



08
2 0 1 5

**BUSINESS AND HUMAN RIGHTS IN DEVELOPMENT COOPERATION
- HAS SWEDEN INCORPORATED THE UN GUIDING PRINCIPLES?**

Rasmus Kløcker Larsen, Sandra Adler

Business and Human Rights in Development Cooperation – has Sweden incorporated the UN Guiding Principles?

Rasmus Kløcker Larsen and Sandra Adler

Rapport 2015:08

till

Expertgruppen för biståndsanalys (EBA)

Rasmus Kløcker Larsen is a research fellow at the Stockholm Environment Institute (SEI) and previously also held a position as researcher at the Centre for Sustainable Development, Uppsala University. Larsen holds a PhD from Wageningen University and MSc. degrees from Oxford University and Copenhagen University. His research and development praxis ranges from community-based impact assessment, through process design and leadership in stakeholder dialogues, to review of the coherence and implementability of policies.

Sandra Atler is a human rights lawyer and independent consultant. Atler has extensive experience of working directly with companies, and with the mining sector in Africa. She has previously assisted Professor John Ruggie, former UN Secretary-General's Special Representative for Business and Human Rights, and his team with research and advice in his Mandate developing the UN Guiding Principles for Business and Human Rights.

Acknowledgements: We wish to thank all colleagues in the Swedish State agencies and State-owned or controlled companies, who generously contributed their insights and experiences to this study. We also acknowledge the dedicated and competent support from the EBA Secretariat, especially Emma Östaker (project manager) and Anna Nilsson (EBA member and Director of Communications at the Swedish Society for Nature Conservation, SSNC). Moreover, we thank the members of the reference group for their helpful comments and advice: Bengt Johansson (former CSR Ambassador at the MoFA), Bo Berglund (former Head of sustainability at Sandvik), Paul Kapelus (Director, Synergy, South Africa), and Rebecca Lawrence (Researcher, Stockholm University). Warm thanks also go to research assistant Sara Gottenhuber, MSc. student at Uppsala University's Centre for Sustainable Development, for her thorough support in document retrieval and review, and to Alan Fine for content and language review.

This report can be downloaded free of charge at www.eba.se

This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit

<http://creativecommons.org/licenses/by/4.0/>.

ISBN 978-91-88143-10-5

Printed by Elanders Sverige AB

Stockholm 2016

Cover design by Julia Demchenko

Table of contents

Preface	1
Sammanfattning	3
Forskningsansats	4
Iakttagelser och slutsatser.....	5
Summary	9
Research approach.....	10
Findings and conclusions	11
1. Introduction: Increased business involvement in development cooperation	15
1.1 Objective of this study	18
1.2 Research approach.....	21
2. The UN Guiding Principles on Business and Human Rights	26
2.1 The UNGPs and their applicability to development cooperation.....	28
2.2 Benchmarking evolving practice	32
3. Findings: policies, procedures and practices in Swedish State institutions.....	37
3.1 The Swedish International Development Cooperation Agency (Sida)	38
3.2 The Geological Survey of Sweden (SGU)	48
3.3 The Swedish Trade and Invest Council (Business Sweden)	53

3.4 Swedfund International AB (Swedfund).....	58
3.5 The Swedish Export Credit Corporation (SEK)	65
4. Analysis: incorporation of the UNGPs	72
4.1 Does the State set out expectations to observe human rights obligations?	72
4.2 Does the State encourage or require HRDD?	73
4.3 Does the agency/company require HRDD?	74
4.4 Does the State provide support to agencies and companies?	75
4.5 Does the agency/company consider human rights impacts?.....	76
4.6 Does the State ensure that policies are implemented?	79
4.7 Does the agency/company track its own performance?	80
4.8 Does the agency/company disclose relevant human rights information?	81
5. Conclusions	86
List of abbreviations	92
Annex 1: Application of the UNGPs to development cooperation	94
Annex 2: Review of NAPs.....	100
Annex 3: Examples of activities funded by Swedish development cooperation.....	103
Annex 4: Detailed recommendations	105
Previous EBA-reports	112

Preface

In recent years there has been an increased focus on the role of business and private sector activities in international development cooperation. Behind this approach is the understanding that the business sector can be a driver of growth and provider of jobs and services in developing countries, as well as a potential provider of finance for development. International aid has also recently been seen to have a potential catalytic role in stimulating private sector investments.

In line with this, the Swedish Government has encouraged state actors in development cooperation to actively seek partnerships with the private sector. Although this approach opens up new opportunities, without doubt it also brings new challenges and risks due to possible conflicting interests.

One example could be conflicts between business interests and human rights, the latter being central to Swedish aid. Hence, when stimulating development through business, state actors must also safeguard human rights.

This EBA report contains a unique analysis of the alignment of Swedish development cooperation with the UN Guiding Principles on Business and Human Rights. These principles constitute a guiding framework for handling different interests and ensuring that the human rights obligations of business are given due attention. The authors use these principles as a point of departure for their analysis. They examine whether the UN norms are integrated into the work of state agencies and state-owned and state-controlled companies that are engaged in international development cooperation. International development cooperation in the African mining sector has been used as a case for selecting state institutions and for detailed discussion of practice. The authors examine whether the institutions responsible for delivering development cooperation have the necessary policies and procedures in place to prevent corporate activities from harming human rights. Consequently, the report is an assessment of how well Sweden deals with potential conflicts of interest in the area of business and human rights.

