

EMBEDDING THE UN GUIDING PRINCIPLES IN FINLAND'S STATE FINANCING OF PRIVATE SECTOR ACTIVITY ABROAD

FINAL PROGRAM REPORT

DECEMBER 2022



Shift

Embedding the UN Guiding Principles in Finland's State Financing of Private Sector Activity Abroad

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A. PROGRAM OVERVIEW

Between 2018-2021, the Finnish government engaged Shift, the leading non-profit center of expertise on the UN Guiding Principles on Business and Human Rights (UNGPs), to support Finland's private sector instruments with their implementation of the UNGPs. Finland's private sector instruments consist of a number government agencies and programs that provide financial and other forms of government support for private sector activity abroad. They include:

- Finnfund, Finland's national development finance institution,
- Finnvera, Finland's export credit agency,
- Business Finland, the Finnish innovation funding, export, investment and travel promotion agency.
- Finnpartnership, which provides seed funding to Finnish businesses for long term business projects in developing countries and offers matchmaking opportunities with local businesses.
- The Public Sector Investment Facility (PIF), which supports Finnish private sector engagement in projects with foreign governments and,
- Education Finland, which promotes Finland's education sector abroad.

The broad objective of the program was to strengthen alignment between the policies, processes and practices of these agencies and programs with the expectations of the UNGPs – in other words, to embed a human rights lens in their due diligence processes.

The program was implemented in two phases. The first phase ran from April 2018-June 2019, and was summarized in a program update in October 2019 entitled “Aligning Finnish State Financing for Private Sector Activity Abroad with the UN Guiding Principles on Business and Human Rights.”¹

The second phase ran from July 2019-December 2021, and consisted of three components:

1. Private sector instrument support: Shift continued to provide tailored bilateral support to the private sector instruments, with a focus on Finnfund, Finnvera and Business Finland;
2. Advisory Support to the Ministry of Foreign Affairs: Shift provided expert advisory support to Finland's Ministry of Foreign Affairs to help advance the government's approach on business and human rights, particularly during Finland's Presidency of the Council of the European Union (EU) in 2019. This included the development of an internal eLearning course about the

¹ Available at https://um.fi/documents/35732/0/Final%2BProgram%2BReport_Finland_Public%2Bfinancing_2019.pdf/aa80c26e-2706-49b1-00d9-e4b0e46fc20d?t=1590998543483

application of the UNGPs to Ministry and private sector instrument roles, along with a number of dialogue sessions that focused on key aspects of UNGPs alignment

3. Evaluating Human Rights Performance: As a separate component of the program, the Finnish government provided financial support to Shift's Valuing Respect Project to improve the evaluation of business respect for human rights and develop public tools capturing the learning.²

This final program report focuses on the main body of work supporting the Finnish private sector instruments.

- Part B sets the **context**, including how the state duty to protect against business-related human rights harms connects to the state's role in supporting private sector activity and the rationale for bringing a sharper focus to human rights impacts that could be connected to these activities.
- Part C provides a **high-level overview of the main activities** and results from the advisory support to the instruments, followed by a brief summary of activities undertaken as part of the advisory support to the Ministry of Foreign Affairs.
- Part D highlights some of the lessons learned through the private sector instrument support. In particular, it explores the key question that underpinned the program: **what is the added value of bringing a human rights lens to existing frameworks for managing environmental and social (E&S) or sustainability-related risks?** Most financial institutions and business advisory agencies, including Finland's private sector instruments, have an existing risk management framework and 'language', based for example on the IFC's Environmental and Social Performance Standards, the OECD Common Approaches for Export Credit Agencies, and/or the Sustainable Development Goals. While these frameworks provide an important foundation, our work to support Finland's private sector instruments highlighted what can be gained by integrating a human rights lens – grounded in the UNGPs – into these existing frameworks. This builds on Shift's existing work to bridge across different sustainability-related 'narratives' and show how the UNGPs can help bring greater precision to the management of social risks and the achievement of positive social outcomes.³
- Part E concludes by drawing connections between the private sector instrument support and the Finnish government's support for Shift's work to strengthen the evaluation of companies' human rights performance. We present some of the common challenges that financial institutions face in managing human rights risks in their portfolios, and how several of the tools developed through the Valuing Respect Project can help financial institutions of all kinds address some of these challenges. **This report is accompanied by a series of 3 stand-alone tools for financial institutions to support their efforts to assess and engage with client and portfolio companies on human rights risks**, developed under the third component of the program, and included as annexes.

² See <https://shiftproject.org/what-we-do/valuing-respect/>.

³ See <https://shiftproject.org/resource/unlocking-narratives/>.

B. SETTING THE CONTEXT: WHY FOCUS ON PRIVATE SECTOR INSTRUMENTS?

1. *The State Duty to Protect, the Corporate Responsibility to Respect, and the State-Business Nexus*

States provide direct and indirect support to private sector activities at home and abroad in a range of ways. This includes state support for the key roles played by export credit agencies (ECAs), development finance institutions (DFIs), trade promotion activities, and development cooperation agencies and programs. State support for private sector activities abroad can serve a number of state objectives, including supporting domestic economic growth by facilitating opportunities for private sector actors abroad, promoting social and economic development internationally, encouraging environmental sustainability, and advancing broader state foreign policy interests.

However, just as with any private sector activity, business activities supported by the state can be connected to adverse human rights impacts – often through a company's extended supply chain and other types of third party business relationships, or by the ways its products or services affect customers or end-users.

The UN Guiding Principles on Business and Human Rights (UNGPs) are the authoritative global framework on the responsibility of businesses for human rights impacts connected to their operations and value chains. Pillar 1 of the UNGPs elaborates on the state duty to protect against business-related human rights impacts, while Pillar 2 focuses on the corporate responsibility to respect human rights.

