on Economic, Social and Cultural Rights in adopting its General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Further, the UN Committee on the Rights of the Child recognized the relevance of the UNGP in developing its General Comment No. 16 (2013) on State obligations regarding the impact on the business sector on children’s rights.

This may include, when appropriate, to require human rights due diligence by the agencies and the beneficiary business.

- › **2. The responsibility of businesses to respect human rights –** Companies are expected to respect human rights. Businesses are expected to avoid causing or contributing to adverse human rights impacts, and to address such impacts when they occur. In addition, businesses should seek to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. In order to meet this responsibility, businesses should adopt a well-informed human rights policy, conduct human rights due diligence and have processes to enable remediation of any adverse human rights impact they cause or contribute to. The same expectations apply to state-owned companies.
- › **3. The need for access to appropriate and effective remedies –** Rights and obligations need to be matched to appropriate and effective remedies when breached. This is a combined responsibility for states and companies.

Some states, among them Norway, have adopted National Action Plans (NAPs) on

business and human rights based on UNGP. The Norwegian NAP sets out a clear expectation that Norwegian businesses shall respect human rights throughout their operations. The Norwegian National Action Plan is, like most other countries' action plans, thin on new and specific commitments.<sup>7</sup> It does not explicitly explain how and when agencies as well as businesses involved in development cooperation – and thus regularly operating in contexts which pose significant risks to human rights – are required to carry out human rights due diligence.<sup>8</sup>

The commitment to UNGP among businesses both nationally and internationally vary. The uptake of UNGP in leading companies is becoming more widespread, but evidence shows that implementation is not deep enough.<sup>9</sup> Amongst small and medium-sized enterprises, UNGP is still not sufficiently known.<sup>10</sup>

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7 See e.g. International Corporate Accountability Roundtable (ICAR), Assessment of Existing National Action Plans (NAPS) on Business and Human Rights, August 2017 update.

8 For a comparative analysis, see Rasmus Kløcker and Sandra Alter, Business and Human Rights in Development Cooperation – has Sweden incorporated the UN Guiding Principles? Rapport 2015:08 till Expertgruppen för biståndsanalys (EBA), Annex 2.

9 John G Ruggie, The Social Construction of the UN Guiding Principles on Business and Human Rights (June 2017), p. 19, and Shift, Human Rights Reporting: Are companies telling investors what they need to know (May 2017).

10 See e.g. The European Parliament, Director-General for External Policies, Policy Department, Implementation of the UN Guiding Principles on Business and Human Rights, February 2017, section 2.3.

### **1.1.2 IFC Performance Standards and other standards' relationship to UNGP**

Other international initiatives and recognised principles may contribute to the same goals as UNGP. For instance, Environmental, Social and Governance (ESG) risk assessments may or may not address human rights risks in line with UNGP. Compliance with UNGP must be assessed in each case. The human rights chapter in the OECD Guidelines for multinational enterprises is aligned with UNGP's expectation that businesses respect human rights. OECD's sector specific guidances, in particular the OECD document on responsible business conduct and due diligence for institutional investors, will thus provide valuable guidance.<sup>11</sup>

The International Finance Corporation Performance Standards (IFC PS) is established as the finance sector's industry standard for ESG risk assessments. The IFC PS goes a long way towards ensuring good human rights due diligence by its clients/investee companies. The IFC PS approaches the clients' environmental and social performance through a set

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11 OECD (2017), Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises. See also OECD (2018) OECD Due Diligence Guidance for Responsible Business Conduct, which is a general guidance for due diligence, including human rights due diligence. Whether the agencies are multinationals or not, is not necessarily material in assessing the relevance and usefulness of these guidances, since multinational and domestic enterprises may be subject to the same expectations.

of concrete standards, covering labour and working conditions; resource efficiency and pollution prevention; community health safety and security; land acquisition and involuntary resettlement; biodiversity, conservation and sustainable management of living natural resources; indigenous people; and cultural heritage, as well as assessment and management of environmental and social risks. The standards develop the expectations to the client in great detail and operationalize the client's commitments. This, of course, contributes significantly to achieving the same ends and outcomes as compared with an UNGP-based approach.

There are, however, important differences. UNGP approaches the corporate responsibility from a different angle, i.e. on the basis of a broad and general commitment to human rights, as well as a general, but flexible and risk-based, requirement to undertake human rights due diligence.<sup>12</sup> Further, the IFC PS are limited as compared with UNGP regarding impacts in the supply chain and have a much less expansive understanding of business relationships than the UNGP. IFC PS does not say anything about prioritization on the basis of risk to people. For these reasons, IFC PS may not by itself secure a sufficiently broad

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12 The latter difference is lessened by in footnote 12 of IFC performance standard 1, which say that human rights due diligence may be appropriate in "high risk circumstances".

and focused human rights due diligence to fully implement UNGP.

An additional point of importance to this evaluation is that the IFC PS does not say anything about the finance institution's *own* commitments, human rights due diligence or duty to remediate. Therefore, a careful analysis of the agencies' own commitments, policies and procedures is required. This point is illustrated by the fact that IFC itself supplements the IFC Performance Standards with its own policies setting out IFC's own commitments and responsibilities, and which makes clear references to the responsibility of businesses to respect human rights.<sup>13</sup>

The evaluation interviewed two comparator Development Finance Institutions (DFIs) – CDC UK and the Dutch FMO. Both have well developed standards and guidances on environmental and social practices and requirements, which include human rights. They both make clear references to UNGP. Reference is made to CDC's human rights on-line briefing note<sup>14</sup> and FMO's position paper on human rights.<sup>15</sup> Norfund has yet to develop such advanced policies, standards and guidances regarding UNGP and human rights.

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13 See IFC's Policy on Environmental and Social Sustainability, Section II.

14 See [CDC ESG toolkit](#).

15 See [FMO website](#).

The IFC PS remains, however, the pre-eminent Reference Framework for both organisations and the primary set of standards that are captured in legal / investment agreements. CDC also sees dilemmas related to the use of human rights language and terms which are unfamiliar to investees, consultants and many regulators. Thus, they try to address human rights through IFC PS. CDC UK performs third party due diligence / use experts on areas of heightened human rights risks.

FMO seems to be actively implementing the UNGP and underscores the positive aspects of improving the focus on human rights and thus the importance of managing such risks, improving local acceptance of projects, etc. FMO seems to appreciate the need to assess risks to the company, risks to rights-holders and risks related to the context of the project, including the systematic check of local acceptance of projects. FMO underscores that they are in an implementing phase and still learning.

Accordingly, best practice by Development Finance Institutions (DFIs) seems to be to make clear human rights commitments and also to make clear reference to UNGP, even if IFC PS are maintained as the primary reference. However, a comparison with CDC and FMO confirms that implementation of

UNGP can take some time and that there are challenges ahead. The policies and the evolving practices within these agencies are, nevertheless, pointing clearly at a development showing that the DFIs increasingly are taking on more responsibility, e.g. through including strong human rights commitments and UNGP in their own due diligence, action plans and training.

## 1.2 THE EVALUATION

This evaluation answers two overarching questions: To what extent is UNGP implemented in Norwegian development cooperation, and how does Norwegian development aid involving business promote, protect and respect human rights?<sup>16</sup>

The evaluation assesses the systems and performance of the following six governmental entities: the Ministry of Foreign Affairs (MFA), the embassies, the Norwegian Agency for Development Cooperation (Norad), Norfund, the Norwegian Export Credit Guarantee Agency (GIEK) and Innovation Norway. The evaluation includes two country case studies, also defined by Terms of Reference, namely Tanzania and Mozambique.

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16 The complete Terms of Reference are provided in Annex 1.



The case studies consider the role played by the Norwegian embassies in the selected countries and assess five projects in each country. The studies include a stakeholder analysis on the contribution of the policies and practices of Norwegian aid institutions to human rights outcomes on the ground, which enables a broader analysis of Norwegian assistance and its contribution to human rights outcomes.

### Evaluation questions

The evaluation sets out to answer the following questions, as stated in the Terms of Reference:

1. To what extent do the selected state agencies have policies, guidelines and procedures in place to be able to know and show that Norwegian development aid to private sector protects and respects human rights? To what extent does the MFA/the embassies set out clear expectations about human rights to business actors?
2. To what extent do the selected state agencies assess human rights risks and impacts of Norwegian development aid involving business enterprises?
  - a) How and how well are Human Rights Due Diligence procedures (HRDD) performed by the selected state agencies or business enterprises?
  - b) To what extent can the state agency rely on the HRDD done by business actors? Does the state agency have the capacity to assess business actors' HRDD?
3. To what degree do policies and assessments contribute to the actual protection of human rights in business activities on the ground in the two designated case countries?
4. To what extent are grievance and remedy mechanisms in place? Are there sanctions if human rights violations have occurred?
5. How do practices in Norwegian development cooperation compare to best practice internationally?
6. What is conducive to and what hinders alignment on the UNGP in Norwegian development cooperation? What are the most important points for improvements?

The rest of the report is structured as follows. The next chapter, Chapter 2, explains the evaluation's approach and methodology. Chapter 3 describes and summarises the systems analysis of the six evaluated entities. Chapter 4 covers the country case studies, with an overview of the country contexts, the situation of human rights and business in the selected countries, a presentation of the work of the embassies and the project case studies for each of the selected countries. Chapter 5 presents answers to the evaluation questions and provides recommendations.

Annexes 1–23 are to be found as a separate document at [www.norad.no/evaluation](http://www.norad.no/evaluation). See [list of annexes](#) at the end of this document.

## 2. Approach and methodology

The evaluation builds on two complementary components: a systems analysis of the six entities covered by this evaluation, which assesses their implementation of UNGP and human rights in Norwegian development cooperation involving business; and two country case studies of Norwegian support to development cooperation projects involving private sector actors and promotion of Norwegian business, in Tanzania and Mozambique.

The systems analysis provides the top-down perspective of the objectives, policies and procedures of the institutions managing Norwegian aid when it comes to UNGP, human rights and business. The case studies are meant to evaluate the actual implementation and results of these policies and provide feedback from the ground to the systems analysis.

Annex 2 provides further details on the questions that were investigated and data collections methods that were used for each. The evaluation is based on data from literature review, interviews and archival searches. The literature review includes policy papers, official

reports, relevant evaluations and media searches. A complete list of reviewed and referenced material is provided at the end of this report.

Interviews were conducted with officials of all evaluated entities, officials from case projects, government officials in case countries, and members of civil society, media and trade unions in case countries. Focus group discussions were also held with stakeholders in case countries. A complete list of the more than 70 interviews conducted is provided in Annex 3. The evaluation matrix presented in Annex 2 gives an overview of the questions covered in the interviews with the different entities and stakeholders.

The preparation of the evaluation methodology included an extensive consultative process. The draft Inception Report was shared with all evaluated entities and a wider group of stakeholders, and the method and selection of case projects was adjusted based on this. A draft report was also shared with the same group of stakeholders, eliciting a substantial number of comments which have been reflected in this final report.

The diversity of sources enabled the evaluation team to triangulate the data in two ways. Within each case study, the evaluation team sought to diversify its sources of information (project documents, annual reports, academic literature and evaluation reports, interviews with diverse stakeholders), systematically detect contradictions and areas of uncertainty, and require further clarification in such cases. For the evaluation as a whole, the team sought to test and contrast the general descriptions and assessments made in the systems analysis with the project-level evidence from the case studies. Here too, apparent contradictions directed the team's further investigations at both levels.



## 2.1 SYSTEMS ANALYSIS

The **systems analysis** was conducted for each of the *six governmental entities* covered by the evaluation (namely MFA, embassies, Norad, Norfund, GIEK and Innovation Norway), acknowledging their respective roles in development cooperation and duties in the framework of the UNGP. The analysis scrutinised the approaches and maturity of each entity in implementing UNGP, including:

- › Their policies and regulations,
- › The allocation of responsibilities to implement UNGP,
- › The competence and capacity of the relevant staff,
- › The implementation and monitoring of human rights in business-related projects, and
- › Grievance mechanisms, including remedy.

To aid a systems analysis of the agencies' human rights due diligence, the evaluation team developed a *Human Rights Due Diligence Quality Assessment Tool (HRDD Tool)*. The tool

is based on the commentaries to UNGP as well as other known resources.<sup>17</sup> The tool was used to generate scores for the five core elements of a HRDD process that is fully aligned with UNGP:

1. *Identify and assess* covers policies and procedures, including identification and assessment of both actual and potential adverse impacts in the organisation's own operations, as well as identification and assessment of risks in the supply chain and business relationships.
2. *Prevent and mitigate* covers the implementation of policies and includes organisations' measures to stop and avoid that they cause or contribute to adverse human rights impacts.
3. *Tracking performance* covers systems to track human rights risks and mitigating measures.
4. *Communication* relates to external communication of due diligence policies.
5. *Remediation* covers how organisations address and remediate impacts it has caused or contributed to.

<sup>17</sup> See Annex 5 for a comprehensive description of the tool.

### BOX // THE HUMAN RIGHTS DUE DILIGENCE QUALITY ASSESSMENT TOOL SCORING

- › **3 points: Fully aligned** – All elements are of high quality and in place
- › **2 points: Partially aligned** – Most elements are in place, but quality vary and opportunities for improvements
- › **1 point: Not aligned** – Only few elements are in place and/or the quality is poor
- › **0 points: None** of the elements are in place

The five core elements were divided into 36 sub-elements, each associated with a score on a four-point scale. Average scores were calculated for the core elements. An explanation of the scoring is provided in the text box on this page, whilst a detailed guide for the scoring is provided in the HRDD Tool Manual in Annex 5.

The systems analysis of the entities is also informed by the country case studies.

## 2.2 COUNTRY CASE STUDIES

**Country case studies** of Tanzania and Mozambique provide an on-the-ground-assessment of the implementation of UNGP and human rights in Norwegian development assistance involving business. The assessment covers the following elements:

- › A mapping of Norwegian assistance to business in the countries.
- › An assessment of the human rights situation in each country with particular reference to business. This includes stakeholder consultations with civil society, trade unions, media and persons affected by projects supported by Norway.
- › An assessment of the work done by the Norwegian embassy in each country, including its responsibilities in project management and its promotion of Norwegian businesses in the countries.
- › An assessment of the extent and quality of the human rights due diligence processes in five case projects in each country.

The field work in Tanzania took place from 4 to 13 December 2017, and consisted of interviews and focus group discussions in Dar es Salaam and a field visit to a site of the SAGCOT project in Iringa. The field work in Mozambique took place from 22 January to 2 February 2018, and consisted of interviews and focus group discussions in Maputo and a field visit to the site of the Tilapia Value Chain project in Hókwe.

Five projects in each country were selected by the evaluation team, in consultation with Norad's evaluation department and the evaluated entities, based on the following criteria:

- › Sector, type of business and inherent human rights risks.
- › Coverage of as many as possible of the evaluated entities.
- › Financial significance of the projects.

The selection of projects reflected the profile of Norwegian support to business in the two countries, which is mainly in the sectors of agriculture, energy, industry and finance.

In Tanzania, three Norfund projects, one MFA project and one Innovation Norway project were selected. Three of the projects are in the agricultural sector and two in energy:

- › MFA – Southern Agricultural Growth Corridor of Tanzania. Partner: SAGCOT Centre Ltd.
- › Norfund – Kilombero Plantation Ltd. Partner: Agrica.
- › Norfund – Globeleq Ltd. Partner: Songas.
- › Norfund – Yara Fertiliser Terminal Dar. Partner: Yara International ASA.
- › Innovation Norway – Sunami village empowering. Partner: EYASYS SA.

In Mozambique, the selection includes three Norfund projects and two embassy projects. Two of the projects were in the energy sector, one in finance, and one each in agriculture and aquaculture:

- › Embassy – Trust fund Regional power systems. Partner: World Bank.
- › Embassy – Tilapia Value Chain. Partner: The Royal Norwegian Society for Development.
- › Norfund – Scatec Solar. Partner: Scatec Solar.
- › Norfund – African Real Estates Ltd. Partner: African Real Estates Ltd.
- › Norfund – Arise B.V. Partner: Banco Terra and Socremo.

Six of ten case projects belonged to Norfund, reflecting the fact that Norfund has a large majority of business related projects in the two case countries. GIEK had no projects in the two countries. Hence, the analysis of GIEK is only based on a general analysis of its systems and procedures.

## 2.3 LIMITATIONS

All evaluated entities – businesses as well as government institutions – openly shared the information that the evaluation team asked for. Yet, the wealth of documents, data and sources notwithstanding, there are some important limitations to the basis of information on which this evaluation is based.

Firstly, not all objectives and questions in the Terms of Reference were answered comprehensively, due to limitations of information and resources available to the evaluation:

- › Evaluation Question 3 is to what extent the evaluated policies and assessments contribute to actual protection of human rights in business on the ground in the two case countries. The evaluation has collected information according to plan. We found, however, that it was not possible to provide a well-founded answer, beyond a general observation of the likely impact. Providing an exhaustive answer to this question would require baseline information and a much more comprehensive data gathering than possible with the resources available to this evaluation. Therefore, we do not include a discussion of this evaluation question in the concluding chapter, instead presenting our

findings on observed human rights outcomes under Evaluation Question 2, and generally in case studies.

- › Evaluation question 5 is to compare Norwegian implementation of UNGP with best practice internationally. The evaluation has collected data to compare the National Action Plan with best practice, and also from comparable Development Finance Institutions. We were not, however, able to gather sufficient data on how other donors actually implement UNGP. We do not, therefore, present a stand-alone comparative analysis, opting instead to integrate our observations on National Action Plans into the systems analysis of MFA, and the comparative analysis of DFIs into the systems analysis of Norfund.
- › In addition to the Evaluation Questions, the Terms of Reference also spells out six Evaluation Objectives that are only partially covered by the Evaluation Questions. The third objectives is to “Map how Norwegian development cooperation is involved with business in the two designated case countries.” The evaluation has done a basic mapping of development assistance in the two countries, including projects backed by Norfund. The detail of this mapping has been constrained

by data limitations,<sup>18</sup> and to the challenges of delineating “support to businesses”. The methodological choice of the team was to focus on projects implemented by private partners, whether established in the recipient country or in Norway. This includes private sector actors who are involved in projects agreements, but may not include projects where private sector is involved in implementation without being the formal agreement or recipient partner. This may, for example, include entrepreneurs or security firms further down the supply chain of a development intervention. Also, because of the lack of available data, we did not map the Norwegian businesses in the two countries who have benefitted from advice and non-financial assistance from the embassies. Although it may make our description of the evaluation object less detailed, we do not believe this in any way affects the validity of our findings.

Secondly, the assessments of the institutions that had no on-going activity in the case study countries, namely GIEK and Innovation Norway, are inevitably more general and less grounded in evidence than those of the MFA, embassies, Norad and Norfund.

Thirdly, the case projects do not present a statistically significant sample of Norwegian supported projects to business. It is, therefore, not possible to infer general conclusions from the evidence provided by the projects. The case projects were used as discrete observations that can highlight some of the strengths and weaknesses of the implementation of human rights due diligence processes in Norwegian development cooperation. Together with the systems analysis at the entity level, this has produced a body of evidence that has been used to triangulate and corroborate findings. But other cases might have shed light on different aspects of the complex reality at hand.

Finally, a word of caution with respect to the use of the HRDD Quality Assessment Tool elaborated and used in this evaluation. Whereas the tool is designed to produce fact-based and comparable scores, minor differences in scoring should not be accorded too much significance, whereas large differences between two organisations are certainly significant. Also, the qualitative explanations given to each detailed score within the tool are a necessary complement to the score itself, and help to better understand the strengths and weaknesses of each evaluated entity.

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<sup>18</sup> There is, for example, no disaggregated data on Norfund projects in Norad's database on Norwegian development cooperation.

## 3. Systems analysis

In this section we summarise the analysis of the relevant systems in the evaluated entities. The analysis is the first step in answering the overarching question of to what degree UNGP is implemented in Norwegian development cooperation and how Norwegian development aid involving business promotes, protects and respects human rights.

The analysis of each entity describes its responsibility to implement UNGP, relevant policies and regulations, the allocation of responsibilities within the entity, the available capacities and competencies, the implementation and monitoring, and established grievance mechanisms. Each section concludes with a summary of the findings for the entity.

### 3.1 THE MINISTRY OF FOREIGN AFFAIRS (MFA)

#### 3.1.1 Role

The Ministry of Foreign Affairs (MFA) has the main responsibility for the implementation of the UNGP. The Ministry's role encompasses the duty to set out clearly the expectation that all

business enterprises within their jurisdiction should respect human rights throughout their operations. Further the MFA should provide effective guidance to business enterprises on how to respect human rights throughout their operations, and encourage, and where appropriate require, business enterprises to communicate how they address human rights impacts. MFA also has a central role in ensuring policy coherence.

According to Principle 4 of UNGP, regarding the state-business nexus, the state, including the MFA is expected to *require* human rights due diligence when state agencies provide substantial support to business activities operating in contexts that pose significant risks to human rights – i.e. both due diligence by the state agency itself and by the businesses receiving their support. This points to MFA's responsibility to ensure good human rights due diligence as part of its grant management for projects involving private sector actors.

#### 3.1.2 Policies, guidelines and procedures

MFA states in the interviews that UNGP is the core steering document, guiding and committing all Norwegian government entities. The MFA led the development of the National Action Plan (NAP) on business and human rights, which was adopted by the Government in 2015. Whereas the plan clearly communicates the Government's expectation that businesses should respect human rights, it does not contain any new, concrete means to support businesses in this regard.<sup>19</sup> The action plan does not elaborate on the State's obligations in regard of development cooperation. Three problem-areas that, in the view of the evaluation, should have been addressed and further developed in the NAP are:<sup>20</sup>

- › Adverse human rights impacts caused by enterprises that receive, distribute or administer Norwegian investments, development aid, loan guarantees or export credits;

<sup>19</sup> The exception is a plan for an information centre, which has subsequently been cancelled.

<sup>20</sup> These were among the issues pointed out in a Fafo-study prior to the adoption of the Norwegian NAP, see Mark B. Taylor, Kartleggings- og avviksanalysen: Statens plikt til å beskytte, Fafo-notat 2012:13

- › Adverse human rights impacts caused by Norwegian enterprises that receives non-financial support, such as advice or promotion;
- › Lack of guidance and procedures for public servants, e.g. in the foreign service, on how they should address potential or actual adverse human rights impacts in such contexts.

More specific policies for development cooperation are, however, laid out in different White Papers:

- › “Corporate Social Responsibility in a Global Economy” (Meld. St. 10 (2008–2009)).
- › “Opportunities for All: Human Rights in Norway’s Foreign Policy and Development Cooperation” (Meld. St. 10 (2014–2015)).
- › “Working together: Private sector development in Norwegian development cooperation” (Meld. St. 35 (2014–2015)): Has a short, but dedicated section on UNGP.
- › “Common responsibility for common future: The Sustainable Development Goals and Norway’s development policy” (Meld. St. 24 (2016–2017)).