The results show examples of good practice, where human rights principles have been ensured, but also a number of gaps where there is

room for further improvements. One conclusion is that state-owned and state-controlled companies perform better than state agencies. According to the authors, this may reflect the fact that there has been a tendency in recent years to focus more on corporate responsibility than on the responsibility of the state and the state agencies.

The authors also argue that there is a risk that the desire to promote business-supported aid in Swedish development cooperation may lead to an increase in this kind of aid, in which the capability to safeguard human rights cannot keep pace. In brief, the authors recommend better procedures for identifying and considering human rights risks, as well as more training and sharing of information.

In conclusion, this report provides input to the discussion on private sector engagement in international development cooperation but also to the broader discussion on how to ensure policy coherence. It has proved challenging to implement the Policy for Global Development from 2003, and there is possibly a need for alternative or complementary approaches on how to ensure double dividends. This report fits well with the recent re-launch of the Policy for Global Development, which highlights sustainable business as one focus area. In addition, the report aligns with the Government's ambition to carry out a baseline study on how well international norms and principles for business and human rights are integrated into Swedish legislation. The report will hopefully prove useful in these processes.

The authors' work has been conducted in dialogue with a reference group chaired by Anna Nilsson, member of the EBA. The analysis, views and recommendations expressed in the report are the sole responsibility of the authors.

Stockholm, January 2016



Lars Heikensten,
Chair

Sammanfattning

Under de senaste åren har vi sett en ökad betoning på företagsengagemang i internationellt utvecklingssamarbete. Samtidigt finns det väl dokumenterade utmaningar i att hantera de intressekonflikter som kan uppstå; mellan statens utvecklingmål, statens handelspolitiska mål och den privata sektorns affärsmål. Denna rapport undersöker hur den svenska staten har lyckats integrera normer för företagande och mänskliga rättigheter i några av de institutioner som har mandat att bedriva internationellt utvecklingssamarbete och som också på ett eller annat sätt samarbetar med näringslivet och därför kan stöta på politiska intressekonflikter. Vi ställer frågan: Har de institutioner som ansvarar för att leverera det svenska utvecklingssamarbetet tillräckliga policies, riktlinjer och rutiner på plats för att kunna säkerställa att de bidrar till att företag respekterar de mänskliga rättigheterna?

För att besvara denna fråga undersöker vi riktlinjer, rutiner och några metoder hos fem utvalda statliga myndigheter och statligt ägda eller kontrollerade företag (fortsättningsvis kallade statliga institutioner) som har som sitt mandat att bedriva internationellt utvecklingssamarbete. Institutionerna är väldigt olika vad gäller deras respektive uppdrag och roll i det svenska utvecklingssamarbetet. Resultaten visar ändå på trender och ger insikt i hur väl det svenska utvecklingssamarbetet lyckas på området; det finns exempel på god praxis, men också luckor i kunskap och utförande som kan öppna upp för anpassning till internationella riktlinjer och utvecklande av ny praxis. De statliga institutioner som vi har undersökt är: Styrelsen för internationellt utvecklingssamarbete (Sida), Sveriges Geologiska Undersökning (SGU), The Swedish Trade and Invest Council (Business Sweden), Swedfund International AB (Swedfund) och Svensk Exportkredit (SEK). De två ansvariga departementen är Näringsdepartementet (ND) och Utrikesdepartementet (UD).

Som utgångspunkt för vår analys har vi använt FN:s vägledande principer för företag och mänskliga rättigheter (UN Guiding Principles on Business and Human Rights/UNGPR), som antogs år 2011 och som fastställer väl utvecklade och tydligt artikulerade riktlinjer för stater om hur de ska tolka sina åtaganden om mänskliga rättigheter i samband med företagande. Såvitt vi vet, innehåller denna

rapport den första analysen av huruvida det svenska utvecklingssamarbetet ligger i linje med UNGP. Internationellt erbjuder rapporten också en första analys av genomförandet av "första pelaren" i UNGP (statens skyldighet att skydda de mänskliga rättigheterna) i internationellt utvecklingssamarbete.

Den här rapporten syftar i synnerhet till att stödja två politiska processer i Sverige. Den ena processen är den nystartade politiken för global utveckling (PGU) som bland annat fokuserar på att stärka hållbart företagande. Den andra är genomförandet av den svenska regeringens nationella handlingsplan för företagande och mänskliga rättigheter (NAP) som lanserades i augusti 2015. Mer specifikt syftar denna rapport till att ge regeringen ett försprång vad gäller metodik och de viktigaste resultaten för den analys som regeringen planerar att genomföra för att klargöra om statens lagstiftning, politik och praxis ligger i linje med UNGP.

Forskningsansats

För att avgränsa vår analys av det svenska utvecklingssamarbetet fokuserar vi på utvecklingsbistånd riktat mot gruvdrift i Afrika. Vi har beslutat att göra en kvalitativ fallstudie eftersom införlivandet av UNGP måste studeras i ett specifikt sammanhang med särskilda riktlinjer, rutiner och praxis. Dessutom ger det möjlighet till att diskutera konkreta situationer (det vill säga specifika projekt och aktiviteter) med de intervjuade. Det möjliggör också en granskning av kontextberoende erfarenheter hos tjänstemän och företagspersonal och tjäna till att lyfta fram den praktiska tillämpningen av redovisningsprinciperna i verkliga situationer.