As part of the duty to protect, the UNGPs call special attention to the role of states in providing support for private sector activities in Guiding Principle 4. This focus on the 'state-business nexus' recognizes that – precisely because the state is providing financial and/or other resources – states should take additional steps to encourage and, where appropriate, require that the private sector actors that their agencies and programs support are meeting their own responsibilities to prevent and address human rights impacts.

Many of these agencies and programs have explicit environmental and social sustainability objectives tied to economic development mandates which would be undermined by business practices that or fail to address human rights impacts. As the UNGPs point out, such a situation could also lead to reputational, financial, political (and potentially legal) risks to the state agencies themselves, as well as adding to the human rights challenges faced by recipient/host states.

2. *Finland's Focus on Private Sector Instruments*

Governments in a number of countries have instructed their agencies and programs that support private sector activity abroad to align their approaches with the UNGPs. However, the Finnish Government's approach through this program of cooperation with Shift was unique in two important ways. First, rather than focusing on an individual agency, the program took a comprehensive approach by looking across a broad range of Finland's private sector instruments. Second, rather than simply setting an expectation, the Finnish government provided multi-year advisory and capacity-building support to these instruments to strengthen their policies, processes and practices towards greater alignment with the UNGPs.

In most cases, Finland's private sector instruments -- like their international peers -- start from some foundation of existing frameworks for managing E&S risks and promoting sustainability. These frameworks are often based on or create industry-wide standards, and require the instruments to conduct some level of E&S due diligence on business activities that they are considering supporting.

The frameworks include:

- IFC Environmental and Social Performance Standards for DFIs, including Finnfund;
- OECD Common Approaches for ECAs, including Finnvera;
- UN Sustainable Development Goals (SDGs), which shape Business Finland's sustainability efforts; and,
- a Human Rights-Based Approach (HRBA) in development cooperation programs, including Finland's development cooperation assistance.

The advisory support to the private sector instruments highlighted a foundational question, which many private sector instruments ask: if we already have existing E&S risk management and/or sustainability frameworks, what does it mean in practice to integrate a human rights lens? In other words, what is the value add of the UNGPs?

Section C (below) provides a high-level summary of the activities that shaped the advisory support to the instruments, while Section D then draws insights from the advisory work to address this foundational question.

C. OVERVIEW OF PROGRAM ACTIVITIES AND PROGRESS ACHIEVED

1. Private Sector Instrument Support

In the first phase of the program, Shift worked with five different instruments: Finnfund, Finnvera, PIF, Finnpartnership and Business Finland (primarily through its BEAM program, Business with Impact). The second phase of the program focused on three instruments: Finnfund, Finnvera and Business Finland as a whole, with a discrete piece of advisory work supporting Education Finland.

With **Finnfund** and **Finnvera**, which had dedicated E&S risk management functions, Shift took a capacity-building approach, working with internal staff to embed a human rights lens into each organization's overall E&S risk management framework. This support, and the approach with Business Finland, is detailed further below.

With **PIF**, **Finnpartnership**, **BEAM** and **Education Finland**, which did not have existing E&S risk management functions, Shift took more of a 'process engineering' approach, aimed at integrating a human rights lens into specific stages of the private sector funding or support cycle. This included: the application materials for business entities applying for support, each program's risk screening criteria, follow-up engagement with applicants by program staff, and (in the case of Finnpartnership) the technical support offered to applicants by the instrument.

However, more fundamentally, the advisory work helped these programs recognize that human rights risks were present within their portfolios, even though they may have offered relatively few grants (in the case of PIF), relatively small amounts of financial and non-financial support (in the case of Finnpartnership), or had positive outcome mandates (in the case of BEAM and Education Finland). More specifically:

- **PIF:** PIF provides support to public infrastructure projects abroad in which Finnish private sector businesses partner with foreign governments to strengthen public infrastructure and services. The program is managed internally through ministry advisors, who have various forms of sectoral expertise. Shift worked with the PIF team to review application procedures, strengthening the consideration of human rights risks. Since PIF has a smaller volume of projects, Shift conducted case-based reviews alongside the PIF team of individual projects to identify human rights risks and explore approaches to preventing and managing those risks in specific project contexts, including meeting with grant recipients to discuss specific human rights risks connected to their projects.
- **Finnpartnership:** Finnpartnership provides seed funding and 'match-making' services to help Finnish private sector actors identify potential business partnerships in developing countries, particularly as they look to expand into new markets. Finnpartnership applications are screened and reviewed by Finnfund's E&S risk management team, and higher-risk projects can receive vouchers for technical support from external E&S consultants. In practice, this means that Finnpartnership's staff are not primarily responsible for identifying or determining how best to address human rights risks.

Instead, Shift's support focused on four activities: (1) strengthening the Business Partnership application to better acknowledge and embed human rights risks; (2) developing a human rights component to Finnpartnership's orientation training and materials for applicants to provide early communication about Finnpartnership's human rights expectations; (3) reviewing Finnpartnership's match-making service, including developing minimum standards for potential partners and opportunities to build the capacity of 'spotters' to recognize human rights concerns; and (4) strengthening Finnpartnership's voucher program to ensure more targeted and effective support for businesses engaged in activities with heightened human rights risks. Finnpartnership

identified a new pool of E&S consultants with specific human rights expertise, and Shift led capacity-building workshops with these consultants on the expectations of the UNGPs and helped develop templates and tools for such consultancy support.

- **BEAM:** BEAM was a government program that provided financial support through Business Finland for activities that met certain development impact objectives and criteria. The original BEAM program was nearing its conclusion as the current program of private sector instrument support was getting underway. In agreement with the MFA, the focus of Shift's support shifted from BEAM to the broader set of activities undertaken by Business Finland, which was undergoing an organizational restructuring at the time. This recognized that alignment with the UNGPs should not be limited to the BEAM program but should encompass the full set of economic promotion activities conducted by Business Finland (discussed further below).
- **Education Finland:** A smaller advisory project was also undertaken with Education Finland, supporting Education Finland's leadership to understand and recognize key areas of its programming where potential human rights risks might be greatest.