The White Paper on “Diverse and value-creating ownership” (Meld. St. 27 (2013–2014)), sets out the policy for managing publicly owned entities, and thus guides MFA’s management of Norfund. This White Paper recommends that state-owned companies implement UNGP.<sup>21</sup>

Arguably the most operationally important document for the standard of human rights due diligence in Norwegian development assistance is the Grant Management Manual (the so-called “Green book”). Originally, there was no explicit requirement to consider any potential impact on human rights as part of grant management. However, in 2016 human rights was added as a mandatory cross-cutting issue (the others being anti-corruption, environment and gender). This was presented in a new version of the Manual’s chapter V04, which provides requirements and guidance on standards for risk assessments.<sup>22</sup>

The section of V04 that deals with human rights as a cross-cutting issue takes as its point of departure the need to map the country and sector context. The description of how to do this, however, is formalistic and top-down. The recommended mapping is limited to collecting information about the international human

<sup>21</sup> Meld. St. 27 (2013–2014), p. 81.

<sup>22</sup> The Norwegian Ministry of Foreign Affairs. (2017). V04 Guide to assessment of results and risk management, including cross-cutting issues, Final Version.

rights conventions ratified by the country at issue and whether they have incorporated the conventions in the national legislation, in addition to the outcomes of the Universal Periodic Review (UPR) of the relevant country.

Mapping the formal status of human rights law in a given country provides useful entry points into discussions with governments, and it clarifies legal requirements for business based on national law. However, the formal background gives only limited information about what the main human rights risks are in practice. This is particularly the case in countries where the capacity and political will to enforce human rights standards are weak.

Even though the UPR process provides information about human rights issues, it may not adequately indicate the most salient human rights risks of relevance to businesses.<sup>23</sup> This includes issues commonly encountered by business, such as adverse human rights impacts related to poor protection of land rights and workers’ rights. The case studies in this evaluation clearly show that these types of specific issues, rather than the formal status of international conventions, are the most relevant for human rights due diligence.

<sup>23</sup> As an example, a 2016 CESR-report found that economic, social and cultural rights received less attention than civil and political rights in the UPR process, see Center for Economic and Social Rights, The Universal Periodic Review: A Skewed Agenda? (June 2016).



The section on risk management in Chapter VO4 of the Grant Management Manual, provides a discussion on private sector development as one of eight sector specific examples. This refers explicitly to the UNGP and provides a three point check list requiring companies to:

- › Have a strategy for meeting their responsibility to respect human rights.
- › Carry out a human rights due diligence, and
- › Put in place a grievance mechanism.

Reference is further made to the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work and specifically refers to vulnerable groups, children and women's rights, whereas there are no references to e.g. land rights and related human rights impacts.

The Manual does not specifically commit the state agency providing the support to business activities to carry out due diligence. The human rights due diligence process is not explained in any detail and it does not explain the requirement to consider human rights in supply chains. The limitations of the regulations as a guiding document for assessing the quality of the implementing partners' human

rights due diligence is further noted in the country case studies.

MFA does not have any specific Grants Management Schemes for private sector development (as Norad does, see below). Most direct support from MFA goes through the "Regional Allocation" Grant Management Scheme.<sup>24</sup> The Scheme does not cover human rights or business, and refers to the Grant Management Manual for detailed instructions.

### 3.1.3 Allocation of responsibilities

The Section for human rights, democracy and gender equality has the overall responsibility for human rights in Norwegian development cooperation, and for ensuring that MFA's systems and procedures address human rights as a cross-cutting issue. The responsibility for Norway's support of UNGP internationally and the implementation of the National Action Plan, including support to the National Contact Point lies with the Section for business relations and private sector development.<sup>25</sup> Whereas this division of labour, according to the interviewees, generally works well for MFA, it is not clear for MFA's partners, companies and other external entities.

<sup>24</sup> MFA. "Grant Scheme Rules. Regional allocation, bilateral development assistance to Asia, Africa, Latin America and the Middle East," updated 1.3.2016.

<sup>25</sup> Interviews with the respective sections at MFA.

The responsibility for ensuring good quality human rights due diligence in projects implemented by MFA lies with the sections delivering the projects. MFA's ownership of Norfund is managed by the Section for business relations and private sector development.

### 3.1.4 Capacity and competence

MFA has currently no standardised training that specifically targets human rights or UNGP.<sup>26</sup> Nevertheless, professionals receive "induction training" prior to being posted to the embassies. In the case of postings to embassies that administer ODA funds, human rights and also UNGP are supposed to be included in the training. The interviewed embassy staff in Mozambique could recall the inclusion of UNGP in the induction training, while the staff in Tanzania could not.

In addition to the required training, refresher courses are provided, albeit on a voluntary basis. Staff at MFA as well as other agencies are invited to participate in courses arranged by the Norwegian OECD National Contact Point. However, there is no formalised or structured follow-up on this.

<sup>26</sup> Human rights and UNGP are mentioned in the basic training packages provided through the three-year trainee programme which form the fundament for a career in the diplomatic service (*aspirantkurset*) for staff to serve in the embassies and at the head office. *Aspirantkurset* produces approximately 15 graduates a year, most of whom goes on to a career in the foreign service and international development.



### 3.1.5 Implementation and monitoring

MFA makes use of different institutions and mechanisms in promoting UNGP in Norway, such as the OECD National Contact Point, KOMpakt, civil society meetings, and an inter-ministerial working group. The Contact Point, in particular, is used for training and awareness raising both internally and for partners.

The role of embassies is important in MFA's efforts to support Norwegian business, including assistance to understand the responsibility to protect human rights. In the last two years, however, the budgetary allocations to embassies for activities to support Norwegian businesses have been reduced. The annual allocations to the embassy in Tanzania, for example, has been cut from NOK 100,000 in 2016, to NOK 50,000 in 2017 and to no funding in 2018. This budget was previously utilised for activities such as meetings with Norwegian businesses to inform about requirements for responsible business, including preparing and updating Corporate Social Responsibility (CSR) country notes (see further description under the discussion of Embassies, below). Therefore, the political ambition to support Norwegian business in their efforts to respect human rights, is not supported by budgetary allocations.

Moreover, the lack of detailed guidance and structure weakens MFA's support to, and quality assurance of, human rights due diligence in development projects involving businesses. This is also evidenced by the case studies. There is no structured reporting on human rights and/or UNGP in MFA that enables a systematic tracking of how human rights is protected and respected in projects supported through Norwegian development cooperation.

The MFA's management of its ownership of Norfund is first and foremost through its appointment of Norfund's Board of Directors. In addition, there are four annual meetings between Norfund and MFA. These meetings generally deal with issues at policy level, and specific cases related to human rights have not been discussed in recent meetings.<sup>27</sup> One of the quarterly meetings includes a session dedicated to Norfund's Corporate Social Responsibility. MFA does not require Norfund to carry out human rights due diligence in accordance with UNGP.<sup>28</sup>

### 3.1.6 Grievance mechanisms

MFA has a general whistle-blower channel through its Central Control Unit. Whilst the

Section for human rights, democracy and gender equality confirms that this mechanism is also intended for reports on human rights abuses, the channel is more directed to employees and illegal and unethical behaviour. By and large it receives reports on suspected corruption. It does not encourage cases relating to human rights and no such cases have been received.<sup>29</sup> It cannot be expected that victims of adverse human rights impacts are familiar with this mechanism, as it is not communicated at project level.

According to the MFA, the Norwegian OECD National Contact Point (NCP) is a relevant grievance mechanism also for complaints regarding MFA. It should be noted, however, that NCPs deal with the business conduct of multinational enterprises operating in or from Norway, and not of governmental bodies that is not also a business enterprise and that the Norwegian NCP has not handled any cases regarding MFA.

Norway plays a leading role within UN in work on "Access to Remedy" – which includes financing of policy work.<sup>30</sup> There is no information available on cases where remedial action had been taken following reports of adverse impacts to MFA. This does not, however, mean

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<sup>27</sup> Interview with MFA and archive search.

<sup>28</sup> Interview with MFA.

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<sup>29</sup> Email from MFA.

<sup>30</sup> See [38th session of the Human Rights Council: Reports](#).

that remediation does not occur, as will be discussed in the case studies.

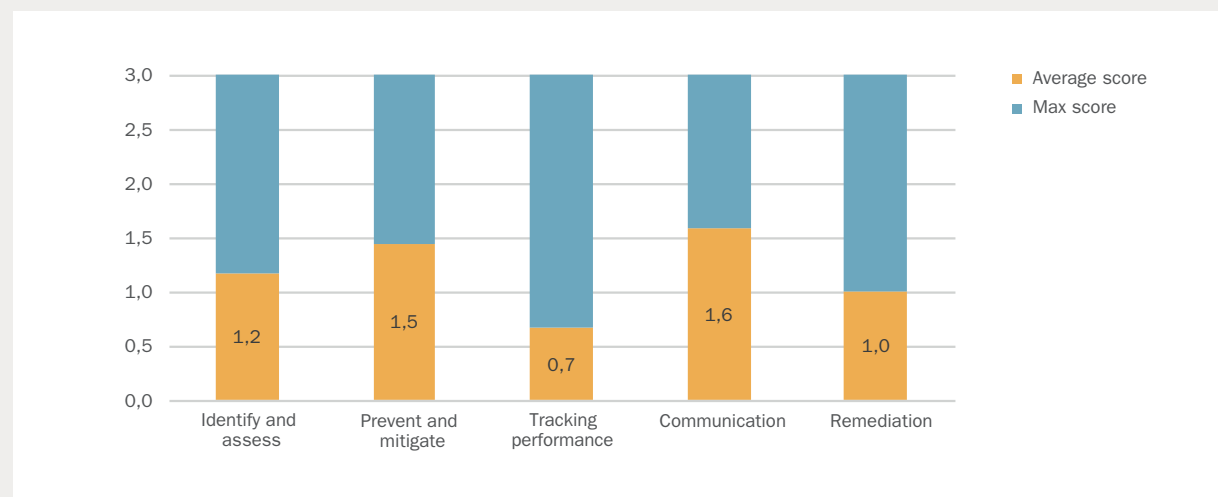
### 3.1.7 Summary of findings

The findings regarding MFA's role are divided into two groups; firstly, there are findings relating to the MFA's overall responsibility to protect human rights, and secondly, findings related to the duty to take additional steps, including human rights due diligence, to protect against human rights abuses in concrete projects involving businesses. These two groups are closely interrelated.

Regarding MFA's overall responsibility to protect human rights, key findings are as follows:

- › The 2015 National Action Plan for Business and Human Rights sets out the expectation that Norwegian business enterprises should respect human rights throughout their operations. Further, MFA's policies make reference to UNGP.
- › The 2015 National Action Plan for Business and Human Rights does not provide any new means of helping enterprises to fulfil their responsibility to respect human rights.
- › There is a lack of clarity in the allocation of responsibility to oversee the implementation of UNGP.

**FIGURE 1 // MINISTRY OF FOREIGN AFFAIRS – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 18

Regarding the duty to take steps to protect against human rights abuses in concrete projects involving businesses, the HRDD Quality Assessment Tool shows that procedures and regulations lack operational detail and that implementation is weak. MFA scores in average fairly low around 1,5, or 50% of maximum score, on most elements, and very low, 0,7, on “Tracking performance”. Weaknesses in relation to grievance mechanisms are also reflected in a score of 1,0.<sup>31</sup>

<sup>31</sup> See Annex 18 for full explanation of HRDD scores.

The systems analysis of the MFA regarding its duty to take steps to protect against human rights abuses in concrete projects involving businesses further shows that:

- › The grant management manual is overly focused on the formal aspects of human rights in partner countries, and provides limited guidance to ensure that human rights due diligence by state agencies and their business partners in development cooperation are informed by context, and that it covers the most important risk areas.

- › MFA follows up Norfund through contact meetings, but human rights issues are rarely discussed. MFA does not require Norfund to carry out HRDD in accordance with UNGP.
- › There is no structured reporting on human rights and/ or UNGP, and there is no system for tracking how associated agencies communicate about how they address human rights risks.
- › There is no structured approach for ensuring that relevant staff have basic UNGP and human rights training, although there is training available on demand.
- › Human rights due diligence does take place on a project-by-project basis, but this process is not guided by an overall system, and there is no systematic tracking of the process in projects.
- › There is no established grievance mechanism for negative human rights impacts. Reference was made to the OECD National Contact Point, but this is limited to deal with the conduct of multinational enterprises operating in or from Norway. The MFA Central Control Unit cannot be regarded as accessible for human rights victims.

## 3.2 THE EMBASSIES

### 3.2.1 Role

The embassies are part of the Foreign Services under the MFA. They are “Norway’s” offices abroad, with staff from different ministries. This evaluation assesses the following two functions of the embassies:

- › Managers of Norwegian development cooperation with the responsibility of ensuring good quality human rights due diligence in development projects involving businesses and monitoring and reporting on these.
- › Promoters of Norwegian business interests with a responsibility for ensuring that Norwegian businesses are informed about UNGP and the country specific requirements for responsible business.

The latter refers to promotion and facilitation, not financial support. For sake of clarity we refer to this as business promotion, in order to clearly distinguish from grant management and follow-up of projects financed by Norway.

### 3.2.2 Policies, guidelines and procedures

The MFA issues an Annual Directive for all embassies (*Årsinstruks*) that updates the priorities for the embassies each year. The

Annual Directive for 2018 instructs the embassies to promote Norwegian businesses seeking to invest in the countries and to “encourage [Norwegian companies] to familiarise themselves with the OECD guidelines for responsible business which entail conducting due diligence and manage risks associated with humans, society and environment.”<sup>32</sup>

The directive further states that the embassies should actively support and coordinate the work of Team Norway. Team Norway is facilitated by Innovation Norway, and led by the ambassadors. It includes key ministries (MFA; Industry, Trade and Fisheries; and Oil and Energy) as well as other actors, including Norad and GIEK.<sup>33</sup>

In addition to the Annual Directive, MFA issues each embassy an annual Allocation Letter (*Tildelingsbrev*). The evaluation reviewed the Allocation Letters of the case embassies, both of which state that support to private sector development and promotion of Norwegian companies in the countries are strategic priorities.<sup>34</sup> There is no mention of UNGP

<sup>32</sup> MFA 2018. *Virksomhetsplanlegging 2018. Årsinstruks for stasjonene*, page 9, the evaluation’s non-official translation.

<sup>33</sup> For information about Team Norway, see [their website](#) (the website is only available in Norwegian).

<sup>34</sup> Allocation letter for 2017 for the Norwegian Embassy in Dar es Salaam (*Tildelingsskriv 2017*) and Allocation letter for 2018 for the Norwegian Embassy in Dar es Salaam (*Tildelingsskriv 2018*).

or requirements to perform HRDD in conjunction with investments, support to private sector projects or business promotion.

The embassies follow the same regulations as the MFA. As discussed under the systems analysis of MFA above, the Grant Management Manual is formalistic and top-down with little concrete guidance on how to assess context specific issues on the ground. Embassy staff from the case countries also stated that they did not feel that the regulations gave them sufficient operational guidance for assessing human rights as a cross-cutting issue.

### **3.2.3 Allocation of responsibilities**

The responsibilities for the human rights and business development are typically allocated to different officials, and it is not clear who is responsible for UNGP. This was the case for the embassies in both Tanzania and Mozambique (see country studies, below), where the responsibilities for human rights and business were split between different people. Particularly in Mozambique, it was evident that private sector development and human rights were seen as two different areas, with little overlap.

### **3.2.4 Capacity and competence**

The MFA provides “induction training” to embassy staff prior to posting. The induction training has a focus on grant management, as the requirements relating to grant management has increased in recent years, with the introduction of the Grant Management Manual in 2013. One interviewed official expressed that there is some room for improving the training on the requirements for UNGP/good human rights due diligence in relation to private sector development (and grant management more broadly). They also expressed that while they felt they had sufficient knowledge to consider human rights as a cross-cutting issue and had an understanding of the main challenges within different sectors, they lacked detailed knowledge on the legal requirements relating to businesses, for example with regard to land rights.

### **3.2.5 Implementation and monitoring**

Embassy staff play a key role in ensuring that Norwegian development aid involving business promotes, protects and respects human rights. They provide on the ground input to the due diligence in the process of approving projects, and have the responsibilities of following up projects in the implementation process. The particular responsibilities pertaining to human rights fall under the cross-cutting issues in the Grant Management Manual.

However, embassy staff confirm that they would have benefitted from more specific guidance and systems/checklists relating to human rights as a cross-cutting issue in Decision Documents and annual reporting. The project case studies consequently show an ad hoc approach, with variable systematic tracking of human rights issues in projects.

In the case of projects implemented by the World Bank, the embassies trust the World Bank’s management of the projects, aligned with Embassy instructions and guidelines.

Regarding Norfund, the embassies do not have an assigned role in the follow-up of Norfund’s investments. Whilst the case embassies mention Norfund investments in their regular reporting to MFA, human rights concerns have not been mentioned.

The embassies do not have systems in place for securing institutional memory and knowledge building of the country contexts in relation to human rights. Whereas the periodic reporting in the case embassies includes updates on the human rights situation, this is more on a general political level and related to high-profile cases. The reports are however not tied to the implementation of Norwegian supported projects or Norwegian businesses.

Embassies were earlier required to develop an annual “CSR country note”, but this is no longer the case due to an MFA initiative to reduce mandatory reporting.<sup>35</sup> Yet, several embassies, including the Embassy in Tanzania, still develop a CSR country note, as discussed in section 4.2 below.

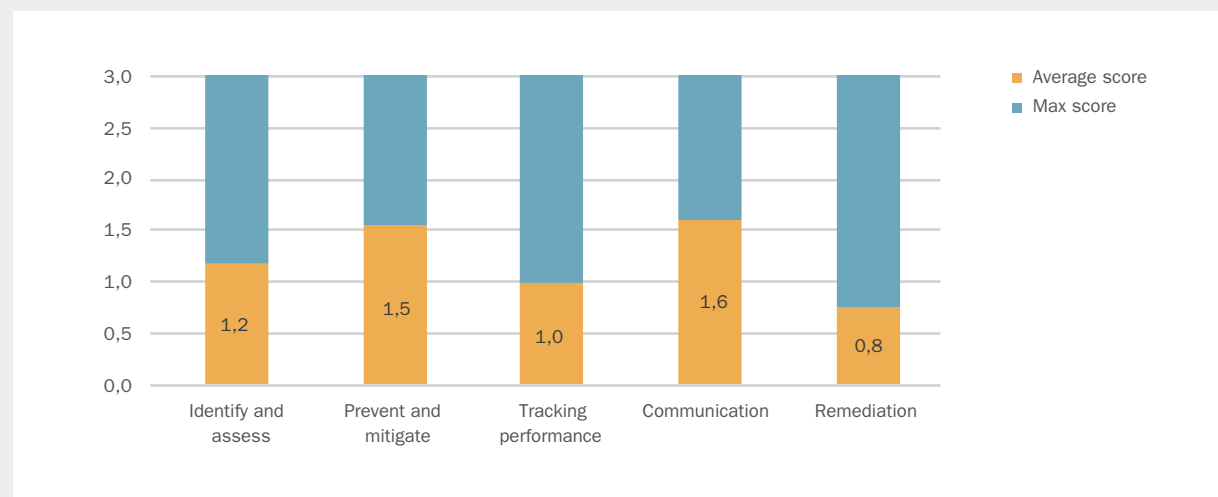
### 3.2.6 Grievance mechanisms

The embassies do not have their own grievance mechanisms. They use the whistle-blower channel of MFA’s Central Control Unit, although as stated above, it is neither directed to raising human rights concern nor has received any reports on negative human rights impacts. The embassy websites do not provide any links for outsiders to report negative human rights impacts.

Some embassies, like the Embassy in Tanzania, provide links (in Norwegian) to, for example, the OECD National Contact Point. This, however, is more aimed at informing Norwegian businesses about their obligations, than to provide a mechanism to report grievances. Also, the link does not go the page on the site that solicits grievances. The embassies visited by the evaluation, lack well publicised mechanisms to enable reporting back to MFA, Norad or any other Norwegian development organisation on human rights issues.

<sup>35</sup> Interview with MFA.

**FIGURE 2 // EMBASSIES – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 19

Finally, there was at the time of the field visits no official registers of grievances at the embassies. Although, according to the Embassy in Dar es Salaam, the Embassy established a register of company-specific grievances and media-references after the visit of the evaluation team.

### 3.2.7 Summary of findings

Regarding the Embassies’ overall responsibilities to protect human rights, key findings are as follows:

- The embassies receive a request to guide and encourage Norwegian businesses to implement UNGP through the annual directives from the MFA.
- The embassy staff lack training on UNGP and country-specific detailed human rights issues related to businesses. It is recommended to establish a check-list for assessing or

conducting human rights due diligence. The embassies do not have systems in place for securing institutional memory and knowledge building of the country contexts in relation to human rights.

Regarding the embassies' duty to protect against human rights abuses in concrete projects involving business, the HRDD tool shows scores that are similar to those of MFA. This is not surprising, since they have the same governance system. Like the MFA, the embassies score slightly better on policies ("Identify and assess"), implementation ("Prevent and mitigate") and communication than on tracking and remediation.<sup>36</sup>

The following findings further summarise the systems analysis of the embassies:

- › The lack of a structured approach for how to do human rights due diligence means that the quality of follow-up is not adequate.
- › Reporting to MFA on human rights is at a general level. It does not refer to human rights and business or any human rights issues relating to Norwegian support to business.

<sup>36</sup> See the full scoring in Annex 19.

- › At the time of the field visits, there were no established grievance mechanisms or registers of grievances at the embassies in Tanzania and Mozambique. According to the Embassy in Dar es Salaam, they have established a register of company-specific grievances and media-references after the visit by the evaluation team.
- › The interviewed officers could not recall any incidences or provide any documentation of cases where supported businesses had been sanctioned due to negative human rights impacts.

### 3.3 NORAD

#### 3.3.1 Role

Norad is a directorate under the MFA,<sup>37</sup> with functions specified in the terms of references (*Instruks*) and annual allocation letters from the MFA. They include providing expert advice and quality assurance to MFA and embassies, grant management for development projects in areas assigned to it by MFA, performing independent evaluations, and communication of results from development cooperation.<sup>38</sup> For the purposes of

<sup>37</sup> Norad also reports to the Ministry of Climate and Environment on matters regarding Norway's International Climate and Forest Initiative, but an analysis of this Ministry's procedures is beyond the scope of the evaluation.

<sup>38</sup> MFA: "[Instruks for Direktoratet for utviklingssamarbeid \(Norad\) gitt ved kongelig resolusjon av 13. desember 2013](#)".

this evaluation, we consider Norad's role in providing expert advice and quality assurance to MFA for projects and programmes relevant to UNGP, and grant management of relevant projects.