Till grund för dataframställningen ligger tre huvudsakliga aktiviteter: a) en inledande kartläggning och undersökning av hur vissa delar av svenskt utvecklingssamarbete interagerar med näringslivsaktörer och i synnerhet utvecklingssamarbete kopplat till gruvdrift i Afrika, b) en systematisk analys (desktop recension) av policies, allmänna styrdokument och implementeringsförfaranden för de identifierade statliga institutionerna (departement, myndigheter och statsägda eller kontrollerade företag); och c) en kvalitativ bedömning genom 32 intervjuer om hur dessa policies, riktlinjer och

rutiner fungerar i praktiken i utvalda exempel på konkret utvecklingssamarbete.

Under det förberedande arbetet med UNGP fanns inga särskilda analyser, studier eller rapporter om hur principerna skulle vara relevanta för internationellt utvecklingssamarbete, för nationella biståndsorgan eller andra biståndsorganisationer. Därför erbjuder vi i denna rapport vår tolkning av hur UNGP är relevanta för statliga institutioner som är involverade i utvecklingssamarbete. Efter en genomläsning av UNGP härledde vi minimikrav för staten (d.v.s dess departement), myndigheter och statligt ägda eller kontrollerade företag och vi gjorde också en särskild tolkning av hur UNGP kan tillämpas på utvecklingssamarbete.

lakttagelser och slutsatser

Studien ger många exempel på politiska åtaganden att stärka arbetet med företagande och mänskliga rättigheter, såväl hos myndigheter som statligt ägda eller kontrollerade företag. Den observerade goda praxisen hos de statliga institutionerna tycks vara ett resultat av ett systematiskt arbete för att genomföra de åtaganden som finns när det gäller de mänskliga rättigheterna. I de flesta fall verkar detta dock mer bero på ett internt arbete inom institutionerna, än som ett svar på specifika krav som ställts av statliga departement för att genomföra UNGP. Sverige är föredömligt ett av åtta länder i världen som är först med att ha antagit en nationell handlingsplan som beskriver hur det är tänkt att implementera UNGP.

Icke desto mindre har den svenska staten, dess myndigheter och företag fortfarande mycket arbete kvar för att anpassa sina policies, rutiner och metoder till UNGP. Inget av regeringsorganen eller de statligt ägda eller kontrollerade företagen har helt anpassat sina riktlinjer, rutiner och praxis till UNGP. Bland flera exempel är en av de mest anmärkningsvärda skillnaderna, i relation till studiens härledda minimikrav, att departementen varken uppmuntrar eller kräver en risk- och konsekvensanalys (Human Rights Due Diligence/HRDD) vad gäller mänskliga rättigheter hos någon av de granskade myndigheterna eller företagen; varken i situationer med hög risk eller i några andra situationer, vilket uttryckligen krävs enligt UNGP. Detta

är problematiskt, eftersom UNGP endast kan få verklig effekt om staten ställer tydliga krav och genomförandeåtgärder.

En annan anmärkningsvärd brist är att medan alla de granskade myndigheterna och företagen kunde lämna ut information om sina policies, var det bara en av de fem institutionerna (Swedfund) som på begäran kunde lämna ut information om utvalda operativa riktlinjer och hur de genomfördes. Varken någon myndighet eller företag kunde lämna en fullständig och relevant risk- och konsekvensanalys. En slutsats som vi drar är att affärsstödda biståndsformer – under det rådande läget för genomförande – äventyrar statens institutioners möjlighet att vara transparenta, att kommunicera och att lämna ut relevant information om mänskliga rättigheter till intressenter. Detta står i skarp kontrast med det viktiga ansvar som de har enligt UNGP och svensk lag; att kunna lämna ut information och att vara transparenta.

En mer generell slutsats är att de statligt ägda eller kontrollerade företagen i visst hänseende utförde sina åtaganden bättre än myndigheterna. Dessutom är det så att flera statstjänstemän uppfattade normerna kring företagande och mänskliga rättigheter som varandes mer relevant för företag än för statliga myndigheter, och mer relevant för direktfinansiering än för andra typer av tjänster, vilket är felaktigt. Flest poäng i vår analys fick SEK och Swedfund, detta utifrån deras egna åtgärder för att implementera normer för företagande och mänskliga rättigheter. Till exempel har Swedfund anammat ett obligatoriskt krav för att genomföra en risk- och konsekvensanalys i situationer med hög risk, de har en exitstrategi och lämnade ut mer information än någon annan myndighet eller företag. SEK visade flera sätt på vilka de omsatte UNGP i praktiken; genom olika förfaranden och genom programförklaring, vägledning och genomförandeåtgärder som grundar sig på eller refererar till UNGP, liksom riktlinjer och rutiner för uppföljning av projekt där det finns en bristande efterlevnad av de mänskliga rättigheterna. Den bättre prestandan hos statligt ägda eller kontrollerade företag jämfört med myndigheter återspeglar att det både internationellt och i Sverige helt enkelt har varit mer införlivande och mer globalt delad praxis av UNGP andra pelare (företags ansvar att respektera mänskliga rättigheter) än i fallet med den första pelaren. Det är synd att en stat som Sverige, med ett högt anseende när det gäller mänskliga rättigheter, inte har främjat ett mer grundligt ansvar genom sina statliga myndigheter.