In addition to these bilateral advisory activities, Shift leveraged opportunities to take an eco-system approach to its support in the first phase, recognizing shared challenges across all the private sector instruments. This included working with a cohort of sustainability consultants that support several of the programs and instruments and provide advisory support directly to businesses, clients or customers; engaging with civil society actors that both support and hold accountable these instruments; and conducting joint training with the instruments to share challenges and approaches.

In the second phase of the program, Shift's continuing support to the private sector instruments focused in on three in particular: **Finnfund**, **Finnvera** and **Business Finland**. With Finnfund and Finnvera, strong existing relationships with these organizations allowed Shift's advisory support to continue on a remote basis during the COVID-19 pandemic that coincided with this phase of implementation.

As noted above, Shift's engagement with Business Finland had been limited in the first phase of the program due to Business Finland's restructuring, and it therefore took some time to establish a working relationship and to identify appropriate support activities under purely remote conditions.

- **Finnfund:** Finnfund is Finland's national DFI, providing financial support to projects and activities in developing countries, with a mandate to promote sustainable environmental, social and economic development.

Finnfund has a dedicated E&S risk management team, including a human rights expert, and a robust framework for managing E&S risks based on the IFC Performance Standards. Shift's prior engagements with Finnfund's peers in the development finance universe have explored how this existing policy foundation has both advantages and challenges. On the one hand, DFIs are already familiar with the idea of connection to risks through client activities, and have experience with managing a number of E&S risks. On the other hand, there has been some reluctance among DFIs to look beyond this framework specifically when tackling human rights risks. It is therefore significant that Finnfund was actively and openly exploring these questions.

Prior to this program, Finnfund had already begun exploring the implications of the UNGPs for its policies and practices. Shift had provided some initial light-touch bilateral support to Finnfund in 2016, following which Finnfund had commissioned an independent gap analysis of its approach with regard to the UNGPs with accompanying recommendations. Shift's engagement with Finnfund built on this foundation, with a focus on addressing gaps between Finnfund's existing approach, aligned with current industry practice, and the expectations of the

UNGPs. Shift worked with Finnfund to apply these approaches to specific cases in Finnfund's investment portfolio, and to engage with Finnfund's executive leadership throughout the program of support to strengthen organizational understanding and commitment. Some of the specific areas of support included:

- **Finnfund's Human Rights Policy Commitment:** In particular, more closely aligning it with the UNGPs' expectations on the scope of responsibility for impacts, a more robust approach to leverage, and a commitment to remedy. Finnfund's revised policy commitment now reflects a leadership position on human rights among peer DFIs.
- **Human Rights Risk Identification:** Finnfund had already recognized the need to supplement its E&S risk identification with human rights due diligence. However, Finnfund was still exploring how to use human rights tools to hone in on the specific circumstances under which additional due diligence would be important, and what this might involve. Shift helped Finnfund adapt and apply these tools.
- **Due Diligence on Financial Intermediaries:** Over the last several years, DFIs' portfolios have evolved from the financing of specific projects to a more mixed approach that includes substantial investments through financial intermediaries (i.e., intermediary financial institutions, including national banks and special facilities that multiple DFIs jointly invest in). However, existing E&S risk assessment frameworks are primarily designed to assess and address risks with specific clients and/or project contexts in mind. With Shift's support, Finnfund is in the process of adapting its approach to human rights due diligence for financial intermediaries, with a particular focus on the risk profile of an intermediary's portfolio and the maturity of the intermediary's human rights risk management systems.
- **Leverage and Remedy:** Finnfund organised cross functional discussions - including with executive leadership - to develop a more robust framework for building and using leverage to influence clients and third parties to address human rights risks.
- **Human Rights Defenders:** Through engagement with civil society advocates, Finnfund strengthened its commitment and approach to protecting the rights of human rights defenders in particularly high-risk investment contexts.
- **Human rights reporting:** Finnfund took initial steps to enhance its external reporting on human rights, in line with the UN Guiding Principles Reporting Framework, which can help provide greater transparency and accountability towards Finnfund's stakeholders.
- **Solar Sector Due Diligence:** Along with several peers, Finnfund is taking a leadership role among DFIs in defining expectations for credible due diligence in the solar sector, where urgent environmental imperatives for investments in renewable energy are clashing with credible allegations of state-sponsored forced labor in solar supply chains.
- **Finnvera:** Finnvera is Finland's ECA, providing insurance and guarantee products that facilitate Finnish private sector engagement with international business partners. Finnvera has a dedicated E&S risk management team, and an existing framework for E&S risk management based on the OECD Common Approaches for ECAs. Like the IFC Performance Standards, the Common Approaches provide a solid foundation for E&S risk management, but also contain some important gaps in relation to the expectations of the UNGPs.

Shift's engagement with Finnvera began with a comprehensive gap analysis of Finnvera's existing approaches against the UNGPs and accompanying recommendations. Finnvera used the gap

analysis as an opportunity for internal engagement and capacity-building with both Finnvera's E&S risk management team and Finnvera's leadership.