Norad's activities fall under different grant management schemes. Several of these provide aid to business actors, although it is beyond the scope of this evaluation to consider them all. This evaluation covers the work of the Section for human rights, governance and fragility, the grants managed by the Section for private sector development and the Section for renewable energy (which has a project included in the sample). Other sections that provide support to business actors, such as the Section for global health and the Oil for Development section, are not covered.

#### 3.3.2 Policies, guidelines and procedures

As a directorate under the MFA, Norad follows the same policies and procedures as the ministry (see above). Norad receives its strategic priorities and budgetary allocations through the yearly allocation letters from the MFA. Norad's own strategy commits the organization to increase their emphasis on risk assessments, including for human rights.<sup>39</sup> There is no special mention of UNGP.

<sup>39</sup> Norad. 2016. [Kunnskap for utvikling. Norads strategi mot 2020](#).



The Grant Management Manual lays out the overall regulations for human rights due diligence (see under the section on MFA above). Grants under the budget post for private sector development are further guided by the Grant Management Scheme for support to private sector development.<sup>40</sup>

The Grant Management Scheme guidelines state that the grantee must have conducted a risk assessment that covers the four cross-cutting areas, including human rights. It is further stated that Norad expects that the grantee abides by the UNGP and OECD's guidelines for responsible business conduct. There are no further details provided to guide the project offices considering applications, on what would constitute an adequate human rights due diligence.

The Section for Renewable Energy requires that partners follow the IFC Performance Standards. This goes back to comprehensive stakeholder review where it was agreed that the IFC Performance Standards was the best available instrument to secure sustainable investments.<sup>41</sup> It is worth noting that this predates Norway's National action plan on business and human

rights. The IFC Performance Standards do not have an equally strong focus on human rights as does UNGP.<sup>42</sup>

Norad's "Ethical guidelines" for grantees state that grantees must commit to implement ethical guidelines "in accordance with the ethical standards required by relevant UN and ILO conventions."<sup>43</sup> The guidelines require that employees of the grantee are informed of the guidelines and that there are grievance mechanisms in place with procedures for remedy. There is, however, no mention of UNGP or human rights due diligence. All grantees have to sign a declaration where they confirm that they have ethical guidelines in place, that they will implement them, and that Norad is granted access to the guidelines and can ask for information about the implementation of the guidelines.<sup>44</sup>

### 3.3.3 Allocation of responsibilities

The responsibility for following up on the implementation rests with each section that funds relevant programmes. The Section for human rights, governance and fragility offers, when requested, training and technical advice on

UNGP and human rights to all other sections. The operational responsibility for UNGP is with the Section for private sector development, while the Section for human rights, governance and fragility has the primary responsibility at policy level. Other sections, as for example Section for renewable energy and the Oil for development section also has operational responsibilities for the implementation of UNGP in relevant projects. There is, however, not a dedicated person or section responsible for ensuring the overall implementation of UNGP in Norad. As a result, there is no holistic monitoring and institutionalised learning on UNGP.

### 3.3.4 Capacity and competence

None of the sections reviewed have mandatory UNGP training, and an overview over employees who have received training is not available. Norad's Section for human rights, governance and fragility has courses that includes information on UNGP and employees are invited to training and/or awareness raising provided by the OECD National Contact Point. The Section for human rights, governance and fragility also offers advice on UNGP within Norad, but according the section, they have experienced little demand for this service. This indicates that there is available capacity to provide added technical assistance where it is most needed.

40 Norad. 2016. "Ordningsregelverk. Bedriftsstøtteordning for næringsutvikling i utviklingsland", Norad, 7. September 2016.

41 Energi Norge. 2014. "Sluttrapport til Norad og oppsummeringsdokument for prosjekt Bærekraftige Energiinvesteringer – 2011–2013," dated 31.01.2014.

42 See Annex 4.

43 Norad. 2014. "Ethical guidelines – Guide for Norad's grant recipients." Valid from January 2014.

44 Norad. 2014. "Declaration concerning ethical guidelines," Norad, March 2014.



### 3.3.5 Implementation and monitoring

Norad relies on grantees for doing the HRDDs, and reviews the quality of the risk analysis as part of the processing of the Decision Document. There are no set procedures or guidelines for this assessment, apart from the generic points in the Grant Management Schemes. The Section for private sector development could not recall any cases where an application had been turned down due to a weak quality human rights due diligence, or due to too high risks of adverse human rights impacts.

Follow-up is limited to field visits and reviews of annual reports. Field visits are carried out in a discretionary manner and depends on availability of resources. The choice of projects to visit is not based on a risk rating. There are no checklists for what to check regarding human rights and UNGP, and there is no requirement for the risk analysis to be updated to reflect emerging issues.

The Section for renewable energy states that in projects where they collaborate with the World Bank, they rely on the environmental, social and governance (ESG) due diligence that is done by the Bank, and Norad does not carry out any follow-up assessments.<sup>45</sup>

<sup>45</sup> Interview with Norad.

Neither the Section for human rights, governance and fragility nor the Section for private sector development engage with multilateral actors on UNGP or the international normative framework for business and human rights. Work with multilateral actors is the responsibility of MFA.

### 3.3.6 Grievance mechanisms

Under the ethical guidelines, discussed above, all grantees are required to have their own grievance mechanisms. Norad has a general whistleblowing channel, for “suspicions of financial regularities or other misconduct”.<sup>46</sup> Almost all reports received through the whistleblowing channel concern suspected corruption. The whistleblowing channel has not received any reports on negative human rights impacts and no register of grievances is held.

### 3.3.7 Summary of findings

Regarding Norad’s overall responsibility to protect human rights, key findings are as follows:

- › Norad is required to follow MFA’s policies with regard to the implementation of the UN Guiding Principles on Business and Human Rights. There is no reference to UNGP in Norad’s own strategy.

<sup>46</sup> [Norad’s Whistleblowing channel](#).

- › The responsibility for implementation of UNGP is spread over different sections in Norad, and there is no overall and systematic monitoring of efforts to ensure that human rights are protected and respected in businesses and projects receiving support from Norad.

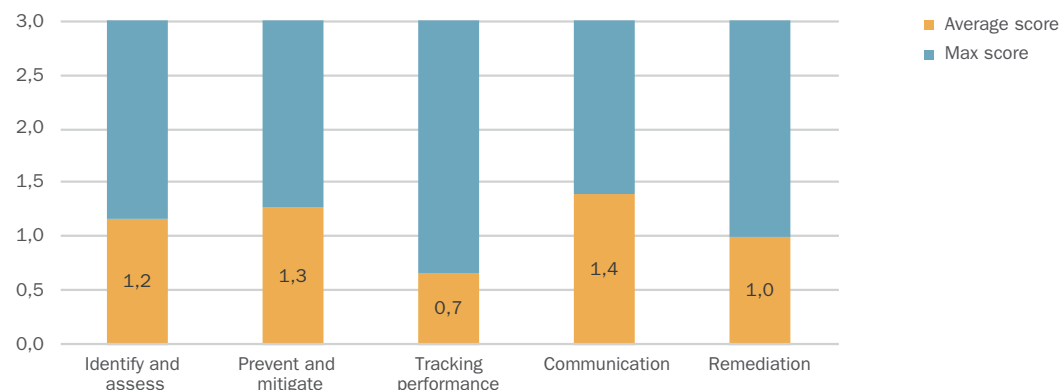
- › Norad’s section for human rights, governance and fragility has strong technical capacity on human rights and UNGP. Yet, the section experiences limited demand for technical support from the other reviewed sections of Norad. There is scope for using this capacity for improved quality assurance of actual HRDDs.

- › Norad has limited engagement with multilateral institutions and foreign governments on business and human rights.

Norad’s systems and practices for follow-up on concrete projects involving business, as assessed using the HRDD tool, score slightly lower than MFA and the embassies on most categories, although the relative scoring between the categories are identical. Norad scores between 1,2 and 1,4 on policies, implementation and communication, and only 0,7 and 1,0 on tracking and remediation, respectively.<sup>47</sup>

<sup>47</sup> See Annex 20 for full explanation of HRDD scores.

**FIGURE 3 // NORAD – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 20

The following findings further summarise the systems analysis of Norad:

- › There are no set procedures for assessing and quality assuring human rights due diligence in supported projects. An exception is the Section for renewable energy, which requires grantees to follow the IFC Performance Standards.
- › There is demand based training on UNGP provided by the OECD National Contact Point, but no set requirement for those who needs training.
- › There are no established grievance mechanisms for negative human rights impacts and no register of grievances.
- › The interviewed officers could not recall any incidences or provide any documentation of cases where supported businesses had been sanctioned due to negative human rights impacts.

## 3.4 NORFUND

### 3.4.1 Role

Norfund is the Norwegian government's Development Finance Institution (DFI). Norfund is a state-owned finance institution and its role is to support growth of the private sector in developing countries, particularly "undertakings that would not otherwise be initiated because of the high risk involved".<sup>48</sup> Norfund is both a state-owned enterprise, of which the State should require HRDD when it operates in high risk contexts (UNGP Principle 4), and a state-owned enterprise that is expected to respect human rights in accordance with UNGP Pillar II.

In the years 2010–13, Norfund distributed half of Norway's support to private partners. Norfund is primarily an equity investor, but can also provide loans to companies. The government sets out expectations that Norfund – as other State-owned enterprises – exercises corporate social responsibility in the areas in which its activities "affect people, society and the environment, including human rights, labour rights, climate and environment, anti-corruption and transparency".<sup>49</sup>

<sup>48</sup> The Norfund Act of 9 May 1997 No. 26 Section 2.

<sup>49</sup> Meld. St. 27 (2013–2014) Diverse and value-creating ownership.

### 3.4.2 Policies, guidelines and procedures

Norfund has not adopted a clear well-elaborated human rights commitment as required by UNGP and it does not make reference to UNGP in any of its steering documents.

Norfund's Principles for environmental and social responsibility states that Norfund "will strive to ensure that the health, safety and *human rights of employees* are valued and protected" [emphasis added] and that "investment projects must comply with recognised environmental and social standards, and with national legislation and regulations".<sup>50</sup> The policy provides a short version of the IFC Performance Standards (IFC PS).

Norfund's Principles for corporate governance state that its business concept is to provide risk capital and expertise to profitable enterprises that "ensure that health, the environment and human rights are protected and promoted (as specified by the International Finance Corporation, the World Bank and the International Labour Organisation's core conventions)".<sup>51</sup>

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<sup>50</sup> Principles for environmental and social responsibility.

<sup>51</sup> Principles for corporate governance, section 3.  
The document was approved by the Board on 15 May 2012.

Norfund's Investment Manual does not mention human rights.<sup>52</sup> The Manual only makes general references to "relevant social legislation (including) international treaty obligations" and "all other laws, rules and regulations providing for protection of employees and citizens". It does specify, however, that Norfund expects its investee companies to comply with the IFC Performance Standards and ILO Labour Standards.

The centrepiece of Norfund's policies is the IFC Performance Standards.<sup>53</sup> As explained above in chapter 1.2, while the IFC PS goes a long way towards ensuring good human rights due diligence by its clients/investee companies, a sole reliance on them will nevertheless entail limitations and differences in human rights policies and practices as compared with the UNGP. Further, the IFC PS are addressed to the investee companies and does not say anything about Norfund's own commitments and due diligence procedures.

Norfund's Investment Manual does not provide clear and detailed guidance for Norfund's own assessment of potential and actual human rights impacts. The chapter in the Norfund Investment Manual that deals with

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<sup>52</sup> Except for one reference in a citation of the Government's expectations in Meld. St. 27 (2013–2014).

<sup>53</sup> See Norfund's Principles for environmental and social responsibility.

due diligence<sup>54</sup> makes a short and high-level description of what the ESG part of the due diligence shall cover. It says that ESG due diligence shall be performed in-house and only in "special cases" performed by consultants. The Manual's chapter on Risk appraisal<sup>55</sup> deals with "risks to the project", and the ESG dimension in the risk categorisation table that is used by Norfund is described as "ESG: The ESG risks to the project..."<sup>56</sup> This differs from UNGP's recommendation to focus on rights risks to people/rights-holders.

Norfund's projects have been through a due diligence based on the Norfund Investment Manual. We have been informed that this will in practice include an Environmental and Social Impact Assessment (ESIA) by an external consultant. The due diligence itself covers areas such as technical, commercial, management, financial, ESG, legal, integrity and reputational risks. Norfund does not develop a list of suppliers or other business partners, nor does it require its investee to conduct HRDD on its supply chain. Norfund's approach to ESG risks does not specify how inputs from stakeholders should be integrated in the appraisal.

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<sup>54</sup> Norfund Investment Manual chapter 6.1.4.

<sup>55</sup> Norfund Investment Manual chapter 6.1.6.

<sup>56</sup> Norfund Investment Manual on p. 29.

On this basis, Norfund conducts a risk appraisal of the project. The focus is on the residual risk, which captures the effect of mitigation and remedy actions on the initial risk.

Several of Norfund's investment partners and even some of its investees reviewed in the case studies are established outside of project countries and in jurisdictions with favourable tax regimes – creating the risk that these structures be used (even if not directly by Norfund) for aggressive tax optimisation purposes. In total, locations such as the Cayman Islands, the state of Delaware, Luxembourg or Mauritius channel 20% of Norfund's investments in 2018.<sup>57</sup> Policy makers and NGOs alike have repeatedly drawn attention on the risks related to the use of tax havens by DFIs to channel development funds.<sup>58</sup> Despite recent progress in this area,<sup>59</sup> it still does not appear that several DFIs, including Norfund, thoroughly

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57 <https://norfund.no/investments/category857.html#offset=0|sortOrder=1>, accessed 1 August 2018.

58 For instance, NOU 2009:19 (Tax Havens and Development) recommended that "Norfund should assess whether African countries can be found which do not have the harmful structures associated with tax havens and which can function as investment locations" (Government of Norway, 2009). In 2016, a briefing paper prepared by 10 NGOs under the auspices of Oxfam recommended that "DFIs should not use tax havens to channel their investments to developing countries. When an intermediary jurisdiction is used, DFIs should demonstrate that the use of a third jurisdiction was superior in advancing its development mandate when compared with a targeted developing country for domiciliation" (OXFAM, 2016).

59 See in particular the Principles for Responsible Tax in Developing Countries adopted by the Association of European DFIs (EDFI, 2018).

assess these risks. The issue, although not directly within the scope of this evaluation, needs to be mentioned as tax abuses do have human rights implications.<sup>60</sup>

### 3.4.3 Allocation of responsibilities

Norfund's Principles for corporate governance specify that the Board is responsible for ensuring that business is conducted in line with "commercial principles, the values base and ethical guidelines", and the Managing Director is expected to follow the guidelines issued by the Board. As the Compliance Officer, the Director must ensure "that prevailing laws and statutory regulations are observed, and that the necessary ethical standards and guidelines are drawn up for Norfund".

For projects within certain budget and risk classification limits, the Board has delegated investment authority to the Director, subject to approval from Norfund's Investment Committee. It is noted that high ESG risk is not a sufficient condition for triggering examination by the Board.<sup>61</sup>

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60 See for instance International Bar Association (2013), *Tax Abuses, Poverty and Human Rights*, Report of the Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights.

61 See Norfund investment manual, p. 12.

At operational level, a dedicated member of staff is in charge of ESG issues. Norfund's Code of Conduct outlines the organisation's ethical guidelines. It specifies that Norfund's employees shall observe national and international law, communicate ethical guidelines to partners and "support assessment of all investments to the Norfund exclusion list, the IFC Standards [...] and promote these standards during the entire business period."

### 3.4.4 Capacity and competence

Norfund has designated staff with responsibility of ESG issues, who have extensive experience in dealing with human rights due diligence. All Norfund staff are informed about the company's ESG policy during their induction training and the annual "Norfund week". The staff also receive ESG training internally or, for fund managers, externally. Human rights issues are covered in, but not the central focus of these trainings. Within the projects that it supports, Norfund requires that key functions be filled with suitably trained people (e.g. environmental manager, community liaison officer, health and safety manager).

Norfund also funds training and systems development through a grant facility. The facility has been used in several cases to fund ESG interventions, e.g. to improve worker safety or

increase female representation in management positions. However, there are only few illustrations of such uses.<sup>62</sup> Norfund explains this by the fact that the facility is in principle not meant to finance activities that the company is mandated to conduct by the law or by contract – as is the case for ESG procedures.

### 3.4.5 Implementation and monitoring

During its decision process, Norfund asks the investee to adopt an action plan for the development of an Environmental and Social Management System (or the improvement of the existing), and to report progress regularly. Norfund can use this framework to establish a dialogue on ESG issues during site visits or Board deliberations. Norfund updates its risk assessments for all projects, and revises them for high-risk projects, annually. Routine visits (annual) and audit inspections (every 2 years for high-risk projects) seek to assess new risk factors.

Norfund promotes ESG obligations as part of its active ownership strategy and as a lender. All Norfund loan and shareholder agreements provide for both information and visitation rights to ensure compliance with IFC PS. All projects are required to report annually on ESG

performance, while high-risk projects are subject to quarterly reporting by an appointed external consultant. When investing in equity, Norfund also typically receives monthly management reports covering health and safety and general ESG performance. The reference to the IFC PS in Norfund's legal agreements grant the company a legal right to declare default in situations in which investees would operate with sub-standard performance. Similar requirements are implemented for suppliers of the investee in certain cases and on ad hoc basis.

As a minority investor, Norfund sometimes has to cooperate with partners that do not have the same level of requirement on ESG issues, to try and maximise its influence. In the view of this evaluation, this should be an important human rights risk factor to carefully assess and manage: If a (majority) partner's conduct is sub-standard, Norfund should develop a plan to immediately prevent and mitigate potential human rights risks. Also, Norfund does not rely on systematic procedures and indicators to guide its monitoring of progress on ESG issues.

The implementation of the Environmental and Social Management System can meet challenges and be delayed, sometimes very significantly. Potential trade-offs between ESG and business development objectives are also addressed on

a case-by-case basis, with no guiding principle. New options to improve the ESG performance – because the context has changed – can be missed for the lack of a more detailed re-assessment of risk factors and opportunities.

Norfund's flexible approach is less far-reaching and systematic than required by the UNGP. The absence of an explicit statement that human rights obligations cover supply chains is a weakness. This notwithstanding, Norfund ensures that compensation measures in line with IFC PS are included in project management plans, and monitors their implementation. When serious harm is reported through project-specific grievance mechanisms, Norfund ensures that the investee conducts proper investigation and proposes adequate compensation. This is reflected in the case studies, which shows practical examples of how Norfund's follow-up of due diligence processes has provided assurances that negative human rights impacts have been considered and remedies provided.

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62 Annual Report of the Grant Facility (2016).

### 3.4.6 Grievance mechanisms and communication

Norfund requires the implementation of a stakeholder engagement plan and a project-specific grievance mechanism, and assesses these during the due diligence phase. The role of the project Community Liaison Officer includes raising awareness of the grievance mechanism in the local communities. Norfund itself has a whistleblowing channel that is meant to manage cases of misconduct in its investments.<sup>63</sup>

Norfund's investees have to make Environmental and Social Impact Assessments available and communicate their ESG policy and stakeholder engagement plan. Norfund itself includes a general section on human rights in its Annual Report but does not publish information on project-specific issues. The information provided in the Annual Report does not enable external parties to have a clear understanding of the human rights challenges that Norfund faces and subsequent response taken. Norfund does not publish information regarding affected individuals and treats information on ESG performance as confidential and requires its investees to act likewise.

Norfund has used grievances in order to improve ESG approaches in some of its projects. Key ESG issues and lessons learned across projects are discussed in Norfund department meetings. The process is documented, but it could be made more systematic, reinforcing it as a mechanism to learn lessons and share them across its portfolio of projects.

Norfund has highlighted on multiple occasions that it considers stakeholder dialogues as key. It is thus counterproductive that Norfund's Managing Director recently expressed views against civil society organisations, publicly stating that making claims of human right violations, these organisations hinder development in the Global South.<sup>64</sup>

### 3.4.7 Summary of findings

In contrast with the MFA, embassies and Norad, Norfund does not play a policy role, they are only involved in project management. All aspects of their assessment, therefore, is captured by the HRDD tool.

With scores from 1,3 to 1,8 in the areas considered by the HRDD tool, Norfund has several elements akin to a HRDD in place. However, it does not have a clear and well-elaborated human rights commitment and does not refer to UNGP or commit to undertake HRDD in its steering documents. Norfund could significantly improve its approach by properly implementing UNGP and adopting a clear and well-elaborated human rights commitment and an own HRDD procedure. It could be more systematic in the assessment, prevention and remediation of potential and actual human rights impacts, and develop and enhance the performance tracking in projects and communication on human rights issues.<sup>65</sup>

The following findings further summarise the systems analysis of Norfund:

- › Norfund has not adopted a clear and well-elaborated human rights commitment and does not refer to UNGP in any of its steering

63 <https://norfund.no/warning-complaints/category1018.html>

64 See letter from 10 Norwegian organizations to the Norwegian Minister of development dated 28 January 2018.

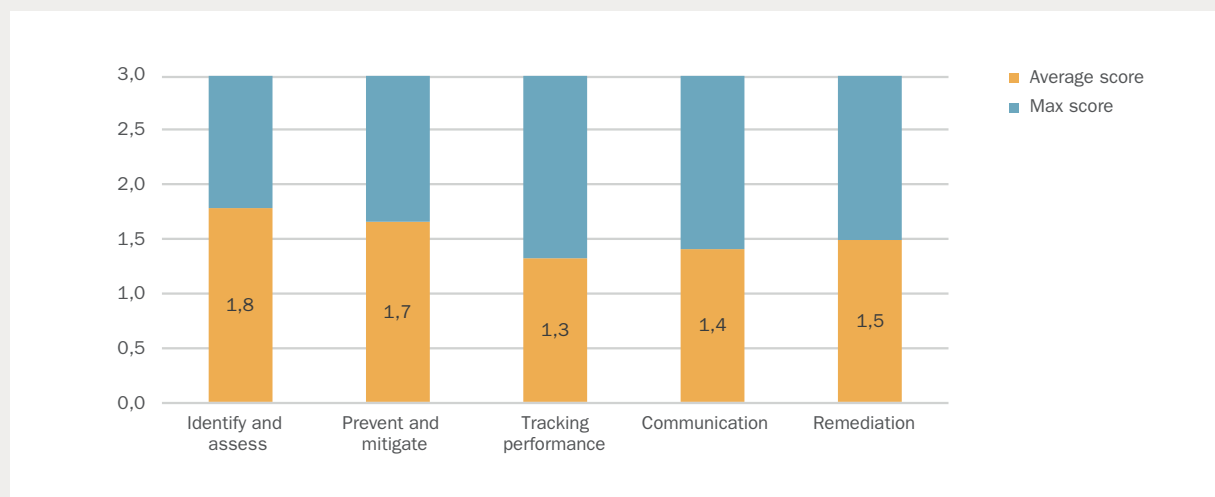
65 See Annex 21 for full explanation of HRDD scores.



documents and does not commit to undertake own HRDD. It has procedures and practices focused on environmental, social and governance (ESG) risks and the IFC Performance Standards which it requires investee companies to follow, but the reference to human rights is sporadic and inconsistent.