Totalt sett är önskan att främja affärsstödda biståndsformer i det svenska utvecklingssamarbetet – för närvarande – större än förmågan hos statliga institutioner att leva upp till den svenska statens skyldighet att skydda de mänskliga rättigheterna från företags eventuella kränkningar och att iaktta skyldigheter vad gäller normer för företagande och mänskliga rättigheter. Detta gäller svenskt utvecklingssamarbete i allmänhet, och i synnerhet i verksamheter relaterade till den afrikanska gruvsektorn – som utgjorde fallstudien för vår analys. Utan ordentliga riktlinjer och rutiner utsätter sig den svenska staten för risken att myndigheter och statligt ägda eller kontrollerade bolag (o)medvetet äventyrar statens människorättsförpliktelser när de engagerar företag som en motor för utveckling. Vi rekommenderar därför att staten, genom sina departement, tar en närmare titt på resultaten av denna studie, stärker villkoren för Human Rights Due Diligence (HRDD), tillhandahåller utbildning och information och kontrollerar att politiska åtaganden genomförs. För myndigheter och statligt ägda eller kontrollerade företag, är de viktigaste luckorna som bör åtgärdas i relation till studiens minimikrav följande: utövandet av HRDD, konkreta förfaranden för att kunna bedöma risker i relation till de mänskliga rättigheterna och att på begäran kunna lämna ut information.

Flera av åtgärds punkterna i den svenska nationella handlingsplanen (NAP) stämmer överens med våra resultat, till exempel att Business Sweden bör få i uppdrag att öka sina ansträngningar. Den svenska nationella handlingsplanen innehåller faktiskt många exempel på god praxis och sticker på många sätt ut i en internationell jämförelse med andra nationella handlingsplaner. Till exempel, konstaterar den nationella handlingsplanen att Sida sedan 2015 har ett uppdrag av staten, genom ett formellt krav, att ansluta sig till UNGP och att Sida har utvecklat ett verktyg för risk- och konsekvensanalys. Det är två av de mest konkreta exemplen i någon av de granskade nationella handlingsplanerna på hur ett biståndsorgan arbetar med att införliva UNGP och bör absolut ses som god praxis i ett internationellt sammanhang. Men sammantaget, när det gäller utförandet hos de statliga institutionerna, har den svenska nationella handlingsplanen liknande svagheter som de som har observerats i rapporten, särskilt det begränsade erkännandet av statens ansvar att på ett systematiskt sätt genomföra den första pelaren bland sina departement och myndigheter. Till exempel, nämner inte planen behovet av utbildning

för statliga myndigheter, särskilda åtgärder för Statens Geologiska Undersökning (SGU) eller deklarerar en avsikt att ytterligare stärka Sidas arbete.

Trots detta var kanske den mest uppmuntrande slutsatsen i studien den allmänna medvetenheten hos många av de personer som intervjuades hos statliga myndigheter och företag om vikten av ämnet och en vilja att förbättra prestandan för att kunna följa UNGP. UNGP antogs av FN så sent som 2011 och det här är verkligen en resa som nyligen har börjat, som vissa intervjuade också har påpekat. Ändå, nu är det gyllene tillfället för förändring och att adressera återstående luckor i kunskap och utförande. Svenska departement, myndigheter och statliga eller kontrollerade företag bör så snart som möjligt se till att bygga vidare på och förverkliga de åtaganden som finns i den nationella handlingsplanen, i Sveriges politik för global utveckling (PGU) och i de åtaganden som finns inom respektive institution. Detta för att säkerställa att svenskt utvecklingsbistånd inte associeras med företagsrelaterade kränkningar av de mänskliga rättigheterna.

Summary

Recent years have seen an increased emphasis on business involvement in international development cooperation. Meanwhile, there are well documented challenges in implementing policy coherence to address conflicts of interest between the State's development objectives, the State's trade objectives and the private sector's business objectives. This report explores the ways in which the Swedish State has integrated business and human rights norms into some of the institutions that are tasked with international development mandates and also are engaging with business in some manner and therefore may face policy tensions. We ask the question: Do the institutions that are responsible for delivering Swedish development cooperation have the policies, guidelines and procedures in place to be able to know and show that they contribute to improved human rights practices by business?

To answer this question we examine the policies, procedures and some of the practices of five selected State agencies and State-owned or controlled companies (henceforth jointly referred to as State "institutions") that are involved in development cooperation. The institutions are vastly different with regard to mandate and role in Swedish development cooperation. Yet, the findings do show trends and insight into the current performance of Swedish development cooperation; elements of good practice but also gaps that may be opportunities to align with international norms and evolving praxis. The State institutions examined are: The Swedish International Development Cooperation Agency (Sida), the Geological Survey of Sweden (SGU), the Swedish Trade and Invest Council (Business Sweden), Swedfund International AB (Swedfund), and the Swedish Export Credit Corporation (SEK). The two responsible ministries are the Ministry of Enterprise and Innovation (MoEI) and the Ministry of Foreign Affairs (MoFA).