Subsequent support focused on addressing key gaps, including:

- **Scope of Due Diligence:** Finnvera revised its E&S risk management framework to enhance alignment with the UNGPs on issues such as the range of products covered by the framework.
- **Screening of Transactions:** Due to Finnvera's high volume of transactions, Finnvera's E&S team cannot individually review each transaction. Finnvera fine-tuned its assumptions of heightened human rights risks requiring proactive due diligence, with a focus on criteria and guidance for relevant high-risk sectors (such as ICT) and its ability to conduct reactive due diligence through an automated screening process for presumptively lower-risk transactions.
- **Leverage and Remedy:** Shift helped build Finnvera's understanding of what a more robust framework for leverage and remedy might entail, including supporting the implementation of collaborative leverage approaches with peer ECAs and clients in certain sectors in a series of case-based applications.
- **Leveling the Playing Field:** One of the challenges in deviating from industry standards by addressing areas of under-alignment with the UNGPs is the potential for a competitive disadvantage for Finnish companies requiring export credit support, if Finnvera is setting higher expectations for its customers than peer ECAs. Recognizing this concern, Finnvera and Shift jointly presented Finnvera's efforts to peer ECAs at the OECD E&S Practitioners' Forum as part of broader conversations among leading ECAs that are seeking to drive up wider ECA practice on human rights.
- **Business Finland:** Business Finland actively promotes and supports opportunities for Finnish private sector entities to identify and engage in business activities abroad. Following an organizational restructuring that merged several previously separate programs of support, Business Finland has recently become a primary interface for Finnish businesses with the global economy. However, due to this restructuring and the challenges posed by the pandemic, it took time to find points of traction for integrating a human rights lens into Business Finland's programs.

In November 2021, Business Finland launched a new sustainability strategy to underpin its approach, positioning environmental and social sustainability as a core competitive advantage for the Finnish private sector in the global economy. Business Finland's new sustainability strategy, grounded in the SDGs, leverages existing Finnish leadership on promoting positive environmental outcomes. However, Business Finland recognized a gap in both internal capacity and practical approaches for understanding and promoting the social side of sustainability. Through the advisory support provided by Shift, Business Finland recognized an opportunity to position the UNGPs as the key framework for social sustainability, unlocking opportunities to deepen its alignment with this key standard in the future.

In the second half of 2021, in the lead-up to the launch of the new strategy, Shift and Business Finland collaborated on an ambitious internal engagement series, conducting more than 25 sessions with organizational leaders and operational staff that introduced the UNGPs as the social side of Business Finland's sustainability strategy. While there remains substantial work to

operationalize this approach, the advisory support built a foundational understanding of the ways in which ensuring respect for human rights is both relevant and essential to Business Finland's mandate and its support to Finnish private sector entities.

2. Support to the Ministry of Foreign Affairs (MFA) on Business and Human Rights

- **Supporting Finland's Presidency of the Council of the EU:** In the second half of 2019, Shift's support to the MFA focused on the design and delivery of a high-level event in Brussels on advancing business and human rights at EU level. A central objective was to help reinvigorate policy discussions on the topic in the absence of a coordinated EU plan of action.

The conference explored three main themes: a) the importance of integrating the UNGPs into state financing for the private sector (highlighting the experience of Finnfund in particular); b) the role of binding regulation as part of a smart mix of measures in advancing uptake of the UNGPs; and c) the importance of collective leverage in seeking improved human rights outcomes in global supply chains.⁴ The opening keynote was delivered by Professor John Ruggie in which he highlighted the complementary role of mandatory measures alongside voluntary ones in the model of 'dynamic regulation' that the UNGPs envisaged.⁵

In preparation for the event, Shift helped coordinate contributions from various stakeholders to a 'perspectives paper' highlighting key issues that they wanted to see the EU tackle.⁶ Shift also worked closely with the MFA on the outcome document from the conference, entitled an 'Agenda for Action on Business and Human Rights'.⁷ The Agenda for Action was presented by the Finnish Minister for Employment at the close of the event, and it highlighted several important areas for progress, including:

- The need for an EU Action Plan on business and human rights;
- The importance of advancing human rights due diligence through a mix of mandatory and voluntary measures, including EU-wide corporate due diligence regulation;
- The value of integrating human rights due diligence into state financing and public procurement;
- The urgency of improving human rights outcomes for workers and local communities through development cooperation, trade measures and collective initiatives involving the private sector;
- The need to develop proposals to address gaps in access to state-based remedy in the existing EU legal framework, including through broader corporate due diligence regulation.

The efforts of many stakeholders, as well as wider developments including the impact of the pandemic on vulnerable workers and communities, have since helped drive several of these key topics up the EU's agenda – in particular, in the form of a proposal for an EU Directive on corporate sustainability due diligence and

⁴ See further: <https://shiftproject.org/resource/conference-business-human-rights-towards-a-common-agenda-for-action/>

⁵ Available at: <https://shiftproject.org/resource/john-ruggie-keynote-finland2019/>

⁶ Available at: https://eu2019.fi/documents/11707387/12748683/BHR_konferenssi_Perspectives_Paper.pdf/e683f507-5bff-f09d-127b-f5ece1e-a62b1/BHR_konferenssi_Perspectives_Paper.pdf

⁷ Available at: <https://eu2019.fi/documents/11707387/12748671/Agenda+for+Action+on+Business+and+Human+Rights/8d418ed7-c1cc-9b31-3da2-21add95ddcd6/Agenda+for+Action+on+Business+and+Human+Rights.pdf>

accompanying policy measures.

- **Additional Activities:** The program included other activities to build internal capacity on business and human rights and inform relevant policy discussions. In particular, building on Shift's experience designing and delivering capacity-building courses for other governments, Shift led the development of an eLearning course on core business and human rights concepts for the staff of the Ministry of Foreign Affairs and other government officials, which will be launched by the end of 2022.

The MFA also organized several dialogue sessions led by Shift with relevant government officials on key topics on business and human rights, including:

- The potential role of import bans and trade measures as a tool for enforcing human rights due diligence expectations;
- The role of the UNGPs in development cooperation activities, and ways to understand and align expectations of private sector actors participating in development cooperation activities;
- Human rights due diligence in high-risk circumstances and implications for the role of the government in advising Finnish private sector actors operating in these contexts.