- › Norfund's approach to human rights risks is narrower in focus and less systematic than required by the UNGP, in particular when it comes to its own HRDD, consulting stakeholders and considering risks along the value chain.
- › According to Norfund's Investment Manual, the ESG risk appraisal shall deal with risks to the project, rather than risks to people/rights-holders.
- › Norfund usually develops substantial action plans on the basis of its initial assessment but does not have a systematic approach to addressing implementation gaps and challenges.
- › Norfund tracks performance through monitoring by investees and, in most cases, inspections. But the approach is ad hoc and its reliability varies from project to project.

**FIGURE 4 // NORFUND – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 21

- › The identified shortcomings notwithstanding, the analysis, backed by the case studies, also show that Norfund does require impact assessments in line with IFC PS that cover key elements of human rights due diligence with provision of remedy, for example, in the case of land rights.
- › Norfund does not communicate specific information on the human rights challenges that it faces and the measures that it takes in response.
- › Norfund pushes for projects to adopt grievance mechanisms and community liaison functions, but does not use grievances as much as it could to learn lessons on human rights risks and responses.

## 3.5 GIEK

### 3.5.1 Role

The Norwegian Export Credit Guarantee Agency (GIEK) is a State-owned institution administered by the Ministry of Trade, Industry and Fisheries. It is a central mechanism for the internationalisation of Norwegian business and a potential tool to strengthen businesses' role in Norwegian development policy as described in the White Paper "Working together: Private sector development in Norwegian development cooperation."<sup>66</sup> GIEK's financing is not classified as Overseas Development Assistance (ODA), but the scheme's coverage of development countries warrants its inclusion in this evaluation. GIEK is both a state-owned enterprise of which the State should require HRDD when it operates in high risk contexts (UNGP Principle 4) and a state-owned enterprise that is expected to respect human rights in accordance with UNGP Pillar II.

In practice, GIEK promotes Norwegian export and investment abroad by issuing credit guarantees on behalf of the Norwegian State. The guarantees apply to Norwegian goods or services delivered abroad or when an export

transaction promotes Norwegian value creation. The aim is to help foreign buyers obtain financing, lower the risks for Norwegian exporters and foreign buyers and level the competitive playing field for Norwegian companies abroad.<sup>67</sup>

### 3.5.2 Policies, guidelines and procedures

GIEK has a stand-alone environmental and human rights policy from 2013.<sup>68</sup> The policy is publicly available on its Norwegian home-page, and along with other public statements on GIEK's web-page, explicitly commits the organisation to UNGP and confirms that GIEK will undertake HRDD. Specifically, the policy requires identification and assessment of actual or potential human rights impacts, acting to seek to prevent, mitigate and remediate any adverse impacts, accounting of how adverse impacts are addressed through follow-up and monitoring, and finally, that the management of impacts is disclosed to and communicated with relevant stakeholders. The policy covers all transactions and states that human rights shall be considered in the evaluation of projects.

### 3.5.3 Allocation of responsibilities

The human rights policy does not explicitly allocate responsibility, but interviewees inform the evaluation team that it has been approved by the board of directors. The responsibility for its implementation is allocated to the legal director and the responsible project officers with support of a dedicated ESG team.

### 3.5.4 Capacity and competence

GIEK has an environmental and social team led by a human rights lawyer with considerable experience in the field. The team increases its competence through participation in various fora and conferences in addition to consultation with external experts. In order to embed and enforce the competence in the organisation, GIEK has placed the ESG team in the legal department ensuring tight cooperation and involvement with the project officers. Quality assurance procedures have also been strengthened to make sure assessments are consistent and person dependency reduced. The fact that GIEK's procedures require an ESG staff to be part of the initial screening of all applications and closely cooperate with the responsible project officers throughout the project assessment process, contributes to the competence building across the organisation.

<sup>66</sup> "Working Together: Private Sector Development in Norwegian Development Cooperation (Meld. St. 35 (2014–2015))," pp. 22–23.

<sup>67</sup> GIEK in 0216, Annual Report summary.

<sup>68</sup> [GIEK's Environment and Human Rights policy](#).

### 3.5.5 Implementation and monitoring

GIEK applies several means for following up its project portfolio: For projects requiring an Environmental and Social Impact Assessment (ESIA), solutions to prevent, mitigate and remediate identified human rights impacts are provided in an Environmental and Social Management Plan (ESMP). These actions are specified as part of contract conditions (for instance through conditions precedent and conditions subsequent) and followed up, for instance, through reporting obligations or auditing rights either by own staff or external consultants. GIEK has an internal system in place for monitoring the progress of the ESMP as part of regular reporting by clients. However, this system is not optimally structured to allow for systematic follow-up of identified issues and also is limited to already identified issues. Therefore, it may miss emerging issues due to, for example, changes in the company or its environment. GIEK has informed that they are currently exploring how they can strengthen their monitoring system.

In addition, GIEK uses a public source tracking system that notifies potential human rights issues, along other environmental and social issues, related to portfolio-projects. Finally, GIEK conducts reassessment of risks in connection with projects or clients applying for further guarantees.

The contract includes a legal right to declare default in situations of sub-standard performance. However, in practice it may be challenging to enforce this right after guarantees have been confirmed. GIEK's leverage is further reduced in cases where GIEK has a minority role and the other partners have less stringent requirement. In such situations, GIEK aims to align with likeminded partners. GIEK states that it has chosen not to participate in high-risk transactions.

GIEK's current HRDD therefore emphasises the identification of actual and potential negative human rights impacts prior to contract signing. However, there is less attention on identifying emerging issues after contracts have been signed. GIEK does not have a systematic mechanism in place to learn lessons, share them across its portfolio of projects and to revise the overall HRDD. Nevertheless, emerging human rights risks identified in the shipping sector have been included in action plans and shared with customers.

### 3.5.6 Grievance mechanisms and communication

GIEK requires the projects to implement a grievance mechanism and a clause is included in contracts that GIEK shall be notified of cases received. However, this is challenging to ensure in practice. In addition, GIEK has established its

own "stakeholder feedback" mechanism on its webpage. Whilst this is a commendable initiative, no relevant reports have been received so far, and it is unclear if stakeholders are aware of the mechanism. The effectiveness of grievance mechanisms relating to GIEK's project activities is therefore uncertain and its input to the continual improvement of the HRDD is not optimal.

GIEK has identified negative human right impacts in a limited number of projects through its public search engine. These were followed up with the client and the project, but sanctions were not implemented.

GIEK publishes information regarding human rights as part of its communication of its application process, policy, requirements and procedure on its webpage. The human rights assessment process is also described in the annual report. In addition and in conformity with the OECD Common Approaches, GIEK makes ESIA's for category A and also for category B projects available on its webpage, but it is uncertain to what extent stakeholders are aware of this. Nevertheless, the information provided is not sufficient to enable external parties to have a clear understanding of the human rights issues GIEK has encountered and how these have been addressed and remediated, and in turn how the HRDD subsequently improves.

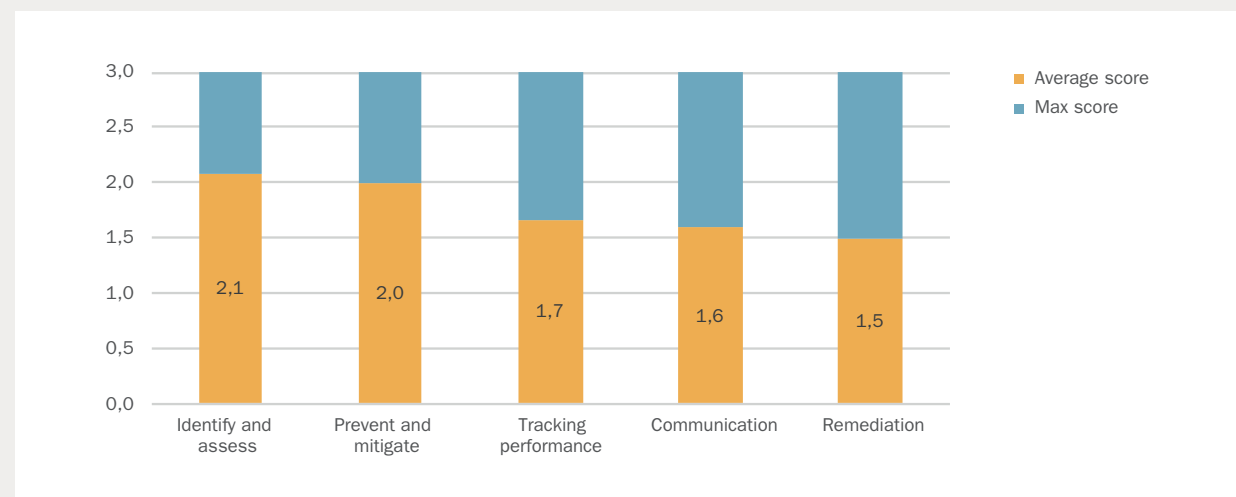
### 3.5.7 Findings

The score of 2,1 for policies, procedures and implementation, shows that GIEK has several elements in place for human rights due diligence, particularly as it specifies UNGP. Yet, there is room for improvement. Tracking, communication and remediation score lower from 1,7 to 1,5. These should be improved in order for the HRDD to continuously identify issues and ensure that adverse impacts are addressed and remediated.<sup>69</sup>

The following findings further summarise the systems analysis of GIEK:

- › GIEK has strong policies that commit to undertaking HRDD in accordance with UNGP.
- › The responsibility for the human rights policy is clearly allocated, but still person-dependent.
- › GIEK has a thorough HRDD process to identify project-related human rights issues *prior* to entering into contracts, but is weaker on systematic and continuous monitoring for identifying emerging issues in projects *after* the guarantee has been provided.

**FIGURE 5 // GIEK – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 22

- › GIEK does not use a systematic stakeholder dialogue to inform all levels of the HRDD.
- › GIEK has a room for improvement of the efficiency of grievance mechanisms related to GIEK's project activities.
- › GIEK does not have a systematic and documented approach to learn lessons, share them across its portfolio of projects and to revise the overall HRDD.
- › GIEK has identified negative human right impacts in limited cases of projects through their public search engine. These have been followed up with the client and the project, but sanctions were not implemented. GIEK has more leverage in the application process and have in certain cases opted to decline applications.
- › GIEK has a room for improvement regarding its external communication of how it addresses potential and actual human rights impacts.

<sup>69</sup> See Annex 22 for full explanation of HRDD scores.

## 3.6 INNOVATION NORWAY

### 3.6.1 Role

Innovation Norway provides financing, advice, training and other business support to innovative Norwegian businesses. Innovation Norway is also the official trade representative of the government of Norway abroad, and a key actor for the promotion of tourism in Norway. As stated earlier, Innovation Norway also facilitates Team Norway, a platform of Norwegian public entities aimed at promoting Norwegian companies abroad. Development cooperation represents only a fraction of Innovation Norway's activities, and essentially consist of specific programmes for companies wishing to invest in or trade with developing countries.

In order to fulfil the requirement in UNGP Principle 4 to protect against human rights abuses by businesses that receive substantial support or services from Innovation Norway, the agency should put in place appropriate policies and procedures. This is necessary to secure that consideration for human rights impacts are provided in a systematic and consistent manner.<sup>70</sup> Moreover, Innovation Norway is an agency of which the State should require

<sup>70</sup> See Kløcker, Rasmus and Sandra Alter, *Business and Human Rights in Development Cooperation – has Sweden incorporated the UN Guiding Principles?* Rapport 2015:08 till Expertgruppen för biståndsanalys (EBA), p. 31.

HRDD – both by the agency itself as well as by those business enterprises or projects receiving support – when “appropriate”, and especially when when it provides substantial support or service to business activities in high risk contexts (UNGP Principle 4).

### 3.6.2 Policies, guidelines and procedures

Innovation Norway does not have a specific policy on human rights. Its Policy on Good Business Practice commits to support sustainable development through its support to Norwegian business and industry, and specifies that this work is to be done according to “internationally recognized standards defined by UN in its UN Global Compact and UN Guiding Principles and by the OECD Guidelines.”

### 3.6.3 Allocation of responsibilities

Innovation Norway emphasises two principles at all stages of its projects: avoiding harm (from corruption, violation of human rights, poor working conditions and harm to consumers, communities and the environment, including through business relations), and adopting a responsible approach (due diligence assessments, stakeholder consultation, reference to relevant guidelines and best practices and measures for continuous improvement).

In practice, however, Innovation Norway does not conduct proper due diligence in the area of business and human rights, and neither the Ministry's requirements nor Innovation Norway's own procedures elaborate on when HRDD is “appropriate, cf. UNGP Principle 4. Its assessment of projects is typically based on the applicants' declarations. Innovation Norway has developed, and is currently testing, draft guidelines on red flags, which refer to the OECD Guidelines for Multinational Enterprises, UN Global Compact and UNGP.

Innovation Norway asks for documentation on policies and procedures relating to ethical conduct and corporate social responsibility, and demands that the missing elements be developed before any fund is disbursed. Applicants are also asked to provide information on risk factors related to the cross-cutting issues as defined by the MFA: climate and the environment, gender equality, corruption, and human rights.

### 3.6.4 Capacity and competence

A core team is responsible for overseeing issues related to good business practice, including compliance, finance, training and human rights. Project managers receive training on risks, which includes human rights risks. Innovation Norway does not see itself as highly exposed to human rights risks because

of the nature of its support, which is limited in financial terms in a development context, focusing on developing partnerships or piloting the market for innovations in cooperation with NGOs. The number of projects in low-income countries remains limited, and Innovation Norway does not have any active projects in the two case countries.

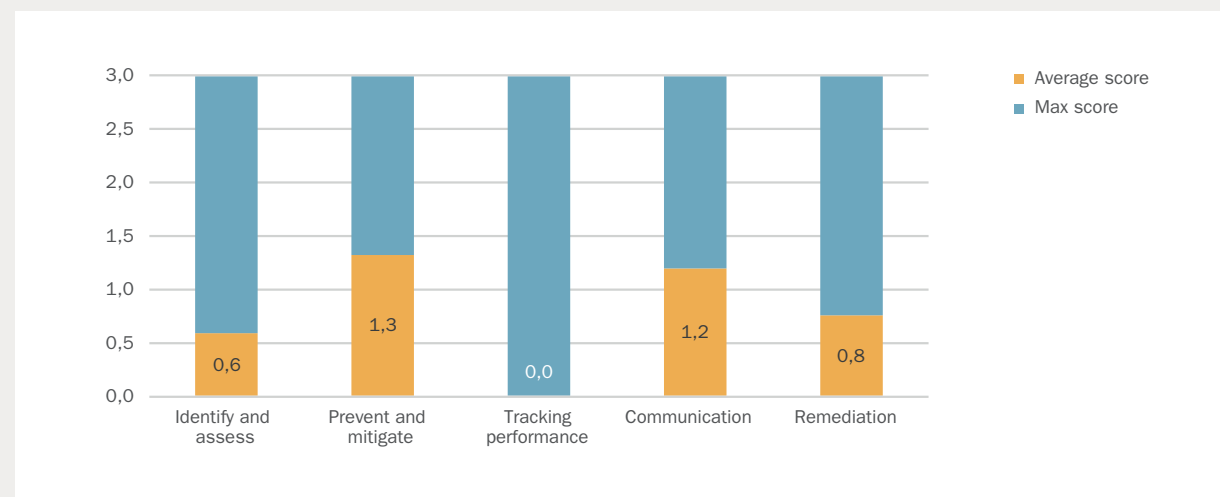
### 3.6.5 Implementation and monitoring

Once a contractual relation is established, businesses are required to notify Innovation Norway in case principles of avoiding harm and adopting a responsible approach are breached. In such cases, Innovation Norway has the right to withdraw its support and recover its funding. However, the status of human rights due diligence and observed human rights risks in the projects that it supports is not tracked. When visiting projects, Innovation Norway does not conduct audits or evaluations, but rather sees its role as problem-solving advice. Innovation Norway does not have a mechanism for providing remedy in case of negative human rights impacts.

### 3.6.6 Grievance mechanisms and communication

Innovation Norway has recently launched an external whistle-blowing channel for all breaches of the law or of general standards of ethics,

**FIGURE 6 // INNOVATION NORWAY – HRDD QUALITY ASSESSMENT SCORES**



Source: See annex 23

be they caused by Innovation Norway itself or its employees or by third parties (an internal mechanism was already in place). The whistle-blowing channel does not mention human rights and no cases or concerns related to human rights issues have so far been received. Innovation Norway reports bi-annually to Norad on human rights as a cross-cutting issue in its development projects, and includes a section on human rights issues in its annual report.

### 3.6.7 Findings

Innovation Norway has by far the lowest scores on the HRDD Quality Assessment tool of all the evaluated entities. It scores just above 1 on implementation and communication, below 1 on policies and remediation, and 0 on tracking. This reflects poor incorporation of human rights due diligence in the organisations systems and practices.<sup>71</sup>

<sup>71</sup> See Annex 23 for full explanation of HRDD scores.



The following findings further summarise the systems analysis of Innovation Norway:

- › Innovation Norway does not have a specific policy on UNGP or human rights, but its Policy on Good Business Practice refers to international guidelines and broadly defines its expectations.
- › Innovation Norway is currently adopting risk-based guidelines on red flags, but its risk management options are limited to providing advice and requiring the adoption of appropriate guidelines.
- › Innovation Norway does not conduct HRDD of its partner businesses nor track their performance.
- › Innovation Norway reports on human rights issues to Norad twice a year, and includes a section on human rights in its annual report. It does not, however, communicate human rights obligations to the stakeholders of the projects that it supports.
- › Innovation Norway has very recently launched a whistle-blower channel, but does not have remedy tools.

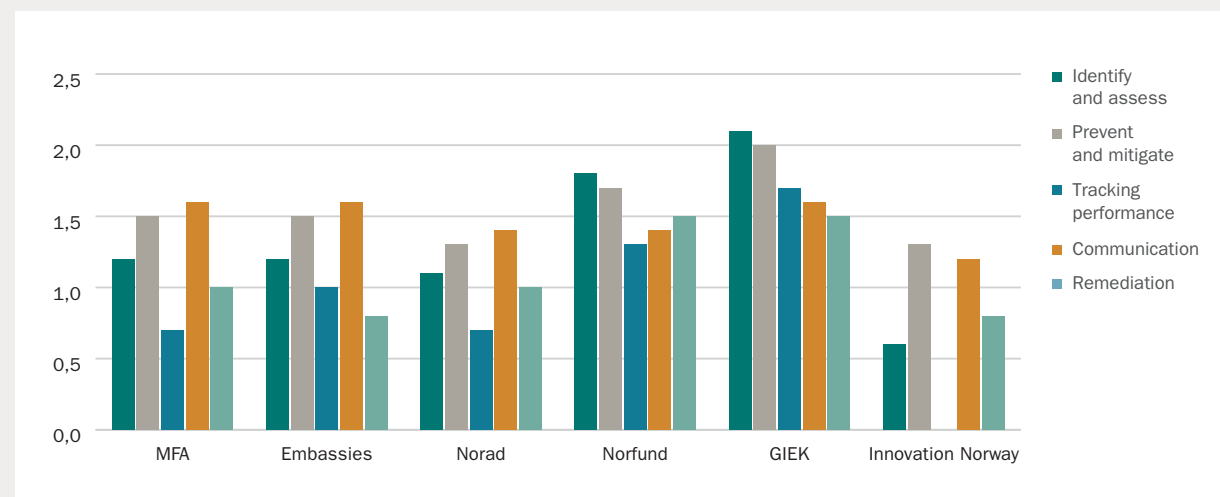
### 3.7 SUMMARY

The systems analyses of the six evaluated entities, show a divided picture. On the one hand, UNGP is deeply embedded in the key development policies, including the relevant White Papers. The MFA plays a lead role in driving the agenda of UNGP internationally. MFA – in Norway, and embassies – abroad, also do a good job of informing Norwegian businesses and other stakeholders of the responsibilities of businesses under UNGP. The Contact Point, with support from MFA, also provide information and training on UNGP on demand. At the higher level, therefore, the alignment with UNGP is good.

The picture is considerably different when it comes to ensuring actual implementation of human rights due diligence. As illustrated by the overall low scores in the HRDD QA tool (see Figure 7), the evaluated entities show considerable gaps in their systems, implementation and follow-up of human rights due diligence.

The assessments of MFA, embassies and Norad are largely similar. They operate under the same policies and grant management system, and have quite similar roles in the implementation of Norwegian development aid, as both overseers and implementers. UNGP is enshrined in their policies, but their systems and procedures for

**FIGURE 7 // HRDD QUALITY ASSESSMENT SCORES – ALL ENTITIES**



Source: See annex 18–23

ensuring good quality human rights due diligence lack structure and are not sufficient to ensure human rights due diligence according to the specifications of UNGP. They have weak standard of monitoring and reporting and weak systems for capturing and acting on reports of negative human rights impacts.

Norfund and GIEK are both commercial entities that operate with a high degree of independence. These two entities score highest on the HRDD tool of the six evaluated entities across all five core elements. This is to a large extent due to their use of the IFC Performance Stan-

dards that ensures a more structured approach those of the MFA, embassies and Norad. There are, however, gaps in the systems, indicating that their systems are still not strong enough to secure adequate implementation of UNGP.

Innovation Norway scores the lowest on all core elements. They are in the process of putting in place several elements of a human rights risk assessment system, but this is not yet operational and requires strengthening on all levels.

## 4. Country case studies

### 4.1 NORWEGIAN DEVELOPMENT SUPPORT TO TANZANIA AND MOZAMBIQUE

Tanzania and Mozambique, the two case countries for this evaluation, have been major recipients of Norwegian aid for several decades. In both countries, Norwegian support to private sector considerably increased in the early years of this decade and represented close to 20% of total ODA in 2012–13 (with a peak of 110 million NOK out of total ODA of 580 million NOK in Tanzania in 2013, and 100 million NOK out of total ODA of 500 million NOK in Mozambique in 2012).

The sector distribution of support to private sector in Tanzania reflects overall Norwegian ODA support; economic development and trade dominating (83% of the total on average between 2010 and 2013), followed by good governance (8%), environment and energy (7%) and health and social services (2%). In Mozambique, by contrast, support to private sector has essentially focussed on two sectors: economic development and trade (93%) and environment and energy (6%). A complete list of Norwegian support to projects involving

private sector actors in Mozambique and Tanzania is provided in Annex 17.