As point of departure for the analysis we take the United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011, which set out the most developed and clearly articulated guidelines for states on how to interpret their human rights obligations relating to businesses. To our knowledge, this report presents the first analysis as to whether Swedish development

cooperation is aligned with the UNGPs. Internationally, it also offers a first analysis of the implementation of the UNGPs' first pillar (the State duty to protect human rights) in development aid. The study in particular aims to support two policy processes in Sweden. First, the recent "restart" of the Policy for Global Development (PGD) that among other things focuses on strengthening "sustainable business". Second, the implementation of the Swedish Government's National Action Plan on Business and Human Rights (NAP) launched August 2015. Specifically, this report aims to provide the Government with a head-start on methodology and key findings for the baseline study that the Government plans to execute to clarify whether the legislation, policies and practices of the State are aligned with the UNGPs.

Research approach

In order to delineate our analysis of Swedish development cooperation, we focus on development aid directed towards mining in Africa. This reflects the adoption of a qualitative case study methodology, acknowledging that the incorporation of the UNGPs must be studied in the context of specific policies, procedures and practices. Furthermore, this focus provides tangible "mediating objects" (i.e. specific projects and activities) to discuss with interviewees. It also enables the examination of context dependent experiences of civil servants and company staff, serving to highlight application of policies onto real situations and nuances from practice.

Data generation relied on three principal activities: a) an initial mapping and examination of how certain Swedish development cooperation activities are connected to business actors and in particular connected to mining in Africa, b) systematic analysis (desktop review) of policies, general steering documents and implementing procedures for the identified State institutions (ministries, agencies and State-owned or controlled companies); and c) qualitative assessment through 32 interviews on how these policies, guidelines and procedures play out in select examples of concrete development cooperation activities.

During the preparation of the UNGPs, there were no particular surveys, studies or reports on how the principles would be relevant to

development cooperation, domestic development agencies, or other development aid organizations. Hence, in this report, we offer our interpretation of the UNGPs as applicable to State institutions involved in development cooperation. Based on our reading of the UNGPs, we derive minimum requirements for, respectively, the State (i.e. its ministries), agencies, and State-owned or controlled companies and a specific interpretation of how the UNGPs can be applied to development cooperation.

Findings and conclusions

The study finds many examples of policy commitments to improved human rights practices by companies as well as diligent efforts in agencies and State-owned or controlled companies. The observed good practices by the State institutions appear to reflect results of systematic efforts with regards to implementation of human rights commitments. In most cases, this appears to be due to internal work in the institutions and not in response to specific requirements posed by the State ministries to implement the UNGPs. Commendably, Sweden is among the first eight countries in the world that has adopted a National Action Plan (NAP) outlining the intended implementation of the UNGPs.

Nonetheless, the Swedish State and its agencies and companies still have much work left to align their policies, procedures, and practices to the UNGPs. None of the agencies or State-owned or controlled companies have fully aligned their policies, procedures and practices with the UNGPs. Among several examples, one of the most remarkable performance gaps is that the ministries do not encourage nor require human rights due diligence (HRDD) (as explicitly required by the UNGPs) of its agencies or State-owned or controlled companies; not in high risk situations or in any other situations. This is problematic since the UNGPs will only be given real effect if the State puts in place clear requirements and implementing measures, in effect when the State goes beyond the high level policy commitments. Another noteworthy performance gap is that whereas all agencies and companies examined did disclose policies, only one of the five institutions (Swedfund) was able to disclose selected requested operational procedures and how they were implemented; and no agency or company was able to disclose a full, relevant HRDD report.

One conclusion that we draw is that business-supported aid modalities – under the current mode of implementation – is compromising the ability of Swedish State institutions to be transparent and communicate and disclose relevant human rights information to stakeholders. This stands in stark contrast with the important responsibilities under the UNGPs and Swedish law –to disclose and be transparent.

A more general conclusion is that the State-owned or controlled companies in some regard performed better than the agencies. Moreover, the business and human rights discourse is in several cases erroneously perceived by civil servants to be more relevant for companies than for State agencies, and for direct financing than for other kinds of services. The best scores in our analysis were received by SEK and Swedfund based on their own actions to implement business and human rights norms. For instance, Swedfund has a mandatory requirement to conduct HRDD in high risk human rights situations, has an exit strategy, and disclosed more information than any other agency or company; SEK evidenced several ways by which it is putting the UNGPs into practice by a variety of procedures including a policy statement, guidance and implementation measures based on or referencing the UNGPs, as well as policies and procedures for follow up with projects where there is non-compliance on human rights. The better performance of State-owned or controlled companies compared to agencies does reflect that there has, internationally and in Sweden, simply been more uptake of the UNGPs second pillar regarding the corporate responsibility to respect human rights and more practice shared globally amongst peers than is the case for the first pillar. It is disappointing that a State with a high human rights reputation such as Sweden has not fostered a more thorough degree of responsibility by its State agencies.