D. EXPLORING THE ADDED VALUE OF THE UNGPS: INTEGRATING A HUMAN RIGHTS LENS INTO EXISTING E&S AND SUSTAINABILITY-RELATED FRAMEWORKS

Shift's program of support to Finland's main private sector instruments – as described above in Part C – sought to strengthen alignment between their existing E&S and sustainability-related risk management approaches with the expectations of human rights due diligence in the UNGPs. Shift has undertaken similar work with a range of other organizations, including financial institutions, in different countries over the past decade. The foundational question informing many of these engagements is: *Given existing frameworks to manage environmental and social risks, and/or to promote sustainability related outcomes, what is the added value of the UNGPs in practice?*

1. The Benefits of Existing E&S and Sustainability-Related Frameworks

It is important to start by recognizing the value of the existing frameworks which shape the due diligence approach of Finland's private sector instruments to E&S risks and development opportunities. They provide a number of important benefits:

- **They define common industry standards:** Across the development finance and export credit landscape, the IFC Performance Standards and OECD Common Approaches provide a common baseline, clear expectations, and a level playing field. They ensure that any single DFI or ECA is not 'the only one asking the question' when raising concerns with clients, customers, or third parties, including foreign governments, about E&S impacts. They are therefore more accepted by leaders within and across those organizations, and by their customers and clients as well.
- **They address 'people and planet':** Existing frameworks address both environmental and social impacts, rather than focusing solely on human rights. They are therefore broader in their scope than the UNGPs in that they include attention to urgent global issues such as the effects of climate change and biodiversity loss whether or not those issues involve impacts on people. (Of course where those issues do involve impacts on human rights, then they are within scope of the UNGPs.)
- **They are more prescriptive:** In the case of the IFC Performance Standards and the Common Approaches, existing frameworks have been designed specifically for DFIs and ECAs to apply. They provide a degree of specificity on the actions that financial institutions should take and how certain key topics should be managed (such as labor rights and resettlement) as well as on the E&S risk management systems that should be in place at the client or customer level.

2. What are the Gaps in Existing Frameworks?

While recognizing these benefits, it is equally important to understand what these frameworks do not provide – in other words, what are the gaps in how these frameworks approach the issue of responsibility for preventing and addressing impacts on people and how should financial institutions seek to address them? Shift's work with the Finnish private sector instruments focused on four key areas:

- a) **What is in scope?** The scope of existing frameworks is often limited in important ways. Some, such as the OECD Common Approaches, have certain thresholds related to the amount of the financial exposure, the duration of the transaction or the type of underlying asset. Others focus on the size of the client or customer. Yet, none of these factors is an entirely effective proxy for the level of human rights risk that may be present. In fact, in some instances, smaller transactions can increase risk because financial institutions may have more limited commercial or contractual leverage, or because smaller clients may be less well equipped or resourced to manage human rights impacts.

Other frameworks, such as those based on the IFC Performance Standards, do not address a broad range of risks related to the behavior of third parties. They focus primarily on issues the client can control, and therefore do not look as deeply into extended value chains where the most severe human rights risks may lie, or recognize the full range of contextual risks that can increase the likelihood of severe impacts on people, particularly already vulnerable or marginalized groups.

- b) **Where to focus?** In some cases, businesses may be exposed to a large number of actual or potential human rights impacts and may not be able to address them all immediately. In others, businesses may identify a number of opportunities to contribute to one or more of the SDGs. In both situations, businesses are likely to need to make choices to prioritize their attention and resources. However, existing frameworks do not provide clear criteria to guide businesses in how to make these choices. This can lead to 'cherry-picking', where businesses may choose to focus on the easiest problems to fix, or the ones that pose the greatest risk to or opportunity for the business, rather than thinking about the greatest risks to people.
- c) **What action is expected?** Once risks are identified, expectations for action to address risks under existing frameworks are often limited to a narrow set of tools, focusing on corrective actions that a client can control and/or that can be included in contractual terms or action plans. Where risks are more systemic, or beyond the control of a client, it is not always clear what a robust approach should look like. This can in practice lead to a more compliance-focused mindset, rather than a focus on whether a company's approach is likely to drive better outcomes for people.

Similarly, when impacts occur, these frameworks often lack a clear, consistent and principled approach to the issue of remedy – meaning both the process and outcomes that seek to address harm suffered by individuals or groups – particularly in terms of the appropriate role for the financial institution itself in those processes or outcomes.

- d) **How to balance considerations across multiple mandates?** Private sector instruments often have multiple mandates, which may include both promoting positive development outcomes and preventing or addressing negative impacts. In some cases, instruments may perceive a need to make trade-offs across these different objectives. A given customer or transaction is likely to have some combination of positive outcomes and adverse impacts, particularly in higher-risk contexts. There is often a temptation or tendency to evaluate the totality of outcomes: if the positive outcomes outweigh the negative impacts, then that may be perceived as a tolerable level of risk. However, this approach of 'off-setting' exacerbates the risk that some individuals or groups suffer harm that remains unaddressed because some broader positive outcomes may be realized. While these frameworks do not explicitly endorse such trade-offs, neither do they provide clear guidance on how instruments should approach such situations when they arise.

3. The Added Value of the UNGPs: Addressing Gaps through a Focus on Outcomes for People

The advisory support to the instruments explored the significant value of the UNGPs in addressing these practical gaps in existing E&S and sustainability-related frameworks with respect to impacts on people. Some of the main lessons learned addressed the following questions.

- a) **Which transactions are in scope?** Both existing E&S and sustainability frameworks and the UNGPs recognize the practical reality that, due to the number of transactions and relationships involved, many financial institutions will be unable to conduct robust due diligence on each individual transaction. However, there are important differences in how other frameworks and the UNGPs seek to address this challenge.