Development cooperation with both countries has faced important challenges in recent years. Norway suspended general budget support to Mozambique in 2014, and a similar decision was made regarding Tanzania in 2015. As a consequence, Norwegian assistance to both countries has decreased in volume in recent years, and been redirected towards activities in sectors such as agriculture (in both countries), mining and minerals, and fishing (in Mozambique). Because of data limitations, it is impossible to determine the overall impact of these fluctuations on the level and sectorial distribution of financial support to projects involving private sector actors in the two countries.<sup>72</sup>

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72 Source: NORAD, Norwegian Aid Statistics. The figure cumulates agreements with Norwegian and non-Norwegian private sector corporations, as well as contracts with consultancy firms, in all aid sectors (economic development, agriculture, energy, etc.). Since 2014, Norway's official ODA portal does not provide details on Norfund's investments, but simply the overall annual increases in Norfund's capital. The data provided on Norfund's site, on the other hand, is difficult to reconcile with the official ODA data before 2014, and therefore cannot be used as a consistent source on Norfund's support to the private sector since 2014.

Norwegian business involvement in Tanzania and Mozambique increased sharply after 2013 in terms of direct investments (FDI), before receding in the last two years.<sup>73</sup> These investments are largely concentrated in the oil and gas sector and its supplying industries, to a lesser extent in the agriculture and food sector, and not related to development assistance. It is also relevant to note, that there have been no export guaranties issued by GIEK for Mozambique and Tanzania in the last 10 years despite the sharp increase in Norwegian exports to these countries.<sup>74</sup>

### 4.2 TANZANIA CASE STUDY

#### *Business in Tanzania*

Foreign investments in Tanzania were practically eliminated in the late 1960s to early 1970s when the country experimented with its special brand of African socialism. Since the 1990s, foreign investment has become an increasingly important driver of economic growth in

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73 Source: Statistics Norway.

74 Source: email exchange with GIEK's desk officer for export credits.

Tanzania, in particular in the mining sector. Recently, gas has also emerged as a major area of investment, other significant sectors being tourism and agriculture.

The business climate has started to deteriorate in the last years, much as a consequence of the unpredictable and populist leanings of the President.<sup>75</sup> Large-scale investments in the gas sector have slowed down with the gradual ending of the exploration phase. Investment decisions have not yet been made, partly because companies have found it challenging to reach agreements with the Government. The mining sector has also been the target of sudden regulatory changes to ensure Tanzania benefits more from private investments.

The country ranked 137<sup>th</sup> in the world in the World Bank's 2017 Ease of Doing Business index, just ahead of Mozambique. At the same time, however, in part thanks to the bold initiatives of the President, Tanzania has significantly improved its score in Transparency International's Corruption Perception index, ranking 103<sup>rd</sup> in the world in 2017. Tanzania is a low income country and is still ranked as

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75 E.g. The Guardian, "[Foreign investors reportedly unnerved by rise of 'populist politics'](#)", 20 march 2017.

having low human development on UNDP's Human Development Index, albeit in the higher end of that classification (ranking 151st out of 188 countries in 2015).<sup>76</sup>

### **Human rights and business**

Most international human rights organisations consider that the overall respect for human rights has followed a negative trend in Tanzania in recent years. The country's rating in Freedom House's Freedom in the World Report has deteriorated since 2015. The country has also fallen on the World Justice Project's index of fundamental rights since 2012.

The evaluation team consulted with representatives of Tanzanian civil society that deal directly with local populations where human rights issues have been registered, and as such, have a good overview over key issues concerning human rights and business.<sup>77</sup> In general, there is a strong scepticism towards foreign investors. The concerns are not only that the investments may not benefit local stakeholders, but that they can leave stakeholders worse off. The evaluation's review of documents and

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76 UNDP Human Development report 2016. Pakistan, the country with the lowest HDI score ranking in Middle Human Development, is ranked at 147<sup>th</sup>.

77 The team met with six representatives of civil society, media and trade unions in a focus group discussion arranged by the Legal and Human Rights Centre. In addition, the team met individually with two other representatives of civil society. A full list of consulted parties is provided in Annex 3.

interviews with stakeholders revealed five key areas of human rights concerns relating to business:<sup>78</sup>

› *Land rights* is arguably the issue of most concern and debate. The Tanzanian legal system when it comes to land rights is fairly strong and clear, and there are clear provisions to support existing rights to land. Foreign companies cannot own land outright and can only acquire land through the Tanzania Investment Centre for "derivative rights" with leases of 99 years. However, the application of safeguards and enforcement of laws is inconsistent and have little public credibility. There are multiple reports of improper acquisition of land and arbitrary evictions of customary occupants, leading to an increase in land-related conflicts.<sup>79</sup> Many of these are associated with foreign investments. Poor protection of land rights and "land-grabbing" pose significant risks of adverse human rights impacts, e.g. on the right to respect for peoples' homes, the right to adequate food, housing and standard of living, the right to work and not to be deprived of one's means of subsistence, and the rights of indigenous peoples.

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78 These areas are reflected in the Human Rights and Business Report 2015, by the Legal and Human Rights Centre, and verified by interviews with civil society and a focus group discussion with representatives from civil society, trade unions and media, as well as by other interviews conducted in Tanzania.

79 Legal and Human Rights Centre (2016), 'Human Rights and Business Report 2015'.

- › *Workers' rights* concerns include reported cases of lack of contracts, substandard contracts, poor health and safety standards and non-payment of taxes, mandatory pension and social security contributions. Other issues include restrictions against unionisation and collective bargaining.<sup>80</sup>
- › *Poor transparency regarding compensation and revenue sharing* is an oft-cited concern, particularly in respect to larger investments. Two main factors are relevant here: Firstly, in cases of land acquisition, there is often poor transparency around payment of compensation. This involves lack of clarity around amounts paid and suspicions of embezzlement by leaders, particularly at local government and village level. Secondly, companies are by law required to contribute 0.3% of revenues to local authorities. Lack of information on amounts paid often lead to suspicions of embezzlement.
- › *Discrimination based on ethnicity* is a significant concern from local community and civil society. Foreign companies are criticised for hiring expats whilst it is claimed that equally qualified nationals are available.

<sup>80</sup> Legal and Human Rights Centre (2016), 'Human Rights and Business Report 2015'.

Also for national companies, there are often complaints that they prefer hiring employees of their own ethnicity (particularly in the case of Indian-Tanzanian owned companies) or with the same tribal affiliation.

- › *Gender-based violence and discrimination* is the final concern, with reported cases of sexual harassment and rape. Lower wages paid to women is also a concern.<sup>81</sup>

The consulted stakeholders agree that the legal and regulatory frameworks to guard against abuses is generally good. Particularly the land and labour laws provide comprehensive checks against abuse. The problem lays in the poor implementation and enforcement. Oft-cited reasons for this are poor capacities and lack of resources. Closer scrutiny, however, reveals issues such as vested interests, rent-seeking and a partly dysfunctional system of incentives to enforce the rule of law.<sup>82</sup>

There are ongoing processes to improve the systems and to strengthen the capacities to enforce them. Nonetheless, for the purpose

<sup>81</sup> United States Department of State (2017), 'Tanzania 2016 Human Rights Report'.

<sup>82</sup> See, for example, Persson, Rothstein and Teorell (2012) "Why Anticorruption Reforms Fail – Systemic Corruption as a Collective Action Problem," *Governance*, 26:3, and Gray (2015), "The political economy of grand corruption in Tanzania," *African Affairs*, 114:456.

of human rights due diligence, one cannot rely on national safeguards. Indeed and perhaps more importantly, the reviewed literature documents that there are many cases where the government, rather than being a guarantor of rights, has acted against the rights of citizens.<sup>83</sup>

This is most clearly seen in the case of land rights: There is a well-defined process for the allocation of land to foreign investors, with a range of checks to ensure that all existing claims to the land are settled.<sup>84</sup> This includes consultations with local communities and villages. The process is documented and requires sign off by all concerned, producing evidence that due process has been followed.

The problem is that it is difficult to assess the integrity of this process. The administrative capacities at village and local authority level are weak. It is notoriously easy to falsify agreements and/or shortcut requirements for public consultations. Moreover, in cases where there has been due process, these may still

<sup>83</sup> See, for example, Legal and Human Rights Centre 2016 and US State Department 2017. This was also confirmed by our interviews with civil society stakeholders.

<sup>84</sup> For information on the Tanzanian land tenure system see USAID's [Land-links' country profile for Tanzania](#) and Geir Sundet (2006). "The formalization process in Tanzania", note prepared for the Norwegian Embassy in Tanzania. The most thorough review of Tanzanian land rights to date, *Report of the Presidential Commission of Enquiry into Land Matters*, from 1994, also concludes that the most important threat to land rights has historically been the Government (URT 1994).

not be seen as legitimate by local citizens. The capacities for documenting and publicising agreements are poor, district archives are not easily accessible and villages often do not have functioning offices, let alone filing cabinets.

This situation produces a context where the local population have a high risk of losing land without due process and adequate compensation. Investors also run a high risk of being dragged into prolonged conflicts, as agreements made, can later be denied and / or contested. Due to the poor state of documentation it can often be difficult to prove that due caution has been taken. This means that land acquisition requires a thorough knowledge of the legal and political context.

#### **4.2.1 The Norwegian Embassy in Tanzania**

As discussed in the Systems Analysis above, the embassies follow the policies and procedures set by MFA and this evaluation is primarily interested in the following two functions of the embassy:

- › Firstly, as grant manager for projects supporting private sector actors.
- › Secondly, as a promoter of Norwegian business interests in the country (the two areas can be overlapping).

The embassy has the grant management responsibility for MFA projects in the country, and it will also follow up on projects by other Norwegian agencies, if issues are brought to their attention.<sup>85</sup> It works to ensure that implementing partners are aware of potential human rights issues and have the necessary guidelines for addressing them, and to set forth its requirements in the grant contracts.

The Embassy follows project developments on a regular basis, asking questions and requesting first hand insight. Partners are required to report on progress, deviations from plans and unintended consequences. Annual and biannual project meetings are platforms to discuss potential issues and devise corrective actions. This includes the responsibility for assuring good quality human rights due diligence in projects supported by Norway.

For all new projects and agreements, the Embassy convenes an advisory forum that includes a discussion on cross-cutting issues, including human rights. The interviewed staff provided examples of where partners were asked to review and revise their risk assessments and mitigating efforts prior to the agreements (Decision Documents) being approved and finalised.

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<sup>85</sup> Ref. comment by Embassy on an earlier draft of the report.

The interviewed embassy staff have little specialised training on UNGP, and also miss a more detailed guidance on how to conduct human rights due diligence, than what is provided in the MFA's Grant Management Manual and supporting material. The Embassy staff recognised the need for better understanding of key issues, such as land rights, and more follow-up, including field visits, but cited limited capacity, caused in part by the shift of more administrative duties for the embassies.

The Embassy engages in ongoing promotion of Norwegian businesses in Tanzania. This includes awareness raising activities on the requirements for responsible business. For example, the Embassy organized a workshop for Norwegian companies in Tanzania on "The Business Case for Human Rights and Gender approach" in December 2016. The Embassy also assists with facilitating contacts with Tanzanian authorities to aid manoeuvring through the regulatory framework. In the words of Embassy staff, they "help to open doors, but don't enter the room."

The embassy does not systematically do any due diligence on companies requesting non-financial assistance prior to engaging with them. In one case, the Embassy recalls that a quick google search was done before responding to Norwegian



company for a request for (non-financial) assistance in a tax dispute with the national authorities. The search revealed reports of previous financial misdemeanours tied to the management of the company, and it was decided not to proceed. This type of check, albeit very limited, is only done on an ad hoc basis.

The Embassy has developed a CSR land note on responsible business. The note presents a list of conventions that business have to relate to, including UNGP, an overview of issues to be aware of and links to basic resources and the contacts of the Embassy. The information is regularly updated (the latest update was January 2018) and is posted on the Embassy's website under the page of Norwegian business in Tanzania.<sup>86</sup> Whilst it is no longer compulsory to update the CSR land note, and available funding has been cut (see systems analysis, above), the embassy continues this work as it seen as valuable support to Norwegian business interests in the country.

It is also relevant to note that the embassy is one of the main funders of the Legal and Human Rights Centre (LHRC), which produces and publishes the report Human Rights and Business in Tanzania. The 2016 report was published in August 2017.<sup>87</sup>

The embassy's half-yearly reports provide updates on the human rights situation in the country. They also report on Norwegian business interests in the country. But the reviewed reporting (3 last years) does not contain any mention of specific cases of human rights concerns tied to Norwegian development assistance or Norwegian businesses. This means that the embassy has not reported on any cases, like Norfund's investments, that have attracted negative attention and media coverage due to alleged human rights abuses (see, for example, the case of Kilombero Plantation Ltd, described below).

### **Summary findings**

The following findings stand out as being of particular relevance to this evaluation:

- › In their role as facilitators for support and promotion of Norwegian business in Tanzania, the Embassy provides an important function in informing businesses about requirements for implementation of UNGP, with specific references to the legal situation in Tanzania.
- › In their roles as grant managers, on the other hand, Embassy staff face several constraints:
  - Existing templates for risk assessment for human rights, are not seen to be operationally useful (more detail is in place for assessment of corruption risks).
  - The capacity to follow up on projects is limited, partly caused by the transfer of administrative grant management duties from MFA and Norad to the embassies.
  - There is little institutional knowledge on the Tanzanian context, and no system in place for building institutional knowledge and memory.
  - Embassy staff has limited knowledge of key human rights risks, such as land rights.

<sup>86</sup> "Næringslivets samfunnsansvar – Tanzania", Landnotat 1.11.2017,

<sup>87</sup> The Executive Director of LHRC is a member of the consortium responsible for this evaluation.

### Case projects

The case projects selected for Tanzania include one MFA project (SAGCOT), three Norfund projects (Agrica, Yara and Globeleq/ Songas) and one by Innovation Norway. The MFA project is implemented by the embassy, with little or no involvement from the Ministry.

#### 4.2.2 Southern Agricultural Growth Corridor of Tanzania (SAGCOT) (MFA, Tanzania)

The Southern Agricultural Growth Corridor of Tanzania (SAGCOT) project is an ambitious initiative to accelerate agricultural development in the corridor that goes from the coastal area around Dar es Salaam, through Morogoro and Iringa, to Mbeya and the Zambian border. The strategy is to support modernisation of the predominantly smallholder based agriculture through establishment of large-scale farms, support to out grower schemes with more intensive use of inputs and by strengthening the supply chains throughout the area.

The project supports the SAGCOT Centre Ltd., which is set up as a public private partnership to spearhead agricultural development in the area. The project is government-owned project under the Tanzanian Ministry of Agriculture Food Security and Cooperative, and is supported by a pool of donors that include the World Bank, DFID, USAID, Norway, EU and UNDP. The project

builds on a previous agreement to support the SAGCOT Centre that was initiated in 2010, where the Embassy, Yara and Norad were involved.<sup>88</sup> The project is implemented by the SAGCOT Centre itself.

The due diligence done for the SAGCOT project is weak and partially inconsistent:

- › The key document in the risk assessment of the project was the Strategic Regional Environmental and Social Assessment. The Assessment identified the risks of land loss and lack of meaningful consideration of the rights of local communities and women. It was recommended that Standard Operating Procedures be developed for ensuring clear, consultative and documented processes, but this recommendation was not implemented.
- › The project has relied on civil society organisations to play a monitoring role to mitigate social risks, but this has not been done in a systematic manner that has built trust or enabled learning.
- › There is no stand-alone grievance mechanism, and the project's updated risk assessment does not capture human rights risks.

<sup>88</sup> MFA. Decision Document SAGCOT Centre Ltd.

- › The Embassy lacks the capacity and competence to perform their own ongoing due diligence (on capacity, they state that not enough time is allocated to field visits, and on competence they miss specialised knowledge in, for example, land tenure).

There were certain lost opportunities for innovation that could have been better utilised:

- › The use of civil society for independent monitoring is potentially an effective tool. Yet, the monitoring was not properly resourced and structured to enable a more transparent and participative setting of agenda and agreement for sharing of information.
- › The recommendations to develop detailed Standard Operating Procedures for processes around land allocations and community consultations could have provided needed structure for setting practical standards for consultation and documentation of the process. In the absence of this, it is not only difficult for the responsible officers to do sufficient consultation, but also much more difficult to ensure good enough documentation afterwards.

For a more detailed review of the project, please refer to Annex 6.

#### 4.2.3 Agrica – Kilombero Plantation Ltd. (Norfund, Tanzania)

Agrica is a Guernsey registered company that owns and operates Kilombero Plantation Ltd (KPL) in a public private partnership with Rufiji Basin Development Authority (RUBADA). RUBADA is a government authority that supports development and had been given custody of the abandoned farm. KPL is a rice farm on Tanzania's Southern Highlands. Norfund has invested in Agrica, together with Capricorn Investment Group and AgDevCo.

The project has been publicly criticised for breach of human rights, particularly land loss.<sup>89</sup> The evaluation finds, however, that Agrica has demonstrated reasonable due diligence of the issues identified (see below). The due diligence for this project was done by Norfund, and went beyond what was considered necessary by project's government partners:

- › The rights of Project Affected Persons were mapped in a survey at the start of the operations, and a plan was prepared and executed in a consultative manner.

<sup>89</sup> See, for example, Oakland Institute (2015) "Irresponsible Investment. Agrica's broken development in Tanzania"; Benjaminsen (2018) "Motstand mot 'jordran', vold og norsk bistand i Tanzania", Bistandsaktuelt 20.03.2018.

- › The compensations would seem to be beyond the minimum required.
- › There is, however, an ongoing controversy on the quality of land given as compensation, mainly due to proneness to floods.
- › Appropriate remedial action was taken following report of herbicide contamination.
- › Norfund acknowledges that the terms of the credit provided to out growers through the scheme supplied by a micro-finance provider may not have been ideal, and have sought to remedy this.
- › Farm workers have contracts and have the right to unionise.

Overall, we find that the basic required structures and processes are in place, if not always fully adequate:

- › Policies and procedures are defined, although human rights issues are addressed only in the human resources policy, and not a clear human rights commitment in line with UNGP.
- › Human rights risks in supply chains, including for transport companies, is not covered by the company's due diligence.

- › Roles are clearly defined for ESG and community liaisons.
- › There are grievance mechanisms in place, including a women workers committee that meets regularly – this was set up following reports of sexual harassment which led to the dismissal of a supervisor.

For a more detailed review of the project, please refer to Annex 7.

#### 4.2.4 The Yara fertiliser terminal in Dar es Salaam (Norfund, Tanzania)

Yara International ASA requested Norfund for a USD 6 million loan (initially USD 8 million) for its subsidiary Yara Tanzania Limited in 2011, to finance the construction of a fertiliser terminal in Dar es Salaam. The terminal, which includes a 13,000 m<sup>2</sup> storage facility and a bagging plant, was expected to improve the supply of fertilisers throughout the country. The construction of the terminal was one of the key infrastructure projects within the Southern Agricultural Corridor of Tanzania (SAGCOT) initiative.

Yara applied for a loan from Norfund, expecting that Norfund's presence would help managing the risk of corruption pressures from Tanzanian officials. The case study documented a solid

approach to ESG issues and a positive contribution of Norfund's participation:

- › Yara Tanzania Limited integrates its safety standards in the contracts with its suppliers, and communicates a code of conduct with its value chain partners – whether customers or suppliers. Contractor employees working at the terminal are required to have a proper work contract including a pension scheme, and to have adequate equipment and protective gear.
- › Yara International has an ethics hotline that can be used to receive grievances from external stakeholders, but with limitations; members of Yara Tanzania Limited's middle management interviewed for this evaluation did not refer to it, and the internet-based hotline is not necessarily easy to find for a Tanzanian stakeholder.
- › Norfund has positively contributed to the assessment of environmental and social risks and worked with Yara to improve its ESG management.

For a more detailed review of the project, please refer to Annex 8.

#### **4.2.5 Globeleq's participation in the Songas power plant (Norfund, Tanzania)**

Globeleq is an energy company with assets in various African countries, which was originally owned by CDC, the British development finance institution. In 2014, CDC invited Norfund to become a minority shareholder in Globeleq. The joint strategy of CDC and Norfund was to accept development risks in order to spur the expansion of the company through greenfield projects, in particular in gas-fired power plants.

Globeleq's assets include a 54% share in Songas Limited, a Tanzanian company that owns a gas-fired power plant at Ubungu, south of Dar es Salaam, and a subsea and onshore gas pipeline and gas processing facility supplying the plant, on Songo Songo Island. Globeleq also owns the company that operates the Ubungo plant.

Tanzanian state entities, including the Tanzanian national electricity company Tanesco, hold minority stakes in Songas Limited. Songas originally bought the Ubungo plant from Tanesco and started its commercial operations in 2004. In 2005, Songas expanded the plant's generation capacity by nearly 50%. The plant currently provides about 20% of Tanzania's power supply.

- › Although Songas does not have a human rights policy as such, human rights-related risks inherent to its activities have been addressed through the application of the World Bank safeguards and the IFC PS.
- › The company has also benefitted from its strong bargaining position with its contractors, which enables it to impose strict environmental, social and governance (ESG) in its supply chain.
- › After the acquisition of Globeleq, CDC and Norfund have continued this policy and sought to further improve performance as per the IFC PS. For instance, Songas reports to Globeleq on its community development actions, which include 51 contracts passed since 2004 with the villages along the pipeline, whereby villagers are remunerated for informing the company about the state of the wayleave and pipeline.
- › Songas has undertaken various CSR programmes with the help of NGOs.

For a more detailed review of the project, please refer to Annex 9.

#### 4.2.6 Sunami village empowerment (Innovation Norway, Tanzania)

Innovation Norway entered a partnership with the Norwegian company Eyasys AS in April 2017 to provide 2.8 million NOK in support of the project “Sunami village empowerment”. The project aims at developing and testing solar energy solutions in villages in Kenya, Tanzania and Malawi, and training a network of entrepreneurs in solar solutions.

Innovation Norway proposed the Tanzanian component of the Sunami village empowerment as a case study for the present evaluation. During the preparations of the evaluation’s field mission in Tanzania, it appeared that the component had not been developed in accordance with initial plans, and that Eyasys was even reconsidering the choice of Tanzania as an implementation country. Innovation Norway did not seem aware of these facts. For the evaluation team, this case is indicative of a relatively loose monitoring of at least some projects by Innovation Norway.

Therefore, the following findings are based only on a review of the application and allocation process. There was no field study, because there was no project on the ground.

- › In its application, Eyasys specified that it respects and supports human rights, that

its employees have the freedom to participate in trade unions, that it works against all forms of slave labour, child labour, discrimination and corruption, and that it strives to develop environmentally friendly solutions.

- › Innovation Norway did not take any action to verify the accuracy of these statements, and did not conduct any due diligence process regarding the particular project prior to entering into the partnership.