Overall, the desire to promote business-supported aid in Swedish development cooperation is – at present – prone to run ahead of the ability of State institutions to implement the Swedish State's duty to prevent corporate related human rights harm and observe business and human rights obligations. This applies to Swedish development cooperation in general and to the activities associated with the African mining sector – which comprised the case study for our analysis – in particular. Without proper policies and procedures the Swedish State is exposing itself to the risk that agencies and State-owned or

controlled companies (un)knowingly compromise the State's human rights obligations when engaging businesses as an engine for development. We thus recommend that the State, through its ministries take a close look at the findings of this study, step up the requirements pertaining to HRDD, provide training and information, and control that policy commitments are implemented. For the agencies and State-owned or controlled companies, the main performance gaps that should be addressed relate to the exercise of HRDD, concrete procedures for considering human rights risks, and disclosure of information.

Several of the action points in the Swedish NAP plan resonate with our findings, for instance that Business Sweden should be instructed to strengthen its efforts. Indeed, the Swedish NAP contains many elements of good practice, and in many ways stand out in comparison to the other NAPs as can be identified in our international comparison. For instance, the NAP notes that Sida since 2015 is mandated by the State through a formal requirement to adhere to the UNGPs and that Sida has developed a due diligence tool. These are two of the most concrete examples provided in any of the NAPs reviewed of how a development agency is working to incorporate the UNGPs, and should certainly be seen as good practice in an international context. Overall, however, the plan shares some of the weaknesses observed in the current report with regards to performance of the State institutions, specifically the limited recognition of the responsibility of the State to implement the first pillar among its ministries and agencies in a systemic manner. For instance, the plan does not mention the need for training for the State agencies, specific actions for SGU, or declare an intention to further strengthen Sida's work.

Notwithstanding this, perhaps the most encouraging finding in the study was the general awareness amongst many of the individuals interviewed in the State agencies and companies of the importance of the topic and a willingness to improve performance to adhere to the UNGPs. The UNGPs were only endorsed by the UN in 2011 and indeed it is a journey that has recently begun, as some interviewees have also pointed out. Nevertheless now is the window of opportunity for change to address remaining performance gaps. Swedish ministries, agencies and State-owned or controlled companies should as soon as possible ensure to build on and realise the commitments in the NAP,

the PGD and the commitments within the respective institutions to ensure that Swedish development aid funds are never associated with corporate related human rights harm.

1. Introduction: Increased business involvement in development cooperation

Development cooperation has been shaped by shifting paradigms over time. Since the 1992 Rio Earth Summit, the launch of the Agenda 21 and the Rio Conventions, preferred modalities of delivering aid have ranged from the extremes of structural adjustment programmes to partnership-based modalities that espouse ideals of joint ownership and accountability guided by – among others – the 2005 Paris Declaration on Aid Effectiveness and the 2008 Accra Agenda for Action.¹ Recently, the aid landscape has become increasingly complex, with a growing number of new modalities, aid flows and actors.²

Over the past decade or so, the development cooperation agenda has been seeing a turn towards increased emphasis on business involvement in development cooperation. To take one example, in 2011, donors provided USD 41.5 billion to so-called Aid for Trade activities, ie the part of Official Development Assistance (ODA) comprising support to partner countries' efforts to develop and expand their trade as leverage for growth and poverty reduction. This includes development of banking institutions, financial services and private sector capacity building, and public-private sector networking at trade fairs.³ This figure comprised about one third (34 %) of total ODA that year.⁴

1 See eg Chhotray, V. & Hulme, D. 2009. Contrasting Visions for Aid and Governance in the 21st Century: The White House Millennium Challenge Account and DFID's Drivers of Change. *World Development* 37 (1), 36–49; Verhoeven, 2011. Climate Change, Conflict and Development in Sudan: Global Neo-Malthusian Narratives and Local Power Struggles. *Development and Change* 42(3): 679–707.

2 Eg, Greenhill, R., Prizzon, A., Rogerson, A. 2013. The age of choice: developing countries in the new aid landscape. A synthesis report. ODI Working Paper 364.

3 Eg, <http://ec.europa.eu/trade/policy/countries-and-regions/development/aid-for-trade/>

4 OECD/WTO (2013), "Aid-for-trade flows and financing", in *Aid for Trade at a Glance 2013: Connecting to Value Chains*, WTO and OECD. Already in the 2002 Monterey Consensus on financing for development, trade was identified as "...in many cases is the single most important external source of development financing". Similarly, donors noted in the 2008 Doha Declaration the need to "...assist those countries that have been at a particular disadvantage in attracting such flows, including a number of African countries...". And, more recently, in "The Future We Want" – the outcome document from Rio+20 that forms the backdrop to the Sustainable Development Goals and the design of future development cooperation – the undersigning Heads of State reiterated their commitment to

The reasons for donor governments to try and rope in private sector actors in aid efforts may be evident. In today's global market economy, private investments offer the dominant source of financing for developing countries. According to the World Bank, ODA and Other Official Flows, i.e. public flows that do not meet the eligibility criteria for ODA, comprise only 1 % of the total international capital flows to developing countries (2012 figures). Meanwhile, FDI alone (excluding eg bank loans and private equity) totals 60 % of developing countries' capital flows.⁵ The alignment of aid and trade also – in some instances – serve self-serving purposes of donor governments. For instance, it has been documented how bilateral aid from OECD countries is disproportionately allocated to recipient nations who have a greater tendency to import goods in which donor nations have a comparative advantage, especially capital goods such as machinery and equipment supplies.⁶