The UNGPs start from a focus on risk to people. Any transaction – regardless of the size of the client, the amount of financial or other forms of support, the duration of support, or the underlying business activity or asset – can, depending on the circumstances, pose heightened human rights risks. Given the scope of financial institution portfolios, the UNGPs recognize that organizations may still need to prioritize a subset of their transactions for enhanced human rights due diligence, but they should do so on the basis of criteria that better reflect potential sources of heightened risk to people.

- b) **How far should an organization look?** Existing E&S frameworks often limit due diligence, and the due diligence expected by customers or clients, to the impacts that a company can control, meaning impacts in their own operations or in the first tier of their value chains, where a company typically has contractual relationships with its business partners and formal/legal leverage if not control. However, this can exclude more severe impacts on people deeper in supply chains, including at the level of production of raw materials, or at the other end of the value chain, in the way that a company's products or services are used by customers or end-users. Many financial institutions therefore ask, under the UNGPs, how far should we look with our due diligence?

Using the lens of risk to people, the UNGPs take a full value chain approach. If the company's operations, products or services are involved with adverse impacts through a business relationship at any point in the value chain then those impacts fall within the scope of the company's responsibility, and should also fall within the scope of a private sector instrument's due diligence. This will often be challenging to implement in practice. Companies often do not have visibility into all of the entities in their extended value chains (beyond direct suppliers and customers) and it may be more difficult to assess conditions with regard to human rights impacts at more remote levels of the value chain. It may also be more difficult to identify meaningful forms of leverage to influence the behaviors and practices of actors further away in the value chain. But the expectations in the UNGPs create the driver for organizations to identify and tackle these more challenging issues if they represent the most severe impacts on stakeholders with which the organization may be involved.

- c) **How should organizations account for contextual risks?** Human rights risks can arise from a number of factors, including factors in the external context within which a business activity or project takes place. A mining activity, for example, even with the most robust E&S action plans, may still be connected to severe human rights impacts if the activity takes place in an operating context where there is widespread opposition to extractive activities and public security forces have a track record of using excessive force against individuals or communities that peacefully protest such activity without facing accountability for any abuses that occur. If E&S due diligence does not adequately account for these contextual risk factors, it may fail to identify the most severe risks or impacts a customer or transaction may potentially be connected to.

While the specific issue of the conduct of public security forces is well-known in relation to extractive sector projects, the UNGPs incorporate this notion of contextual risk into the process of assessing the most severe – or salient – human rights issues across all types of projects and activities. Businesses are expected to assess actual and potential impacts based on two criteria: the severity of actual or potential harm to people, and the likelihood of those impacts occurring. Contextual factors may influence both the severity of potential impacts for particular individuals or groups as well as their likelihood in practice. These can include factors such as the presence of conflict, corruption, weak or unenforced laws, or systemic marginalization of certain groups.

- d) **How should organizations prioritize?** Private sector instruments, and the clients and customers they support, are likely to be exposed to a range of E&S risks and/or opportunities to contribute

to sustainable development outcomes. In many cases, they will not be able to immediately address all of these impacts and/or opportunities, and will have to make choices. Often, they make those choices based on the level of financial exposure, the issues that are perceived to pose the greatest reputational risk to the organization, or the issues that are easiest to solve. In contrast, the UNGPs provide clear, principled criteria that should guide private sector instruments, other financial institutions and companies more widely in making these choices, focused on the severity of harm to people and the likelihood of adverse impacts occurring.

There is sometimes a perceived tension between efforts to manage risks through the UNGPs and efforts to promote positive development outcomes through the framework of the SDGs. Together with the World Business Council for Sustainable Development, Shift has explored opportunities to leverage these frameworks in support of each other.⁸ Rather than being in tension, there is a synergistic relationship between these frameworks: the lens of vulnerability to harm and severity of impact that underpins the UNGPs can help to clearly point the way towards how private sector instruments and businesses can prioritize and maximize positive outcomes for people. The advisory work with Business Finland further highlighted this potential.

- e) **How much leverage is ‘enough’?** Central to the UNGPs is the concept of leverage: that financial institutions and other businesses whose operations, products or services are connected to adverse impacts through their relationships with third parties should use influence to seek to change their behaviors and practices. Where organizations do not have sufficient leverage to effectively manage a risk, they should seek to build leverage. This may require a more robust and creative set of approaches than those expected by existing E&S frameworks, which often rely on corrective actions and contractual terms.

The corporate responsibility to respect human rights under the UNGPs is a conduct-based standard – meaning that it is a level of behavior that we expect companies to meet, reasonably adapted to the specific human rights risks connected to their operations and value chain relationships, rather than a standard that demands that companies always achieve certain results.⁹ However, the intent of this standard is to prevent and address harms to people; this means that the outcomes of due diligence will be a relevant factor in assessing the reasonableness or adequacy of due diligence in any particular case. Thus, when private sector instruments or the businesses they support ask, ‘When are we done? How much leverage is enough?’, the answer will depend on the extent to which those efforts are reasonably proportionate to the severity of the risks or impacts involved, taking into account contextual and third party factors, as well as their effectiveness in practice.

- f) **What are financial institutions’ roles and responsibilities with regard to remedy?** Like the UNGPs, existing E&S frameworks recognize that actual impacts can still occur, even with robust prevention and mitigation measures. They also focus on the role of client or operational-level grievance mechanisms as a route for providing remedy to individuals or groups who may have been harmed. Many of these frameworks have explicitly or implicitly incorporated the effectiveness criteria for grievance mechanisms set out in Guiding Principle 31.

However, the UNGPs bring a broader lens to remedy. First, they recognize that grievance mechanisms alone may not be sufficient to ensure access to remedy for affected stakeholders, and – more fundamentally – that financial institutions themselves have roles and responsibilities with regard to remedy. Under existing industry frameworks, responsibility for remedy is placed

⁸ See: <https://shiftproject.org/resource/the-human-rights-opportunity-in-collaboration-with-wbcsd/introduction/>

⁹ See: <https://shiftproject.org/hrdd-outcomes-standard/>

squarely and solely with clients or customers. Yet financial institutions are confronted by increasing stakeholder expectations for them to play more of a role in relation to remedy given the huge challenges that affected stakeholders often face in actually securing remedy for harms.