#### 4.3 MOZAMBIQUE CASE STUDY

##### *Business in Mozambique*

Despite a long period of sustained growth since the turn of the century,<sup>90</sup> Mozambique remains one of the poorest countries in the African continent and has one of the lowest levels of human development according to the UN HDI (ranking 181st out of 188 countries in 2015).<sup>91</sup>

Mozambique ranks 138<sup>th</sup> out of 190 countries in the World Bank’s Ease of Doing Business index, being considered as one of the world’s most difficult countries when it comes to enforcing contracts (184<sup>th</sup> rank). Foreign land acquisitions, in particular, can be controversial.

90 Mozambique’s economy grew at average rate of 7.8% a year in real terms between 2000 and 2015 (source: World development indicators, World Bank).

91 [UNDP Human Development report 2016](#).

Corruption remains a systemic problem affecting the human rights and business environment. The country is ranked 142<sup>nd</sup> out of 176 countries on the Transparency International Corruption Perception Index for 2016. There is a widespread distrust in the justice and law enforcement system, leading to the under-reporting of offences and a high level of impunity. The state has weak oversight in the enforcement of the legislation and in many cases, it is considered to be the source of the problem of corruption rather than its solution.<sup>92</sup>

##### *Human Rights and business*

Mozambique’s score in the Economist Intelligence Unit (EIU) Democracy Index has continually declined since 2008, to reach 4 on a scale from 0 to 10 in 2017, ranking it 109<sup>th</sup> out of 167 countries.<sup>93</sup> According to the EIU, areas of particular concern include the functioning of the Government (accountability, status of checks and balances on the executive, corruption, support and skills for social security, and efficiency of policymakers) and a media sector described as “largely unfree”.

92 Raised in civil society meetings and meetings with private sector in Mozambique, January 2018.

93 The democracy index considers five categories: the electoral process and pluralism, the functioning of the government, political participation, political culture, and civil liberties. See [Democracy Index 2017](#), The Economist Intelligence Unit.

International human rights organisations such as Amnesty International and Human Rights Watch have reported cases of arbitrary arrest and detention, extrajudicial executions and unlawful killings, torture and other cases of ill treatment, forced displacement, limitations to the freedom of expression, and attacks on health facilities.<sup>94</sup> Mozambique also faces considerable challenges in the areas of economic, cultural and social rights. Persistent poverty, widespread corruption, and violations of rights of women, children, LGBTIs, elders and disabled persons are also issues afflicting the country.<sup>95</sup>

Civil society organisations working on a range of human rights and community development issues were consulted in the course of this evaluation.<sup>96</sup> They report that at the intersection of business and human rights, the following areas pose the most serious risks:

- › *Land rights*, particularly for poor local communities, are considered to be frequently under threat from business projects. The Land Law in Mozambique is often presented as one of

the most progressive in the African continent, due in particular to its explicit recognition of customary rights. However, the law is poorly implemented, and its provisions regarding community consultations are often violated (see Annex 15). Some civil society actors also point to the tensions arising from impatience and excessive expectations among local communities, which can be caused by inadequate information sharing and communication during public consultations. Land issues involving foreign investors primarily concern the agriculture, forestry, tourism and mining sectors.<sup>97</sup> Poor protection of land rights and “land-grabbing” pose significant risks of adverse human rights impacts, e.g. on the right to respect for peoples’ homes, the right to adequate food, housing and standard of living, the right to work and not to be deprived of one’s means of subsistence, and the rights of indigenous peoples.

- › *Freedom of information* is a related concern as local authorities and investors often do not provide adequate information to the local communities, for instance regarding the intended usage of land, potential environmental risks and employment prospects. The lack of transparency regarding these aspects of

projects compromises the ability of local communities to make informed decisions. This is also an aspect that undermines the application of the Land Law.<sup>98</sup>

- › *Freedom of expression* is also considered to be under threat in Mozambique. In the capital, Maputo, the freedom of expression and the freedom of the press are perceived as relatively satisfactory, and journalists and civil society organisations can be outspoken and critical. In the provinces and rural areas, however, the censorship of the local media is stronger, and cases of arbitrary arrest and attacks of civil society representatives and journalists are reported, in particular in the context of community consultations.<sup>99</sup> The Government has also used criminal defamation laws to limit the freedom of speech.<sup>100</sup>
- › *Regarding workers’ rights*, a poor enforcement of labour legislation is reported, in particular regarding work contracts, and the respect of minimum wage, working hours, health and safety, and social protection regulations. The formal sector remains very small –

94 See [UPR Mozambique shadow report by AI from June 2015](#).  
See [HRW World Report 2017](#).

95 *ibid.*

96 The evaluation team conducted 7 meetings with civil society, a meeting with the National HR Commission and a panel discussion with 13 CSO representatives. See Annex 3 for complete list of civil society meetings.

97 [FIAN report 2010](#).

98 Mentioned in several civil society meetings in Mozambique in January 2018.

99 Also reported by [Freedom House report Mozambique 2017](#).

100 [UPR Mozambique shadow report by AI from June 2015](#).



mainly consisting of public employees, and the vast majority of people work in the informal sector.<sup>101</sup>

- › *Child labour* is a problem in both the formal and informal sectors. The Mozambican Labour Law states that the minimum age for employment is 15 years. Despite this, there are many children working domestically, in informal trade, commercial agriculture and extractive industries<sup>102</sup> – and additionally being victims of sexual exploitation. According to a survey conducted in 2008, 22% of children aged between 5 and 14 were engaged in child labour.<sup>103</sup>
- › *Gender-based discrimination and violence*, including the abuse of women and girls and domestic violence, is widespread and seldom prosecuted. Discrimination against women is frequent in areas such as employment and pay, access to justice, education and access to credit, particularly in rural areas and in the informal sector.<sup>104</sup> Women constitute a higher percentage of the informal labour market than men, which increases their vulnerability to

unregulated working hours, working conditions and low salaries.

The Government has established a Business and Human Rights initiative, gathering the National Directorate for Human Rights (Ministry of Justice), civil society organisations and business representatives, as a platform for human rights and business discussions under the chairmanship of the Human Rights League (*Liga Moçambicana dos Direitos Humanos*). However, the initiative has been on hold supposedly due to internal turmoil in the League, and an initial survey that it carried out has not yet been published.<sup>105</sup>

#### **4.3.1 The Norwegian Embassy in Mozambique**

The evaluation primarily considers the following two functions of the Norwegian Embassy in Mozambique:

- › Grant manager for projects supporting private sector actors.
- › Promoter of Norwegian business interests in the country (the two areas can be overlapping).

In its role as a grant manager, the Norwegian Embassy in Mozambique works to ensure that implementing partners are aware of potential human rights issues and have the necessary guidelines for addressing them, and setting forth its requirements in the grant contracts. The Embassy follows project developments on a regular basis, asking questions and requesting first hand insight. Partners are required to report on progress, deviations from plans and unintended consequences. Annual and biannual project meetings are platforms to discuss potential issues and devise corrective actions.

However, the Embassy does only a limited due diligence to verify processes and practices of implementing partners, and does not seek to investigate that contractual provisions are respected. Background searches and checks may be performed, but only on an ad hoc basis. In particular, the Embassy does not consider its task to check human rights conditions along the value chain. Although it would be beyond the capacity of the Embassy to do a fully-fledged human rights due diligence on every project involving business, it would seem relevant and useful with clearer definitions of what level of due diligence is expected in connection with projects involving private sector actors.

<sup>101</sup> Civil society meetings in Mozambique January 2018.

<sup>102</sup> Interview with Unicef in Maputo.

<sup>103</sup> [UPR joint civil society shadow report](#).

<sup>104</sup> [UN Mozambique Country Team's report to the UPR](#).

<sup>105</sup> See [Business and Human Rights Resource Centre](#) and interviews with the Human Rights Directorate in Maputo, 26.01.2018.

In the Embassy's Annual Work Plan for 2018, the objectives of enhancing trade and investments in Mozambique, i.e. contributing to the development of the civil society and human rights, and contributing to a better enabling business environment – and the actions to attain these objectives – are treated separately.<sup>106</sup>

The Embassy uses the UNGP National Action Plan in its strategic work towards job creation. However, the Embassy's management and staff do not seem fully aware of the reach of UNGP, which is not limited to businesses to which it provides direct financial support. The Embassy could play a far more active role in forums such as the development partners' Private Sector Working Group, making it a platform for inter-sectorial discussion by e.g. including civil society organisations in addition to donors and private entities.

The Embassy has not developed any country specific risk analysis with respect to human rights in general, or human rights and business in particular. The general reporting from the Embassy to the MFA, the bi-annual reports (*"Halvårsrapporter"*), summarise recent developments, including human rights, social circumstances and

sectorial developments, but do not cover in detail essential human rights concerns in the business sector such as land rights and disputes.

### **Summary findings**

- › The Embassy could do more to integrate human rights concerns in its management of private sector related projects, including in collaboration with other partners.
- › The Embassy has two designated staff members reviewing human rights specific projects.
- › The Embassy uses the UNGP National Action Plan in its strategic work towards job creation.
- › Human rights expectations are set forth in contracts, and it is considered the responsibility of implementing partners to ensure that these have been followed. Independent evaluations, when they are conducted, provide an assurance mechanism.
- › The Embassy expressed that it could be useful to develop a standard contract template for strategic partnerships, in which requirements related to UNGP are clearly specified and certain staff members believed that a detailed human rights checklist for the Decision Document could be a useful tool.

- › The Embassy has cut down the number of Norwegian staff from 12 in 2010 to 6 today, whilst work requirements have remained similar. As explained above, the budget of development cooperation with Mozambique has also been reduced.
- › The biannual reporting from the Embassy contains general reporting on national human rights issues but do not cover in detail specific human rights concerns relating to Norwegian development cooperation involving business.
- › Two Mozambican civil society organisations stated that they had found the Embassy to be unresponsive to human rights concerns related to projects with Norwegian interests.<sup>107</sup> This points to the latent conflict in the divided approach to development cooperation, where business promotion and human rights are dealt with separately. The Embassy could make better use of its potential role as a convener to encourage private sector actors, government representatives and civil society to join informed and broad debates on human rights and business.

<sup>106</sup> In the Annual Work Plan for 2018, these are under strategic goal 1, objective 3; strategic goal 2, objective 2, and; strategic goal 4, objective 2, respectively.

<sup>107</sup> Concern raised under civil society panel discussion in Maputo.

### Case projects

The selected case projects for Mozambique include three Norfund projects (African Century Real Estate, Arise and Mocuba Solar Project) and two Embassy projects (Tilapia Value Chain Development and Mozambique Transmission Development Programme).

#### 4.3.2 African Century Real Estate (Norfund, Mozambique)

African Century Real Estate Limited (ACRE) is a real estate developer established in 2011 by the African Century Group (ACG) and other investors (including the company's current manager). ACRE consists of a holding company established in Mauritius and several subsidiaries based in Mozambique, where the company has acquired 9 DUATs (land leases) representing a total area of 45 ha.

ACRE approached Norfund in 2014 to raise USD 6 million in equity (in shares of the holding structure in Mauritius) and USD 12 million in debt (to the Mozambican subsidiary) to finance property developments over the coming years. Norfund's IC and Board gave a final approval to the project in May 2015.

- › Norfund's approach to ESG risks in this project is mostly based on findings from the due diligence (which were not documented in a proper due diligence report) and on appropriate management and reporting by the company. Admittedly, ACRE has not engaged in any new development since Norfund entered its capital, so that its exposure to ESG risks has been limited and stable.
- › Norfund acknowledges that the implementation of the land law in Mozambique is less than adequate, in particular because of considerable shortcomings in official community consultations. Yet Norfund and Takura Capital did not engage directly with local communities or required any particular action from ACRE in this respect. With respect to future developments, Norfund requires ACRE to conduct an Environmental and Social Impact Assessment, which comprises stakeholder and community consultations.
- › Within the ESG requirements formulated thus far by Norfund and Takura, value chain considerations are limited to occupational health and safety for subcontractors working on the building sites.

For a more detailed review of the project, please refer to Annex 10.

#### 4.3.3 Arise (Norfund, Mozambique)

Arise is a company jointly established by Norfund, the Dutch development finance institution FMO and Rabobank in 2016 to pool together the stakes that they held in financial service providers in Sub-Saharan Africa. Arise has two assets in Mozambique, Banco Terra and Socremo. Banco Terra was established in 2006 as a joint venture between Rabobank, the German development finance institution KfW, Norfund and Gapi, a financial service provider in Mozambique.

Socremo is a microfinance institution established in 2009 by the Africa Microfinance Investment Company (based in Mauritius), Nordic Microcap Investment AB (based in Sweden), the Mozambican Directorate of Treasury and Norfund. Socremo has become the second largest microfinance provider in Mozambique and has started to diversify its portfolio towards Small and Medium-sized Enterprises. In 2016, both stakes were transferred to Arise.

- › Norfund invested in Banco Terra in 2006 and in Socremo in 2009. Norfund seems to have substantially enhanced its requirements with regard to ESG performance between these two decisions.

- › Both Banco Terra and Socremo have well developed human resources policies, in particular regarding union rights. Socremo seems more active in promoting gender equality, while Banco Terra has a formal whistleblowing policy.
- › Socremo's approach to value chain requirements seems more comprehensive and better established than Banco Terra's – a fact that is considered surprising given their respective activities and clienteles. The difference of approaches to the monitoring of clients seems rooted in the two companies' initial shareholders' agreements, thus in the evolution of ESG requirements by Norfund and other investors.
- › It therefore appears that Norfund has not sufficiently upgraded its ESG requirements for Banco Terra through the years. It remains to be seen if Arise will be more successful in the harmonisation of ESG approaches across its portfolio of assets.

For a more detailed review of the project, please refer to Annex 11.

#### 4.3.4 Mocuba Solar Project (Norfund, Mozambique)

The Mocuba Solar Project aims at developing the first large-scale solar plant in Mozambique, with an expected capacity of 30 MWac (40.5 MWp). The project company, CESOM (*Centro Solar de Mocuba*), will be an independent producer selling power under a 25-year Power Purchase Agreement to the Mozambican Electricity Company (EDM – *Electricidade de Moçambique*). Scatec Solar is the majority investor in CESOM with a stake of 52.5%, EDM (25%) and KLP Norfund Investment AS (22.5%) are minority investors. The project is financed on a non-recourse basis (i.e. pledged by a collateral), with the International Finance Corporation (IFC) appointed as lead arranger and underwriter.

The main findings of the case study are:

- › Norfund assessed the overall risks of the Mocuba project as “high”. The ESG risks were also rated high due to “complicated replacement land allocation process combined with large number of project-affected people and numerous long-term E&S obligations.”<sup>108</sup> Scatec has risk assessment and mitigation plans in place.<sup>109</sup>

<sup>108</sup> Final approval document.

<sup>109</sup> Scatec OS Description.

- › The project preparation included impact assessments, community consultations, third party assessments and the development of compensation and livelihood restoration plans, implemented by CESOM and Scatec, and monitored by Norfund and the IFC.
- › 215 affected households were identified and it has proved challenging to find replacement land for them. The challenges were foreseen but underestimated in the risk assessment. Government services had identified relocation land but had not properly consulted the affected community. The project team had to conduct much of this process, together with environmental consultancies, and by engaging with provincial authorities and the community.
- › The Livelihood Restoration Plan (LRP) was developed to ensure that affected families would have equal or better living conditions than before. In January 2018, 75% of the plan had been implemented.
- › CESOM has a Community Liaison Officer in Mocuba who reports to the company biweekly on the implementation of the LRP and grievances in the community.<sup>110</sup>

<sup>110</sup> Norfund documents for on-going reporting.

- › Several grievance mechanisms are in place: 1) through Scatec's website (available in Portuguese, 2) through a dedicated project committee, 3) at the workplace (upon construction initiation). A technical working group is established for community involvement.

For a more detailed review of the project, please refer to Annex 12.

#### **4.3.5 Tilapia Value Chain Development (Royal Norwegian Embassy (RNE), Mozambique)**

Tilapia Value Chain Development is a pilot fishery project located in Hókwe village, in the Chókwè district in Southern Mozambique. The project is implemented by the Norwegian NGO *Norges Vel* (Royal Norwegian Society for Development), with support from the MFA/RNE.<sup>111</sup>

In March 2017, Norges Vel established a partnership with Papá Pesca, a small family-driven farm to develop a fishery. The project focuses on local community enhancement by testing: 1) the farming and production of tilapia fish, 2) the level of sales and profitability, and 3) a model of sustainable organisation for the supply chain, which involves SMEs in Chókwè. Another element of the project consists in

building capacity for which a first group of 8 volunteers has been selected.

The main findings from the field visit are:

- › Environmental Impact Assessment, environmental and aquaculture licenses and community consultations were carried out by Papá Pesca, assisted by *Enviestudos* consultancy, prior to establishing the contract with Norges Vel. There were 4 community consultations.<sup>112</sup>
- › Papá Pesca focuses on the relations with the traditional leaders and inclusion in various decision-making processes.
- › The tilapia training was delayed due to lack of adequate housing and living conditions for trainees by the ponds, but it was resumed once the conditions had improved.
- › Papá Pesca has gone beyond the provisions of Mozambican law, the requirements of Norges Vel and the Embassy to ensure favourable working conditions, e.g. by providing information about the workers' union and through health, safety and environmental procedures. However, there were some delays

in providing protective gear for the trainees due to budget constraints.

- › Because of delays in project implementation, Norges Vel asked Papá Pesca to stop all construction, resulting in the redundancy of 82 workers.<sup>113</sup> Management and human resources explained that notifications included clearly why they were laid off, the termination period and calculation of wages, and that this was in line with national labour legislation.
- › There is no specific grievance mechanism in place for the employees but a supervisory system is in place to inform management about any issues. The human resource personnel is actively involved in dispute resolution.<sup>114</sup>

For a more detailed review of the project, please refer to Annex 13.

<sup>111</sup> Agreement signed in November 2016.

<sup>112</sup> Meeting with Papá Pesca management in Chókwè.

<sup>113</sup> Email from Norges Vel stated that project meetings in end of January 2018 has established a new timeline for project deliveries.

<sup>114</sup> Meeting with Papá Pesca.

#### 4.3.6 Mozambique Transmission Development Programme (RNE, Mozambique)

Norway has contributed to a single donor trust fund called “Power Infrastructure Projects of Regional Importance in Southern Africa,” which is divided into two projects.<sup>115</sup> One project is the Mozambique-Malawi Transmission Interconnection including a transmission line from the hydro power plant Cahora Bassa in North-west Mozambique to Malawi and continuation from the receiving destination in Malawi back to North-eastern part of Mozambique. The other project is the Mozambique Regional Transmission Development Programme.<sup>116</sup>

The main findings from the interviews, document review and archive search are:

- › The World Bank is responsible for the due diligence of all studies and projects.<sup>117</sup>

- › The trust fund is being monitored according to the World Bank Safeguard Policies, the Environmental and Social Framework, and the Equator principles.<sup>118</sup> The World Bank requirements for social safeguards focus on both development and construction phases.
- › The Embassy has followed the process but left it to the World Bank to ensure safeguards and requirements. There is a close dialogue between the Embassy and World Bank, also on relevant human rights issues.
- › An ESIA was conducted in 2011, and its revised version is due by July 2018. The assessment concluded that the need for resettlement would be limited. Community consultations have been carried out, but the resettlement plan has not yet been finalised. According to *Electricidade de Moçambique*, the World Bank and donors have signalled that compensation to the local communities would have to be provided by the Mozambican Government.<sup>119</sup> The Embassy reports being unaware of such a statement.

- › Monitoring and grievance mechanisms are not yet operational since construction has not begun.
- › In terms of reporting, there are frequent mission and progress reports, as well as Steering Committee meetings. The Embassy has also regularly reported updates and challenges to the MFA.<sup>120</sup>

For a more detailed review of the project, please refer to Annex 14.

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<sup>115</sup> E-mail from Royal Norwegian Embassy in Maputo: *Oppdatering Norsk Trust Fund I Verdensbanken*, 2014.

<sup>116</sup> Ibid.

<sup>117</sup> Email reporting from the Embassy to the MFA after WB second appraisal mission, June 2009.

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<sup>118</sup> The [World Bank Environmental and Social Framework](#) and the [Equator principles](#).

<sup>119</sup> Meeting with EDM in Maputo.

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<sup>120</sup> From emails assessed as part of archive search in Maputo 31 January 2018.



## 5. Conclusions and recommendations

The systems analysis of the evaluated entities and the country case studies provide several layers of evidence on the extent to which UNGP is implemented in Norwegian development cooperation, and how Norwegian development aid involving business promotes, protects and respects human rights. This has shown that human rights are a priority in Norwegian development cooperation in the context of support to commercial actors and private sector development. Since the adoption of UNGP in 2011, the principles have been incorporated in the policies and procedures guiding Norwegian development cooperation and communicated to partners.

The evaluation also shows, however, that the implementation of Norway's commitment to protection of human rights in line with UNGP is still incomplete. The higher-level commitments are often not supported by adequate commitments and procedures at operational level. This means that policy is not necessarily translated into good quality human rights due diligence in the actual implementation of projects and investments. As a result of this, the uptake of – and reliance on – UNGP and human rights

due diligence in the entities has considerable room for improvement.

In this final chapter, we synthesise the findings of our analysis to respond to the evaluation questions and provide recommendations on how Norwegian development aid involving business can further improve its systems and practices for promoting, protecting and respecting human rights.

In the discussion, we address separately, where relevant, the three groups of entities we identified in the conclusion of the systems analysis: the MFA, the embassies and Norad, which broadly operate under the same set of rules; Norfund and GIEK as the commercial, independent entities dealing predominantly with large projects; and Innovation Norway as an independent, non-commercial implementer of projects.

### 5.1 POLICIES, GUIDELINES AND PROCEDURES

***To what extent do the selected state agencies have policies, guidelines and procedures in place to be able to know and show that Norwegian development aid to private sector protects and respects human rights?***

**There are strong and clear references in high level policy documents to UNGP and the duty to undertake human rights due diligence, especially in White Papers and the National Action Plan, but the implementation and follow-up has room for improvement.**

The White Paper on human rights, “Opportunities for all”, commits the Government to working with development partners, including Norwegian companies and multilateral institutions, to ensure that they follow the UN Guiding Principles. The White Paper on private sector development, “Working together,” refers directly to UNGP and stresses that it is important for companies to do adequate due diligence. Finally, the White Paper on the Sustainable Development Goals, “Common responsibility for a common future,” also stresses the importance of responsible business.

The National Action Plan expresses clear expectations that companies and other relevant stakeholders should implement UNGP, but does not provide any new means<sup>121</sup> or detailed guidance on how they should do so. Norwegian policy and financial support to international initiatives such as Shift contribute towards development of more operational tools, which are also relevant for Norwegian companies and their stakeholders. The emphasis on awareness raising amongst partners, including Norwegian companies, about UNGP, rather than on ensuring that the principles are implemented internally within Norwegian development cooperation, is also a common feature of the above-cited policy documents.