The recognition of the distribution of economic muscle power between the public and private sectors underpins an ongoing redefinition of the role of government donors – and businesses – in development cooperation. This is coming to concrete expression in the (re)design of aid modalities and funding programs, when public sector development cooperation is being reconstructed as a set of instruments that should function as “catalytic” and “enabling” instruments to mobilize businesses as development actors. To some extent, this ongoing “reversioning” of the purpose of development cooperation interacts with the reimagining of the role of business. In turn, this role is tightly linked to the proliferating discourse on corporate social responsibility (CSR), in which business is redefined

support “existing and new partnerships, including public-private partnerships, to mobilize public financing complemented by the private sector...” (Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus. The final text of agreements and commitments adopted at the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus Doha, Qatar, 29 November - 2 December 2008. P 11; Monterrey Consensus of the International Conference on Financing for Development, final text of agreements and commitments adopted at the International Conference on Financing for Development Monterrey, Mexico, 18-22 March 2002. P 11; United Nations General Assembly, 2012. The future we want. Resolution adopted by the General Assembly on 27 July 2012. A/RES/66/288, p. 11.).

5 The World Bank Group, 2013. Financing for Development Post-2015.

6 Younas, J. 2008. Motivation for bilateral aid allocation: Altruism or trade benefits. *European Journal of Political Economy* 24, 661–674.

*“...from being the cause to becoming a part of the solution to the problem”.*⁷

Business-supported development cooperation builds on a presumed mutual interest of donor and recipient countries and their stakeholders to harness the potential of sustainable business to lift people out of poverty. Moreover, in cases where conflicts of interest do arise between the State’s development objectives and the private sector’s business objectives (or even the State’s own business objectives), this particular aid paradigm incorporates an assumption that it is possible to reconcile conflicts of interest through proper policies, guidelines and practices. In order to achieve this objective, governments have promoted so-called *policy coherence*, i.e. coordinating actions between sectors on issues of sustainable development in order to minimize contradictions and to build up synergies.⁸

In Sweden, the objective of promoting pro-poor development-oriented policy coherence has been chiefly manifest since 2003 through Sweden’s Policy for Global Development (PGD).⁹ Indeed, Sweden is heralded as the first country to develop such a policy to be implemented through Swedish actors’ engagement at both national and international levels, and to include the public as well as the private sector in the process of contributing to global sustainable development.¹⁰ Following on its pledge prior to the 2014 general elections, the Government has recently initiated a “restart” of its Policy for Global Development (PGD). With the effort, the Swedish Government demonstrates a continued political interest in retaining its reputation as a front-runner in the area of sustainable business

7 Idemudia, U. 2014. Corporate Social Responsibility and Development in Africa: Issues and Possibilities. *Geography Compass* 8/7, 421–435. The redefinition of business, in turn, plays into – and is nurtured by – a market oriented conception of development based on “...the right to make a profit, the universal good of free trade, the freedom of capital, the supremacy of private property, the commoditization of things including labour, the superiority of markets in determining price and value, and the privileging of companies as citizens and moral entities.”, see Blowfield, M. 2008. Corporate Social Responsibility: reinventing the meaning of development? *International Affairs* 81, 515–524.

8 Eg OECD, 2008. *Synthesis Report on Policy Coherence for Development*. COM/SG/DCD(2008)1/REV1. Paris: Organisation for Economic Cooperation and Development.

9 Government Bill 2002/03:122 “Shared Responsibility – Sweden’s Policy for Global Development”.

10 OECD, 2005. *OECD (2005) Peer Review of Sweden*. Paris: Development Assistance Committee, Organization for Economic Cooperation and Development.

enterprise; a reputation that arguably may offer some level of competitive advantage in accessing foreign markets, including in African mining.¹¹

1.1 Objective of this study

As business-supported aid delivery gains momentum there is a need to examine whether donor countries are sufficiently equipped to ensure that conflicts of interests between the State's international development commitments and private sector's business interests are addressed. High-level commitments to policy coherence for development, such as found in Sweden's PGD, are dependent on operationalisation through policies, procedures and practices within State agencies and State-owned or controlled companies. The European Union and its Member States have faced considerable challenges in achieving policy coherence for development objectives, owing both to lack of political commitment and a lack of concrete implementing measures and processes.¹² Sweden's own implementation of the PGD has received criticism based on, among other things, these points.¹³ Similar challenges to policy coherence in development cooperation have come to the fore internationally, including in the European Community's inconsistent environmental screening of so-called "dirty aid" projects.¹⁴

11 See eg MoFA, 2015. *Gemensamt ansvar för global utveckling*. Notat, 2015-02-03; A new report on the progress in implementing the PGD is expected during 2016. This is the second "restart"; in 2007 the Swedish Government also sought to stimulate a new departure for the PGD, see: Government communication 2007/08:89 to signal a new departure of 2002/03:122. A new report on the progress in implementing the PGD is expected during 2016. The Government Offices of Sweden (i.e. the integrated public authority comprising the Prime Minister's Office, the government ministries and the Office for Administrative Affairs) have been charged to develop action plans for the PGD linked to the SDGs and several ministries, including the MoFA, Ministry of Finance, and Ministry of Enterprise and Innovation have been asked to strengthen the efforts on sustainable business and CSR.