The UNGPs offer a principled framework for understanding which organization has what responsibilities with regard to remedy. Under this framework, the nature of an organization's involvement with an impact determines its responsibility in relation to remedy. Where private sector instruments have caused or contributed to harm, through actions they took or failed to take as part of their due diligence, they have a responsibility to provide or contribute to remedy. In other cases, where their products or services remain linked to the impacts but they did not facilitate or incentivize them, they should consider ways in which they can use their leverage to 'enable remedy' – meaning, to influence those actors that have caused or contributed to an impact to provide remedy. This space of 'enabling remedy' is one of the fastest evolving areas of implementation of the UNGPs and one that Shift has driven attention to, working with financial institutions and businesses to explore creative uses of leverage to help ensure that remedy is provided in practice.¹⁰

A human rights lens also brings greater clarity to what is meant by remedy, and when remedy is sufficient. A human rights impact is an impact on an individual or group's basic dignity. Remedy is both the process and the outcome that seeks to restore that dignity. From a human rights perspective, remedy seeks to put an affected person back in the position they were in before the harm, to the greatest extent possible. This puts affected stakeholders at the center of conversations and processes about remedy, and helps to define the parameters of what effective remedy requires.

- g) **What is a financial institution's role with regard to stakeholder engagement?** Like the UNGPs, existing E&S and sustainability-related frameworks highlight the importance of stakeholder engagement. However, as with the issue of remedy, existing frameworks typically position stakeholder engagement as the responsibility of clients or customers alone.

The UNGPs offer several important points of nuance. First, the UNGPs focus on affected stakeholders that are or could be at risk of adverse impacts, rather than a broader group that may also include project beneficiaries. Second, the UNGPs expect that stakeholder engagement should inform the entire due diligence process, but that it is particularly relevant to assessing and prioritizing risks and tracking the effectiveness of actions taken. Third, under the UNGPs, both private sector instruments and their clients or customers each have a responsibility to ensure that their due diligence is appropriately informed by the perspectives of affected stakeholders. For private sector instruments, that responsibility can largely be met if their customers or clients are effectively engaging with stakeholders. However, if clients or customers are not doing so, then the organization needs to find other avenues for informing itself about affected stakeholder perspectives.

- h) **How should organizations 'balance' positive and negative impacts?** The UNGPs are unequivocal on this issue: when it comes to adverse human rights impacts, there are no 'off-sets'. A positive contribution elsewhere does not change the need for a business to address negative impacts it is involved with. At the same time, meaningfully addressing systemic human rights risks can be the most effective way to drive positive outcomes at scale for impacted workers and communities, as highlighted in Shift's work to explore the connections between the UNGPs and SDGs referenced above.

¹⁰ See: <https://shiftproject.org/rethinking-remedy-and-responsibility-in-the-financial-sector/> and <https://shiftproject.org/resource/financial-institutions-remedy-myths/>

E. TOOLS TO HELP FINANCIAL INSTITUTIONS MEET THE EXPECTATIONS OF THE UNGPs

Financial institutions, including Finland's private sector instruments, face a number of common challenges when seeking to meet the expectations of the UNGPs. These include:

- **Achieving Scale:** Financial institutions typically have very large customer portfolios and/or volume of transactions, numbering in the thousands or tens of thousands. They therefore need due diligence tools that can get to scale.
- **Becoming More Predictive:** For many financial institutions, including Finland's private sector instruments, due diligence may take place early in project or business activity cycles, before potential impacts are known and/or before actual impacts have occurred. They therefore need due diligence tools that can enable them to be more predictive in their assessments.
- **Taking Meaningful Action:** Financial institutions primarily manage risks by proposing specific prevention or mitigation measures that customers or clients should take, or by agreeing to actions proposed by clients or customers to manage those risks. They therefore need tools that can help them evaluate whether the actions they or their customers are proposing are likely to be effective in practice.

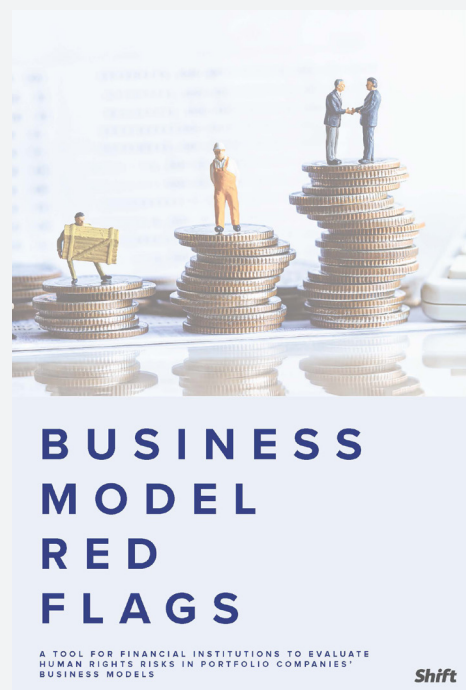
Under a separate arm of this program, Finland supported Shift's Valuing Respect Project, which has developed actionable insights and new tools to help improve how we evaluate companies' human rights performance. Informed by Shift's advisory support to Finland's private sector instruments, as well as our wider work with other financial institutions, **we have developed tailored introductions to three key tools which can help financial institutions respond to these challenges as they seek to align their approaches with the UNGPs. The tailored introductions are included as annexes to this final program report, but they are also stand-alone resources.** They present each tool and its potential use by financial institutions in greater detail, as described below.