The same tendency can be observed in the entities' guidelines and procedures for ensuring that private sector actors receiving substantial support from Norwegian development cooperation perform adequate human rights due diligence. The MFA and embassies provide information to businesses about what is expected and are fairly active at the embassy level with information on their websites and workshops for businesses. However, the focus is more on formal requirements that structures and processes are in

place, and less on assuring actual implementation and adequate quality of the same.

As noted in the systems analysis, Norfund and GIEK have established better and more elaborate systems. However, Norfund does have weaknesses at the policy level, as it has not adopted a clear and well-elaborated human rights commitment in line with UNGP. Also, Norfund does not recognise UNGP, but bases its due diligence on the requirement that investee companies observe the IFC Performance Standards. GIEK on the other hand has a clear human rights policy. This policy commits GIEK to following the UNGP and undertaking human rights due diligence, and is, moreover, based on the OECD Common Approaches and the IFC Performance Standards.

Norfund's approach is not in line with the best practice among DFIs, see chapter 1.2 above. Moreover, Norfund's policies and Investment Manual do not provide guidance for the agency's own human rights due diligence and erroneously point risk assessments towards risks to the project rather than risk to people/rights-holders.

Thus, Norfund could benefit from adopting a clear and well-elaborated human rights commitment in line with UNGP, and furthermore from implementing UNGP to strengthen its human

rights due diligence systems and processes. This could improve the quality of its investment decisions and its efforts to prevent and mitigate actual and potential human right risk linked to its investments.

Innovation Norway does not have a specific policy on human rights, but its Policy on Good Business Practice refers to the UN Global Compact, the OECD Guidelines and the UNGP. Innovation Norway lacks adequate procedures and guidelines to ensure implementation of UNGP.

## 5.2 QUALITY OF HUMAN RIGHTS DUE DILIGENCE

*To what extent do the selected state agencies assess human rights risks and impacts of Norwegian development aid involving business enterprises?*

**There are significant gaps in the human rights due diligence performed by most entities in projects and investments involving private sector actors. This is particularly true for MFA, embassies and Norad, but also Innovation Norway. The entities lack detailed procedures that can be adapted to a given context to perform adequate human rights due diligence. They also lack procedures to track and monitor human rights impacts of their operations during the delivery of projects.**

<sup>121</sup> Apart from the plan to consider establishment of an information center. It was subsequently concluded that a new center should not be established.

***How and how well are human rights due diligence procedures (HRDD) performed by the selected state agencies or business enterprises?***

The MFA, embassies and Norad base their due diligence, including human rights, on the risk assessments done by the supported companies/ projects. In all the reviewed risk assessments, human rights risks come under a generic social and environment impact assessment category. The systems for monitoring and tracking put in place by MFA, embassies and Norad are weak, and provide limited quality assurance and follow-up on partners' risk assessments.

The risk assessment for the SAGCOT project in Tanzania, for example, identified issues relating to land loss and lack of community consultation. The recommended mitigating actions specified a need for context specific procedures to document and verify that community consultations and land rights related issues had been dealt with in a responsible verifiable manner. These recommendations were not implemented, and the follow-up has been patchy.

In this, as in other cases, the Norwegian Embassy in Tanzania followed up in project meetings by asking for an increased focus on

human rights. Yet this follow-up is general and did not refer to the risks or mitigating actions identified in the initial risk assessment.

A key issue identified by the evaluation relating to dealing with human rights issues in high-risk countries like Tanzania and Mozambique, is that there is a significant gap between the formal system of rights and realities on the ground. This means that formal systems for controls and settlement lack integrity, and instead of being guarantors of rights, Government agencies can turn out to be the source of negative human rights impacts. In such cases, the understanding of context becomes doubly important.

The evaluation sees two reasons for the observed shortcomings on effective follow-up on human rights risks during the delivery of projects:

› *Lack of understanding of, and focus, on context and subject matter:* As discussed in the systems analysis of MFA, the guidelines focus on the formal aspects of human rights, and do not specify a more context-oriented approach. There is a lack of operational procedures adapted to country context and weak systems for building institutional knowledge of key issues, such as land rights.

› *Lack of systems for follow-up of risk assessments:* The evaluation has revealed that there are no systems in place for systematic follow-up of risk assessments. Even if up front risk assessments are good, they are not likely to have the desired impact in the absence of consistent and informed monitoring.

The embassies have arguably the most important role when it comes to operationalising human rights due diligence in the Norwegian aid administration. They are effectively responsible for the implementation of MFA projects, often play key role in the management of Norad projects, and they play a supporting role for Norfund, Innovation Norway and Norwegian companies operating internationally.

At the same time, embassies have experienced cuts in personnel and operational budgets. With the abovementioned lack of systems to guide implementation of due diligence process and follow-up, and the absent structures for institutional memory, they are ill equipped to perform the tasks required from them.

In addition, staff do not get, as a general rule, sufficient training on human rights due diligence and country context and sector specific issues relating to human rights, and they do not have

the capacity to handle such complex and time-consuming issues. Given possible conflicts on promoting and supporting Norwegian business on the one hand, and on the other hand implementing UNGP and HRDD in its own project portfolio, it is even more important that embassies are capacitated for this.

Despite the caveats described in section 5.1 above, Norfund has a more defined process for risk assessments. By requiring that the investee companies commit to the IFC Performance Standards, it provides for a more detailed and systematic assessment of risks up-front, than what is done by MFA/embassies and Norad through completing the human rights part of the Decision Documents.

Norfund also starts its process with environmental and social impact assessments done by external consultants that should be approved by environmental authorities in the host country. The assessments are financed by the investee. Norfund is better equipped than MFA/embassies and Norad to follow up with its own assessments as it questions the quality of the assessment (as observed in the ACRE project). Norfund can also work with the investee company directly to do the risk assessment (as was the case with Agrica). Unlike MFA/embassies and Norad, it also has

assigned staff with specialist competencies within the environmental and social, including human rights, field.

There are, nevertheless, significant weaknesses also in Norfund's systems of due diligence:

- › Firstly and most importantly, Norfund approaches potential and actual human rights impacts as part of a standard ESG assessment. Limitations follows from the fact that the due diligence is not based on e.g. in relation to impacts in the supply chains. A clear and well-elaborated human rights commitment would have strengthened the human rights dimension of the due diligence, and secured focus on risks to right-holders, as opposed to risks to the project.
- › Secondly, Norfund does not have a system in place for tracking and continuous updating of risks that allows for an easy overview of the present state of risk management. Norfund is testing a new system at the moment, but it is not clear that its design will enable this type of dashboard function.
- › Thirdly, Norfund could also improve its practices for understanding of context. The issue of land rights and ensuing risks of adverse human rights impacts might be

one area where the organisation could benefit from a more systematic and consistent approach to building competence.

The evaluation has limited evidence on the quality of due diligence on potential and actual human rights impacts of projects under GIEK. Based on the interviews and review of methods, however, many of the same constraints are observed regarding the lack of systems or procedures for systematic tracking and updating of risks throughout the project cycle. Although, it should be noted that GIEK has less leverage than Norfund after the initial agreement is in place.

The above observations on the limitations of the human rights due diligence in projects related to business notwithstanding, the evaluation would also like to add a general observation that the standard of human rights due diligence and workers' rights in the observed projects, are at a higher standard than what is the norm in the case countries. The Norwegian support to private actors in these countries, therefore *does* contribute to a strengthening of human rights standards in these areas. Nevertheless, there remains considerable scope for strengthening safe-guards against adverse human rights impacts.

In particular, the evaluation would like to draw attention to observed opportunities for innovation. A more structured role for civil society in stakeholder dialogues and grievance mechanisms can strengthen the overall due diligence process. This was seen in the SAGCOT project, where civil society “reference groups” are given a constructive role. Although, in that case much more could be gained by providing clearer and more visible roles for the civil society actors, more resources to fill their functions, and better systems for documenting their contributions and consequent follow-up. In relation to the Scatec Solar project, the civil society organisation ADRA has been contracted as an implementing partner for the Livelihood Restoration Plan for the training of the PAPs.

***To what extent can the state agency rely on the HRDD done by business actors? Does the state agency have the capacity to assess business actors’ HRDD?***

State agencies cannot automatically assume that the quality of the business actors’ due diligence on potential and actual human rights impacts satisfies the standards of UNGP. The capacity and commitment of business actors to perform adequate HRDD will vary, and it will always be necessary for state agencies to verify the quality of the due diligence done by

partners, clients and investee companies. This is particularly the case because human rights risks are often seen as less important than environmental and corruption risks.

In all the cases reviewed, the state agencies did assess the quality of the due diligence done by others, and did also follow up on areas that needed further attention and improvement. As described above, however, the capacity and competence of MFA/embassies and Norad to do the assessment is constrained.

The capacity and competence of Norfund and GIEK to assess the quality of due diligence done by others is stronger than that of MFA/embassies and Norad. They have better systems for conducting own assessments and are thus in a better position to assess the quality of their partners’ due diligence. They also have dedicated staff who are specialised in risk assessments, and resources to follow up and complement human rights due diligence as required.

There is, however, still scope for improvement in Norfund’s systems for following up due diligence on potential and actual human rights impacts done by others, and for building better knowledge and understanding of the relevant country and sector context for potential projects.

In the case of Innovation Norway, the gaps are more fundamental: There is a need for a reflection on the organisation’s responsibilities for human rights and business, which would align its practices with its principle declarations; this would provide the basis for the development of a proper human rights due diligence system.

### **5.3 GRIEVANCE MECHANISMS**

***To what extent are grievance and remedy mechanisms in place? Are there sanctions if human rights violations have occurred?***

**Apart from GIEK, none of the reviewed entities have a specially designated mechanism for human rights grievances. Existing grievance mechanisms are first and foremost targeted to capture allegations of corruption.**

All entities had contractual provisions for sanctions in case of documented negative human rights impacts, but none of the entities could provide any cases of when supported businesses had been subjected to sanctions due to such.

All reviewed entities have functioning grievance mechanisms for corruption. These are often also expected to capture other ethical issues, such as negative human rights impacts. In practice, however, they are communicated and used as whistle-blower channels for corruption, and not



human rights. GIEK notably has established a “stakeholder feedback” mechanism which encourages reporting of human rights concern, but it is unclear how well it is known. MFA’s grievance mechanisms receive an average of 100 reports annually. None of these concern negative human rights impacts.<sup>122</sup> Similarly, the Norad whistle-blower channel has not received any reports on negative human rights impacts.

In interviews, several sources at MFA refer to the OECD National Contact Point as a grievance mechanism.<sup>123</sup> Since the human rights chapter of the OECD Guidelines is aligned with UNGP in so far as businesses’ responsibility to respect human rights is concerned, it can be seen as a grievance mechanism for human rights complaint against multinational companies established in, or operating from, Norway. It is not, however, a grievance mechanism for complaints regarding the state’s and state agencies’ obligation to protect against human rights abuses. Moreover, the National Contact Point may not impose sanctions or award compensation, but will seek to mediate or, if mediation fails, adopt and publish a final statement with, if necessary, recommendations to the company.

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<sup>122</sup> Statistics of reports received are on the [MFA website](#). The control unit informed the evaluation by mail that no reports on negative human rights impacts had been received in recent years.

<sup>123</sup> Their grievance mechanism is now posted on their [website](#).

Information about the possibility to complain to the OECD National Contact Point is available at the Norwegian National Contact Point’s home-page. Information about the OECD National Contact Point is not easily accessible through the embassies or the relevant agencies. There seems to be a gap, therefore, between the understanding and promotion in MFA and the embassies on the role and function of the OECD National Contact Point and what it can actually deliver.

At the project level, grievance mechanisms are often set up and communicated in a way that is more conducive to capture negative human rights impacts. There are reports of grievances of inadequate compensation for land loss (Agrica, SAGCOT and Scatec Solar), and of sexual harassment (Agrica and Tilapia). In all these cases, there have been follow-up and remedial action in case of reports or complaints of inadequate compensation and sanctions in the cases of sexual harassment. Worth highlighting at the project level, are the grievance mechanisms of Scatec Solar and CESOM on various levels (general website in different languages, project level, the Community Liaison Officer in the project area, and workplace upon start of construction).<sup>124</sup>

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<sup>124</sup> See discussion of Scatec Solar and CESOM in section 4.3 of this report, for more information.

The evaluated entities do not have strong systems in place for registering human rights grievances from projects centrally, and for using this information for systematic learning and further strengthening of systems. Further, the existing mechanisms seems to be inadequately communicated.

## **5.4 CONDUCTIVE FACTORS AND POINTS FOR IMPROVEMENTS**

***What is conducive to and what hinders alignment on the UNGP in Norwegian development cooperation? What are the most important points for improvements?***

**MFA has made important contributions to the alignment of UNGP in Norwegian development cooperation through enshrining UNGP in its high-level policy framework. However, with the partial exception of Norfund and GIEK, the policy commitments have not been translated into guidelines and procedures that define clear standards for human rights due diligence that are aligned with UNGP.**

The most significant advances in aligning Norwegian development cooperation with UNGP, has been through incorporating UNGP in the policy framework, including relevant White Papers. The inclusion of human rights as a cross-cutting issue has also provided a needed requirement



that human rights risks will be addressed in supported projects.

The development and adoption of a National Action Plan is an important part of enshrining UNGP in national policies. However, the gaps in the National Action Plan are indicative of the overall weaknesses in the approach, namely a high level focus on awareness raising and ensuring that human rights are addressed in business activities. What is lacking is guidance on how this can be done in practice and in ensuring that human rights are indeed, promoted, protected and respected.

There is therefore significant room for improvements in establishing more operational and more context-oriented guides for how to perform human rights due diligence and to document and track the status of human rights risks and remedial action. The recommendations provide some key pointers for how this can be achieved.

## 5.5 RECOMMENDATIONS

Based on the findings and conclusions presented in this report, the evaluation team makes the following recommendations:

### 1. **Develop further the present aid management system for human rights due diligence to secure that it is better informed by the specific geographic and sector context of the projects.**

The existing grant management manual, in particular the section on risk management in V04, and the grant management schemes are too formalistic and top-down. They lack operational directives to guide project officials in their work to assess the quality of human rights due diligence in projects. Moreover, policies at State and agency level should require businesses to demonstrate an awareness of and commitment to the UN Guiding Principles as a prerequisite for receiving State support and benefits.

There should be a requirement for human rights due diligence that is informed by the specific context of the country and sector. This should consider the legal and institutional context, the business' activities, the presence of vulnerable groups and whether any business partners pose added risks to human rights. For this there is a need for operational directives to guide project

officers in their efforts to assess human rights risks and to assess the quality of human rights due diligence in supported projects. There also is a need for specific requirements for stakeholder consultations and dialogue.

Routines for reporting and documentation should also be strengthened in order to establish a log for risk management, also including human rights risks for each project. This should include updates of original risk assessment and status of mitigating actions.

There could be a role for Norad in spearheading the development of country specific procedures covering human rights due diligence. These should be developed in collaboration with other agencies in each country, which could provide significant synergies for achieving a significant and lasting improvement in due diligence processes that are informed by the local context.

### 2. **Strengthen the capacity and competence of embassies.**

Given the complexity of UNGP and human rights issues, the embassies need increased capacity and competence to follow up projects. The embassies require increased competence on the nature of relevant human rights risks in their countries. A more systematic approach to

competence building should be developed to raise understanding of specific human rights issues in each country and relevant sectors, for instance through knowledge banks on issues such as workers' rights, land rights and gender equality.

The development of better tools for informing human rights due diligence would enable embassies to increase their capacity and competence within the existing restrictions of human resources. The efficiency of this approach would be further enhanced by collaborating with other agencies to develop the tools, and as noted above, Norad could play a part in this development.

### **3. Establish new and strengthen existing grievance mechanisms for adverse human rights impacts.**

The existing grievance mechanisms in the evaluated entities are typically directed to reporting of suspected corruption and not to raise human rights concerns. Although officials refer to the OECD National Contact Point as a grievance mechanism for complaints related to Norwegian development cooperation, this is not adequately communicated externally to potentially affected stakeholders and at the same time the NCP's competence is limited.

The entities need to revisit their approach to grievance mechanisms for adverse human rights impacts, and set up mechanisms that are clearly communicated and accessible to stakeholders in partner countries, including at project level. They also need to set up registers for received grievances and invest in learning.

Large and high-risk projects require a more pro-active approach to grievance mechanisms. The use of independent actors as watchdogs is a model to be explored further. An example of this is the use of civil society as a reference group in the SAGCOT project in Tanzania. It is recognised that the watchdog role carries risks, particularly for non-state actors, which is why it is important that such a role is backed by a clear and strong mandate.

In order to fulfil Norway's obligations as an OECD member, the OECD guidelines and the grievance mechanism should be promoted throughout the system. The possibility to submit a complaint on alleged negative human rights impacts by a Norwegian multinational enterprise should be made well known through embassies and public agencies working on private sector development and promotion.

### **4. Norfund to strengthen its own policies and procedures by adopting a more elaborate human rights commitment in line with UNGP and recognise UNGP in its policy on human rights.**

The Norwegian Government expects Norwegian businesses to know and follow the UNGP and the OECD Guidelines for responsible business conduct. Norfund should refer to this expectation in its own policy statement on human rights to found the basis for improving its own policies on environmental and social responsibility and corporate governance. The aim should be to continuously improve Norfund's alignment with UNGP and its human rights due diligence on investee companies, supply chains and other business relationships.

### **5. Norfund and GIEK to strengthen systems for tracking human rights risks.**

GIEK includes supply- and value-chains in their human rights due diligence scope, whereas there is a need for Norfund to do the same. Both organisations' approaches to track human rights impacts and update risks assessment need to become more systematic. The approach should not only cover negative impacts that have already been identified, but also identify and address emerging impacts.

Moreover, procedures to ensure that cases needing a remedial process are identified and adequately resolved in practice should be further developed. These processes should also be communicated to stakeholders.

#### **6. Innovation Norway to develop a complete human rights due diligence system.**

Innovation Norway needs to systematically develop a complete human rights due diligence system for appropriate situations, incorporating the elements reviewed in this report to identify, assess, prevent and mitigate human rights risks, track the performance of its partners, communicate on human rights, and provide remedies when relevant.

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# Stakeholder Endnotes

According to OECD/DAC evaluation standard, in case stakeholders find that there is substantial disagreement between their views regarding the team's findings, conclusions

and recommendations, such disagreements can be included as a footnote in the report. Such disagreements should be linked to specific findings/conclusions/recommendations.

This annex presents such footnotes requested by Norfund, the embassies in Dar es salaam and Tanzania, and Innovation Norway.

## FOOTNOTES REQUESTED BY NORFUND

| Page number*                | Report                                                                                                                                                                                                                            | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Executive summary</b>    |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Page 6</b>               | <i>"Norfund has a significant weakness in that is human rights commitment is not well elaborated and that it does not recognise UNGP as such in its policies"</i>                                                                 | Norfund disagrees with the assessment that the lack of explicit reference to the UNGP is a significant weakness. It is Norfund's understanding that the policy commitment required by UNGP 16 refers to a commitment to <u>core internationally recognised human rights</u> . There is no requirement or suggestion in the UNGP that the policy commitment should refer explicitly to the UNGP document itself. The evaluation places great emphasis on the fact that Norfund policy documents do not refer to UNGP. From this it erroneously infers that Norfund does not "recognise" UNGP.         |
| <b>Page 10 (and 68)</b>     | <i>"GIEK includes supply- and value-chains in their human rights due diligence scope, whereas there is a need for Norfund to do the same"</i>                                                                                     | Norfund finds this statement incorrect. The supply chain of clients is already included in Norfund's due diligence scope, ref §10 of IFC PS 1 which states that "Where the client can reasonably exercise control, the risks and impacts identification process will also consider those risks and impacts associated with primary supply chains."                                                                                                                                                                                                                                                   |
| <b>Introduction</b>         |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Page 13</b>              | <i>"IFC PS does not say anything about prioritization on the basis of risk to people. For these reasons, IFC PS may not by itself secure a sufficiently broad and focused human rights due diligence to fully implement UNGP"</i> | Norfund disputes this claim. Performance Standard 1, §5 requires the client to "conduct a process of environmental and social assessment, and establish and maintain an [environmental and social management system] appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts." Similarly, Performance Standards 1, §15 specify that "the priority of the identified measures and actions will be commensurate with the project's risks and impacts". Further guidance on prioritisation is provided in Guidance Note 1. |
| <b>Chapter 3.4. Norfund</b> |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Report p. 33</b>         | <i>"The IFC PS [...] does not say anything about Norfund's own commitments and due diligence procedures"</i>                                                                                                                      | Norfund's Principles for environmental and social responsibility specify that Norfund "seek to identify any negative social and environmental consequences of our investment projects and contribute towards mitigating any adverse effects". It further explains that we use the IFC PS "for assessing the sustainability of investment opportunities".                                                                                                                                                                                                                                             |
| <b>Report p. 33</b>         | <i>"Norfund's approach to ESG risks does not specify how inputs from stakeholders should be integrated in the appraisal"</i>                                                                                                      | Norfund disagrees with this statement. IFC PS 1, §25-28 presents procedures for stakeholder engagement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

\* We request that the footnotes are repeated in all other sections where these claims are presented.