TOOL 1: BUSINESS MODEL RED FLAGS

In some cases, human rights impacts can be effectively addressed through the implementation of prevention or mitigation measures at the operational level. However, sometimes human rights risks are the result of business models and value propositions which, by their very nature, increase the likelihood of negative impacts – such as high-speed delivery models that place pressure on warehouse workers and 'last mile' delivery, or where cost structures and revenue models are reliant on the use of contract labor from third-party labor providers.

The 'Business Model Red Flags' tool identifies 24 business models in which human rights risks are connected to the business model of the company, broken into three categories:

- The company's value proposition: What the company offers, to whom,
- The company's supply chain: How the company delivers or derives value,
- The company's cost/revenue model: How the business model is profitable.



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These red flags can help financial institutions, including Finland's private sector instruments, address two of the challenges highlighted above. First, they can help them scan their portfolios at scale for examples of these business models, as an indicator of heightened risk. Second, they can help shape more effective approaches to managing these inherent risks, by recognizing that addressing the root causes of risk is likely to require engagement with the company's leadership, rather than operational changes alone.

TOOL 2: LEADERSHIP AND GOVERNANCE INDICATORS FOR A RIGHTS-RESPECTING CULTURE

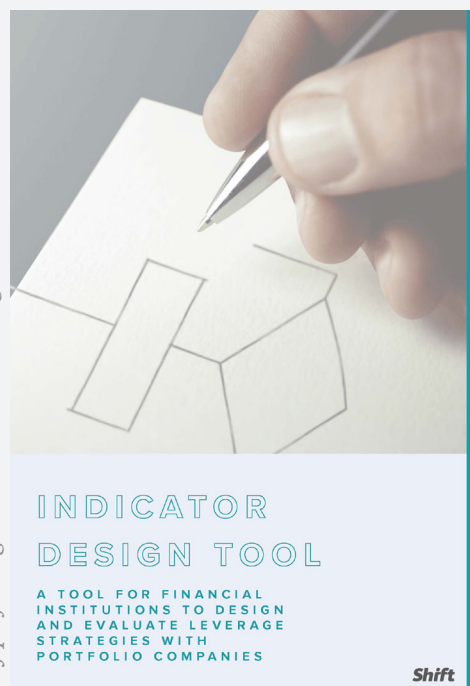
Financial institutions typically cannot anticipate all human rights risks, particularly when financial support happens early in the business activity timeline: what matters is how the customer or client will respond when risks or impacts arise. The Leadership and Governance Indicators tool defines the characteristics of a rights-respecting culture within a business, including in relation to authenticity, accountability, empathy and learning. It sets out 10 leadership indicators and 12 governance indicators which can provide insight into how the business is likely to handle predictable or unexpected challenges.

Integrating these indicators into existing due diligence processes can help Finnish private sector instruments anticipate whether a company is likely to engage effectively on risks or impacts when they arise and to address them in ways that are aligned with the expectations of the UNGPs, including providing remedy where necessary. This should enable private sector instruments to become more predictive in their analysis, moving beyond evidence of policies and processes on paper to better understand how commitments will be implemented in practice.



shiftproject.org/resource/leadership-indicators/about-igis/

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TOOL 3: INDICATOR DESIGN TOOL

The Indicator Design Tool is focused squarely on the third challenge identified above: how can an organization know if action to prevent or address risks is likely to be effective in practice? Financial institutions may take actions to address human rights risks that offer protection to the financial institution itself, but are unlikely to help manage the risk to people in practice, such as requiring customers to sign commitments that their products will be free from forced labor when those customers have a business model that depends on sourcing from contexts in which forced labor is systemic in certain value chains.

The Indicator Design Tool, and the stream-lined versions we have piloted with financial institutions in other countries, can help Finnish private sector instruments define more effective strategies for engagement with clients and also hold themselves accountable for meaningful action. The tool provides a series of logical questions that can help organizations design more effective leverage strategies and support the identification of KPIs to measure progress, all with a focus on moving closer to better outcomes for people.

F. CONCLUSIONS

Human rights impacts remain a pervasive reality of the global economy. When states provide support for private sector entities to operate or invest abroad, it is critical that businesses receiving those funds or other support take effective action to prevent and address negative impacts on people with which they could be involved. The Finnish government has set a clear expectation that its private sector instruments will work to integrate the UNGPs into their operations and customer/client relationships. Through a multi-year program of collaboration with Shift, the Finnish government has directly supported these key agencies in their efforts to build capacity and align policies, procedures and practices with the international standard on human rights due diligence.

Through this program, Shift provided tailored advisory support across a number of Finland's private sector instruments, with a particular focus on Finland's DFI, ECA and main international business promotion organization. The support involved a number of different activities with different instruments. Recognizing that all of them already conducted some level of E&S due diligence or promotional activities based on existing international frameworks, it sought to explore how the specific concepts and methodologies in the UNGPs could add value to these efforts in preventing human rights harms and delivering better outcomes for people. Drawing on the learning from this work, and on Shift's wider efforts to advance meaningful measurement of companies' human rights efforts – which have also been supported by the Finnish government – we were able to distill tailored introductory versions of three key tools to support financial institutions, including the Finnish private sector instruments, to further embed the expectations of the UNGPs.

As a result of this program of work, each of the instruments is better positioned to embed respect for human rights in its support for private sector activities abroad. At the same time, there is clearly more work to be done by each instrument, and by the Finnish government, to consolidate these gains and to translate new and revised policy commitments into practice. As this work progresses, we hope that Finland will continue to share the learning from what is – in Shift's view – a unique government effort to drive the UNGPs into the day-to-day activities of the full range of state agencies and programs that engage with private sector activity abroad.

Embedding the UN Guiding Principles in Finland's State Financing of Private Sector Activity Abroad

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ABOUT SHIFT

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries and redefine corporate practice in order to build a world where business gets done with respect for people's dignity. We are a non-profit, mission-driven organization headquartered in New York City.



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