| Page number *                                                                   | Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Report p. 34</b>                                                             | <i>"Several of Norfund's investment partners and even some of its investees reviewed in the case studies are established outside of project countries and in jurisdictions with favourable tax regimes – creating the risk that these structures be used (even if not directly by Norfund) for aggressive tax optimisation purposes. In total, locations such as the Cayman Islands, the state of Delaware, Luxembourg or Mauritius channel 20% of Norfund's investments in 2018. Policy makers and NGOs alike have repeatedly drawn attention on the risks related to the use of tax havens by DFIs to channel development funds. Despite recent progress in this area, it still does not appear that several DFIs, including Norfund, thoroughly assess these risks. The issue, although not directly within the scope of this evaluation, needs to be mentioned as tax abuses do have human rights implications."</i> | This comment insinuates that Norfund is involved in tax abuses, which we refute. Norfund's use of third country jurisdictions is fully transparent and limited to countries with which Norway has a tax information agreement and/or comply with Global Forum on Transparency and Exchange of Information for Tax Purposes agreed standards. Norfund requires full transparency and access to all transactions of investees. The fund does not accept any financing structures that facilitates tax evasion or other negative consequences for the host country of the investment. Norfund has taken an active role internationally and the initiative to develop common principles for tax policy for the European DFIs. |
| <b>Report p. 36</b>                                                             | <i>"Norfund does not publish information regarding affected individuals and treats information on ESG performance as confidential and requires its investees to act likewise"</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Norfund disagrees with the latter part of this statement. Norfund does not put any obligations on investee companies not to disclose environmental and social information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Report p. 37</b>                                                             | <i>"According to Norfund's Investment Manual, the ESG risk appraisal shall deal with risks to the project, rather than risks to people".</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Norfund disagrees with this statement. Norfund's investment manual clearly states that "Norfund subscribes to the IFC Performance Standards on Social & Environmental Sustainability" and that "Norfund expects that its investees comply with these Standards". The standards define social impacts as "any change, potential or actual, to [...] surrounding community and workers, resulting from the business activity to be supported", and thus clearly address "risks to people".                                                                                                                                                                                                                                  |
| <b>Report p. 34</b>                                                             | <i>"The facility has been used in several cases to fund ESG interventions [...]. However, there are only few illustrations of such uses."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Norfund disagrees with this claim, as 80 percent of active category 2 interventions in 2016 had ESG components.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Chapter 4.3.2. African Century Real Estate and Annex 10</b>                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Report p. 57</b><br><b>Annex p. 54</b>                                       | <i>"Yet Norfund and Takura Capital did not engage directly with local communities or required any particular action in this respect"</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Even though these were land leases entered into prior to Norfund investment, and the properties were urban, without habitation, the risks were properly analysed. The legal due diligence and documentation showed that due process had been followed in the land acquisition process. Norfund engaged a Mozambican legal counsel to verify that community consultations and public announcements had been carried out. The review by legal counsel did not disclose any issues that necessitated further investigations or actions by Norfund.                                                                                                                                                                           |
| <b>Annex p. 52</b>                                                              | <i>"Takura organised a visit on site in January 2015 – but Norfund did not take part in the visit"</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | This visit of Takura was not part of the ESG DD process. Norfund and Takura jointly developed the basis for the assessment, reviewed the responses together and carried out further assessments based on key risks identified. Norfund visited the site(s) on four occasions during the period 2014–2016.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Annex p. 54</b>                                                              | <i>"Norfund does not conduct routine inspections of existing ACRE development and does not revise its assessment of ESG risks"</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Norfund changes ESG risks classification based on new information or developments. As there has been no new developments, there has not been any reason to reclassify the project nor conduct periodic inspections.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Chapter 4.2.4. The Yara fertilizer terminal in Dar es Salaam and Annex 8</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Report p. 52</b><br><b>Annex p. 48</b>                                       | <i>"Yara International has an ethics hotline that can be used to receive grievances from external stakeholders, but with limitations; members of Yara Tanzania Limited's middle management interviewed for this evaluation did not refer to it, and the internet-based hotline is not necessarily easy to find for a Tanzanian stakeholder".</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Grievances in a country like Tanzania would typically be received from regular meetings with different stakeholder groups or through individual direct contacts with the Yara. An internet-based mechanism in Swahili is seen by Norfund as a useful additional safeguard.                                                                                                                                                                                                                                                                                                                                                                                                                                                |



## FOOTNOTES REQUESTED BY THE EMBASSIES IN DAR ES SALAAM AND MAPUTO

| Page number    | Report                                                                                                                                                                                                                                                                                                                                                                                                                                    | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Page 6</b>  | <i>"The main responsibility for fulfilling the State's duty to protect human rights lies with MFA and the embassies."</i>                                                                                                                                                                                                                                                                                                                 | Each state is responsible for protecting human rights within their territories. The role of Norwegian state organs such as MFA and the embassies is to encourage Norwegian companies to behave ethically and responsibly, and to use the UNGP guidelines, which will contribute to the protection of human rights. It does not fall under the mandate of the embassy to enforce this or actively investigate Norwegian private companies' business practices, as stated by the evaluators themselves on page 48 in the report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Page 7</b>  | <i>"There are significant gaps in the human rights due diligence performance by most entities in projects and investments involving private sector actors. This is particularly true for MFA, embassies and Norad, and also Innovation Norway." Lack detailed procedures that can be adapted to context.<br/>"They also lack procedures to track and monitor human rights impacts of the operations during the delivery of projects."</i> | The case embassies strongly disagrees with this statement. The embassies do not provide grant funding to any for-profit business entities. The example KPMG has used from Tanzania, SAGCOT, is registered as a Company limited by Guarantee, but has an application to be registered as a Charitable Organization. Furthermore, the evaluators have struggled to understand the roles and responsibilities of the different institutions involved. The annual instruction ("årsinstruks") from the MFA instructs the embassies to "contribute with guidance for responsible business practices and encourage companies with business engagements to do Due Diligence, manage risks and have knowledge with OECD guidelines. The Government expects that Norwegian companies follows these guidelines." It is not the embassy's mandate to actively track and monitor companies' compliance. The ambition on follow-up of human rights, including with regard to private businesses, must be calibrated with the actual responsibility of the embassy as stated in the instructions. |
| <b>Page 7</b>  | <i>"The evaluation finds that human rights risk assessments are conducted, but they depend to a large extent on the human rights due diligence done by the project partner." The agency often lacks capacity, competence etc. to assess.<br/>"The government entities cannot automatically rely on the human rights due diligence done by business actors."</i>                                                                           | The case embassies finds this statement inaccurate. It is correct that the embassies, along with applications for funding, receive the partner's risk assessment. This is then thoroughly assessed internally and often externally by the embassy, and is a central part of the Embassies' advisory forums. Feedback is given to the partner if modifications are necessary. The risk assessment is regularly reviewed and discussed with partners both in formal and informal meetings in order to update the risk assessment. This is part of the follow up as stipulated in the Grant Management Manual and grant agreements.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Page 16</b> | <i>"Interviews were conducted with officials of all evaluated entities, (footnote)..."</i>                                                                                                                                                                                                                                                                                                                                                | The evaluators made very narrow selections in choosing what staff to interview at the embassies, and have then made sweeping generalizations, often not based on systematic assessments. For example was key staff, with in-depth knowledge on the topic and significant institutional memory, not interviewed at both embassies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Page 27</b> | <i>"The embassies do not have systems in place for securing institutional memory and knowledge building of the country contexts in relation to human rights."</i>                                                                                                                                                                                                                                                                         | The case embassies disagrees with this sentence. As mentioned in the following sentence, the embassy reports, documents, and keep track of all the major Human Rights issues in Tanzania. The embassies' institutional memory and knowledge building is also more than the periodic reports, and include formal and informal digital and paper-based archives, as well as handover of folders and notes to new employees. In addition, the embassies have a number of highly qualified local program staff that possess a wealth of contextual knowledge. Norwegian staff work in pairs with local staff, which provides the main avenue for transfer of knowledge and contributes to the institutional memory. The evaluators did not prioritize interviewing local staff. The embassy in Mozambique has two designated staff members reviewing human rights issues; however, none of them were interviewed.                                                                                                                                                                       |
| <b>Page 29</b> | <i>"The embassies do not have systems in place for securing institutional memory and knowledge building of the country contexts in relation to human rights."</i>                                                                                                                                                                                                                                                                         | See the footnote regarding the almost identical sentence in page 27.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Page 29</b> | <i>"Lack of follow-up, reporting to MFA on a general level, and "The interviewed officers could not recall any incidences or provide any documentation of cases where supported businesses had been sanctioned due to negative human rights impacts."</i>                                                                                                                                                                                 | See notes above regarding the role of the embassies, and the fact that the Norwegian Embassy in Tanzania does not provide any financial support to for-profit businesses.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

| Page number | Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| Page 45     | <i>"The sector distribution of support to private sector in Tanzania reflects overall Norwegian ODA support; economic development and trade dominating (83% of the total on average between 2010 and 2013), followed by good governance (8%), environment and energy (7%) and health and social services (2%). In Mozambique, by contrast, support to private sector has essentially focused on two sectors: economic development and trade (93%) and environment and energy (6%). A complete list of Norwegian support to projects involving private sector actors in Mozambique and Tanzania is provided in Annex 17."</i> | <p>The Norwegian Embassy in Tanzania question the quality of the table presented in Annex 17 in the report (Projects supported by Norway with private sector as implementing partners 2010–2016). The statistical definition of "private sector" in our system may not be fit for purpose for this assignment. The analysis need to distinguish between Norfund (which constitutes most of the grants in the table) and MFA and the embassy, which to a very limited extent would provide grants to private businesses. Footnote 70 even states that the figures include procurement of consultancy services, and these procurements should not be presented as "support (grants) to private sector corporations. Even the Peace Corps is included, and these funds are salaries to Norwegian citizens and cannot be lumped together under the headline "support to private sector actors" in the Annex.</p> <p>The Norwegian Embassy in Tanzania does not provide any financial support to for-profit businesses.</p> |
| Page 48     | <i>"The embassy staff recognised the need for better understanding of key issues, such as land rights, and more follow up, including field visits, but cited limited capacity, caused in part by the shift of more administrative duties for the embassies."</i>                                                                                                                                                                                                                                                                                                                                                             | The statement on shift of more administrative duties for the Embassy is unclear; we do not recognize this statement. Field visits do take place on a regular basis, but it can always be more frequent. The high work load in general, not specifically the administrative duties, can hamper the possibility of increasing number of field visits.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Page 49     | <i>"The embassy's half-yearly reports provide updates on the human rights situation in the country. They also report on Norwegian business interests in the country. But the reviewed reporting (3 last years) does not contain any mention of specific cases of human rights concerns tied to Norwegian development assistance or Norwegian businesses. This means that the embassy has not reported on any cases, like Norfund's investments, that have attracted negative attention and media coverage due to alleged human rights abuses (see, for example, the case of Kilombero Plantation Ltd, described below)."</i> | As mentioned above, it is not in the embassies mandates to do routine visits and check-ups on Norwegian-supported projects. The fact that grievances are not mentioned in general reports does not mean that concerns are not communicated to partners.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Page 49     | <i>"The capacity to follow up on projects is limited, partly caused by the transfer of administrative grant management duties from MFA and Norad to the embassies."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                      | See footnote for page 48 above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Page 49     | <i>"There is little institutional knowledge on the Tanzanian context, and no system in place for building institutional knowledge and memory."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | As mentioned in the footnote of page 27, the case embassies disagrees with this sentence. The Embassy reports, documents, and keep track of all the major Human Rights issues in Tanzania. The embassy's institutional memory and knowledge building is more than the periodic reports, and include formal and informal digital and paper-based archives, as well as handover of folders and notes to new employees. In addition, the Embassies have a number of highly qualified local program staff that possess a wealth of contextual knowledge. Norwegian staff work in pairs with local staff, which provides the main avenue for transfer of knowledge and contributes to the institutional memory. The evaluators did not prioritize interviewing local staff. The embassy in Mozambique has two designated staff members reviewing human rights issues; however, none of them were interviewed.                                                                                                               |

| Page number | Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| Page 49     | <i>"Embassy staff has limited knowledge of key human rights risks, such as land rights."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>The embassy in Dar es Salaam believes this conclusion is unrelated to reality. The staff at the Embassies has a thorough contextual understanding of Mozambique and Tanzania, reuniting decades of working experience in the country. The Norwegian staff at the Embassies also has years of experience working on general human rights issues, both in the Ministry and in key Norwegian human rights institutions. The evaluators did not prioritize interviewing management nor local staff in Tanzania. A number of highly qualified local program staff possess a wealth of contextual knowledge. Norwegian staff work in pairs with local staff, which provides the main avenue for transfer of knowledge. For the staff selected for interviews, the evaluators did not carry out a comprehensive assessment of their contextual knowledge or understanding of human rights in Tanzania. The staff interviewed volunteered information/analysis on a wide range of Human Rights issues specific to Tanzania, including land rights and issues particularly relating to businesses, but information beyond the narrow scope of the evaluators seems to have been ignored.</p> <p>There is always room for improvement in the systematic training of new staff, including on human rights issues. However the issues detailed above indicate a very weak evidence base for the evaluator's sweeping generalizations. This finding seems entirely driven by anecdotal evidence.</p> <p>As mentioned several times above, it is the companies' responsibility to ensure they have a thorough understanding of the context. The Embassy is not, and should probably not be, an expert advisor on all the HR challenges Norwegian companies can face when investing abroad. The Embassy in Dar es Salaam therefore provides an overview of HR risks, and recommends companies to use lawyers or consultants that can guide them to ensure they are compliant with UNGP and local and Norwegian law.</p> |
| Page 55     | <i>"However, the Embassy does only a limited due diligence to verify processes and practices of implementing partners, and does not seek to investigate that contractual provisions are respected. Background searches and checks may be performed, but only on an ad hoc basis. In particular, the Embassy does not consider its task to check human rights conditions along the value chain. Although it would be beyond the capacity of the Embassy to do a fully-fledged human rights due diligence on every project involving business, it would seem relevant and useful with clearer definitions of what is expected."</i> | The Embassy in Maputo disagrees with this statement, which indicates that the Embassy is expected to conduct due diligence on contractual provisions. The National Action Plan does not state this as a responsibility of the Embassy. The paragraph also indicates that it is the Embassy's responsibility to check human rights conditions along the value chain, which is incorrect.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Page 56     | <i>"The Embassy uses the UNGP National Action Plan in its strategic work towards job creation. However, the Embassy's management and staff do not seem fully aware of the reach of UNGP, which is not limited to businesses to which it provides direct financial support. The Embassy could play a far more active role in forums such as the development partners' Private Sector Working Group, making it a platform for inter-sectorial discussion by e.g. including civil society organisations in addition to donors and private entities."</i>                                                                             | The Embassy disagrees with this statement, as it indicates that according to UNGP the Embassy has responsibilities reaching further than the businesses it provides with financial support. The additional responsibilities that follow from UNGP Pillar I is outside of the scope of the evaluation, and should thus not be included. The Private Sector Working Group is a forum intended for sharing information between donors, and to get updates on relevant topics. It is not normal in any Working Group that CSOs are part of the forum.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Page 56     | <i>"Two Mozambican civil society organisations stated that they had found the Embassy to be unresponsive to human rights concerns related to projects with Norwegian interests.[1] This points to the latent conflict in the divided approach to development cooperation, where business promotion and human rights are dealt with separately. The Embassy could make better use of its potential role as a convener to encourage private sector actors, government representatives and civil society to join informed and broad debates on human rights and business."</i>                                                       | The Embassy believes the grounds for this statement is very thin as the CSO panel discussion did not include any of the major CSO that the Embassy cooperates with on human rights, nor the major organizations working on business rights in Mozambique. Due to the absence of relevant organizations in the panel discussion, it is our opinion that there is not sufficient grounds to state that the Embassy is difficult to reach out to.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Page number | Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Page 63     | <i>"The risk assessment for the SAGCOT project in Tanzania, for example, identified issues relating to land loss and lack of community consultation. The recommended mitigating actions specified a need for context specific procedures to document and verify that community consultations and land rights related issues had been dealt with in a responsible and verifiable manner. These recommendations were not implemented, and follow-up has been patchy."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | The SAGCOT Centre has as one of their objectives that their activities should be socially responsible, and they have a dedicated person working on this. SAGCOT's Green Reference Group (GRG) has developed a tool to assess partners' compliance with SAGCOT's principles for green growth, including social issues, and advises the center on this. It is therefore not correct to say that the recommendation was not implemented, although it could probably have been implemented more forcefully. |
| Page 63     | <i>"Lack of systems for follow-up of risk assessments: The evaluation has revealed that there are no systems in place for systematic follow-up of risk assessments. Even if up front risk assessments are good, they are not likely to have the desired impact in the absence of consistent and informed monitoring."</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | See second footnote for page 7.                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Page 63     | <p><i>"The embassies have arguably the most important role when it comes to operationalising human rights due diligence in the Norwegian aid administration. They are effectively responsible for the implementation of MFA projects, often play key role in the management of Norad projects, and they play a supporting role for Norfund, Innovation Norway and Norwegian companies operating internationally.</i></p> <p><i>At the same time, embassies have experienced cuts in personnel and operational budgets. With the abovementioned lack of systems to guide implementation of due diligence process and follow-up, and the absent structures for institutional memory, they are ill equipped to perform the tasks required from them.</i></p> <p><i>In addition, staff do not get, as a general rule, sufficient training on human rights due diligence and country context and sector specific issues relating to human rights, and they do not have the capacity to handle such complex and time-consuming issues. Given possible conflicts on promoting and supporting Norwegian business on the one hand, and on the other hand implementing UNGP and HRDD in its own project portfolio, it is even more important that embassies are capacitated for this."</i></p> | <p>The case embassies strongly disagrees with these conclusions.</p> <p>See previous footnotes for pages: 6, 7, 16, 27, 29, 45, 48, 49, 63.</p>                                                                                                                                                                                                                                                                                                                                                         |

## FOOTNOTES REQUESTED BY INNOVATION NORWAY

| Page number                     | Report                                                                                                                                                                                         | Requested footnote                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Page 41</b>                  | <i>First para under heading «policies, guidelines, procedures»</i>                                                                                                                             | INs policy “Good business practice – Innovation Norway’s expectation for customers and partners” both reference UNGP and further specify principles on Human Rights, such as “Avoid violating human rights and labour rights legislation, especially in countries with weak enforcement of relevant legislation. Prevent violations of human rights in own operations and in the value chain, for instance by conducting due diligence. Address violations of human rights in own operations”.           |
| <b>Page 41</b>                  | <i>Second paragraph under heading «allocation of responsibilities»</i>                                                                                                                         | Ref principle 4 has no state entity required, nor encouraged as UNGP states, IN to perform HRDD. The seven projects funded by IN under the Vision2030 scheme is how ever considered by IN as low risk with regard to the nature of business operations or operating contexts.                                                                                                                                                                                                                            |
| <b>Page 41</b>                  | <i>“Innovation Norway emphasizes two principles at all stages of its projects:”</i>                                                                                                            | This refers to customers’ projects, and not projects conducted by Innovation Norway.                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Page 42, under Grievance</b> | <i>“Innovation Norway itself or its employees or by third parties (an internal mechanism was already in place). The whistle-blowing channel does not mention human rights...”</i>              | Innovation Norway’s whistle-blowing channel refers to all applicable policies, including INs policy on Good business practice – where HR requirements are described.”                                                                                                                                                                                                                                                                                                                                    |
| <b>Page 53, under 4.2.6</b>     | <i>“Innovation Norway did not seem aware of these facts. For the evaluation team, this case is indicative of a relatively loose monitoring of at least some projects by Innovation Norway”</i> | “With reference to our procedures and the terms and conditions outlined in the agreement with the customer (referred to in this document as “partner”); «Any substantial alterations to the project must be approved in advance by Innovation Norway». The payments to customers are done in sequences and based on reporting of proceedings in line with project proposal. The knowledge of changes to a customer projects at a specific date does not reflect the ability or routines for monitoring.” |

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# Abbreviations and acronyms

|                |                                                                                   |                     |                                                                                                                                          |               |                                                                                 |
|----------------|-----------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------------------------------------------|
| <b>CCM</b>     | Chama Cha Mapinduzi – the Tanzanian political ruling party                        | <b>GIEK</b>         | The Norwegian Export Credit Guarantee Agency                                                                                             | <b>NOREPS</b> | Norwegian Emergency Preparedness System                                         |
| <b>CESOM</b>   | Centro Solar de Mocuba                                                            | <b>GRG</b>          | Green Reference Group                                                                                                                    | <b>ODA</b>    | Official Development Assistance                                                 |
| <b>CDC</b>     | The UK's Development Finance Institution (DFI), wholly owned by the UK Government | <b>HICEP</b>        | The Hydraulic Company for the town of Chókwè                                                                                             | <b>OECD</b>   | Organisation for Economic Co-operation and Development                          |
| <b>CIP</b>     | Clearance in Principle                                                            | <b>HR</b>           | Human Rights                                                                                                                             | <b>PAPs</b>   | Project Affected Persons                                                        |
| <b>CLO</b>     | Community Liaison Officer                                                         | <b>HRDD</b>         | Human Rights Due Diligence with reference to due diligence processes aligned with the UN Guiding Principles on Business and Human Rights | <b>RUBADA</b> | Rufiji Basin Development Authority                                              |
| <b>CSR</b>     | Corporate Social Responsibility                                                   | <b>HRDD QA tool</b> | Human Rights Due Diligence Quality Assessment Tool                                                                                       | <b>RENAMO</b> | The Mozambique National Resistance – the largest opposition party in Mozambique |
| <b>DFI</b>     | Development Financial Institution                                                 | <b>IDD</b>          | Integrity Due Diligence                                                                                                                  | <b>SAGCOT</b> | Southern Agricultural Growth Corridor of Tanzania                               |
| <b>DFID</b>    | Department for International Development (UK)                                     | <b>IFC</b>          | International Finance Corporation – World Bank Group                                                                                     | <b>Sida</b>   | The Swedish International Development Cooperation Agency                        |
| <b>DUAT</b>    | Direito do Uso e Aproveitamento da Terra (a Mozambican land lease)                | <b>ILO</b>          | International Labour Organisation                                                                                                        | <b>SES</b>    | Simplified Environmental Study                                                  |
| <b>EDM</b>     | Mozambican Electricity Company (Electricidade de Moçambique)                      | <b>IMF</b>          | International Monetary Fund                                                                                                              | <b>SOPs</b>   | Standard Operating Procedures                                                   |
| <b>EIU</b>     | Economist Intelligence Unit                                                       | <b>Impacto</b>      | Projectos e Estudos de Impacto Ambiental Lda                                                                                             | <b>SRESA</b>  | Strategic Regional Environmental and Social Assessment                          |
| <b>ERM</b>     | Environmental Resources Management                                                | <b>KPL</b>          | Kilombero Plantation Ltd – a rice farm on Tanzania's Southern Highlands                                                                  | <b>STE</b>    | Sistema Nacional de Transporte de Energía                                       |
| <b>ESCOM</b>   | Electricity Supply Corporation of Malawi Limited                                  | <b>LHRC</b>         | Legal and Human Rights Centre in Tanzania                                                                                                | <b>TOR</b>    | Terms of Reference                                                              |
| <b>ESG</b>     | Environmental, Social and Governance                                              | <b>MFA</b>          | Ministry of Foreign Affairs (of Norway)                                                                                                  | <b>UKS</b>    | The Foreign Service's Training Centre (Norway)                                  |
| <b>ESIA</b>    | Environmental and Social Impact Assessment                                        | <b>MDM</b>          | Mozambique Democratic Movement – the third largest political party in Mozambique                                                         | <b>UN</b>     | United Nations                                                                  |
| <b>ESMP</b>    | Environmental and Social Management Plan                                          | <b>NCP</b>          | National Contact Points (OECD)                                                                                                           | <b>UNDAP</b>  | United Nations Development Assistance Plan                                      |
| <b>EU</b>      | European Union                                                                    | <b>NAP</b>          | Norwegian National Action Plan                                                                                                           | <b>UNDP</b>   | United Nations Development Programme                                            |
| <b>FDI</b>     | Foreign Direct Investments                                                        | <b>Norad</b>        | The Norwegian Agency for Development Cooperation                                                                                         | <b>UNGP</b>   | United Nations Guiding Principles on Business and Human Rights                  |
| <b>FMO</b>     | The Netherlands' Development Finance Company                                      |                     |                                                                                                                                          | <b>UPR</b>    | Universal Periodic Review                                                       |
| <b>FRELIMO</b> | Mozambique Liberation Front – the Mozambican ruling political party               |                     |                                                                                                                                          | <b>USAID</b>  | U.S. Agency for International Development                                       |

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