12 Eg Carbone, M. 2008. *Mission Impossible: the European Union and Policy Coherence for Development*. *European Integration* 30(3), 323–342

13 E.g. Larsen, R. K. and Powell, N. 2013. *Policy Coherence for Sustainable Agricultural Development: Uncovering Prospects and Pretence within the Swedish Policy for Global Development*. *Development Policy Review* 31(6), 757–776.

14 Eg European Court of Auditors. (2006): *Special report No.6/2006. The environmental aspects of the Commission's development cooperation*. Official Journal of the European Union, 235, 29.9.06; Roberts, J. T., Parks, B. C., Tierney, M. J. & Hicks, R. L. (2009): *Has Foreign Aid Been Greened?*, *Environment: Science and Policy for Sustainable Development*, 51:1, 8–21.

This report explores how the Swedish State has integrated business and human rights norms into some of the institutions (ministries, State agencies and State-owned or controlled companies) that are responsible for ensuring policy coherence between the State's human rights obligations and its private sector interests in development cooperation.¹⁵ We specifically look at the risk of companies involved in development cooperation activities being implicated in human rights harm and how the Swedish State may address those risks in accordance with evolving business and human rights. We ask the question: Does Swedish development cooperation policy incorporate emerging international business and human rights norms? More specifically, we ask: Do the institutions that are responsible for delivering development cooperation have the policies and procedures in place to be able to know and show that they protect individuals from corporate related human rights harm?

To answer these questions we examine – through policy analysis and interviews – the policies, procedures and some of the practices of five selected agencies and State-owned or controlled companies. The institutions are vastly different with regards to mandate and role in Swedish development cooperation. Yet the findings do show trends and insight into the current performance of Swedish development cooperation, including elements of good practice but also gaps and that can become opportunities to align with international norms and evolving praxis. In order to delineate our analysis of Swedish development cooperation, including for the selection of State institutions and relevant activities, we focus on development cooperation directed towards mining in Africa. This delineation – which is further described below (section 2) – enables analysis of concrete activities yet does not constrain a more general assessment of the State institutions.

As the point of departure for the analysis we take the United Nations Guiding Principles on Business and Human Rights (UNGPs) which, since 2011, represent the most updated and clear articulation of how states should interpret their human rights obligations in relation

15 As will be elaborated in section 4, we are here referring to binding obligations under existing public international law as well as evolving soft law principles eg the UNGPs.

to companies infringing on human rights.¹⁶ Although they do not (yet) in themselves form part of binding public international law, the principles do form part of international "soft law", and global market uptake of the principles already suggest that they are shaping law in many ways e.g. through contract law. There are important reasons for taking this vantage point. It is reasonable to expect that Swedish development cooperation policy adhere to public international law (hard and soft) and to human rights obligations to prevent and address any potential corporate related human rights harm. This includes translating the State's policy commitments into understandable and actionable advice to those performing or delivering services - in effect, those agencies that put the policies into practice (whether a State agency or a company controlled or owned by the State).

The study in particular aims to support two policy processes in Sweden: first, the above-mentioned "restart" of the PGD that among other things focuses on strengthening "sustainable business" and; second, the implementation of the Swedish Government's recently launched National Action Plan on Business and Human Rights. Specifically, this report aims to provide the Government with a head-start in the baseline study that the Government plans to execute to clarify whether the legislation, policies and practices of the State are aligned with the UNGPs.¹⁷

The primary intended readership of this report includes Swedish politicians and civil servants in State agencies and ministries, staff in State-owned or controlled companies as well as other Swedish professionals in businesses and NGOs concerned with the incorporation of the UNGPs and the "restart" in the implementation of the Policy for Global Development. Moreover, from an international perspective, this study provides – to our knowledge – the first analysis of the implementation of the UNGPs First Pillar (the State responsibility to protect people from human rights harm) in

16 Ruggie, J., Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UN Human Rights Council, A/HRC//17/31, 2011); The UNGPs will be introduced in detail below (section 4).

17 See Ministry of Enterprise and Innovation and Ministry of Foreign Affairs, 2015. Action plan for business and human rights.

development cooperation and should thus be of interest also to an international audience.

Below, we first explain the methodology used for the study. We subsequently provide an introduction to the UNGPs, describe their applicability to development cooperation and offer a review of evolving international practice of the implementation of the UNGPs as concerns development cooperation. This helps provide an understanding of what expectations can be placed on Swedish institutions involved in development cooperation. On this basis, we examine the five selected State institutions and subsequently analyse their incorporation of the UNGPs.

1.2 Research approach

As noted, the study departs from the perspective of the UNGPs as an analytical and internationally accepted normative framework to examine the performance of State institutions with regard to business and human rights.¹⁸ The focus on activities directed towards African mining reflects the adoption of a qualitative case study methodology, acknowledging that the incorporation of the UNGPs must be studied in the context of specific policies, procedures and practices. Furthermore, this focus provides tangible “mediating objects” to discuss with interviewees. It also enables the examination of context dependent experiences of civil servants and company staff, serving to highlight nuances from practice.¹⁹ As such, it frames the concrete data generation yet does not constrain a more general analysis of the performance of State institutions through the assessment of policies and procedures.

Whereas Swedish bilateral aid to the mining sector does not comprise a substantial share of the present aid budget, there are,

18 The UNGPs have been adopted for such analytical purposes in previous studies of different business sectors, Eg Aaronson, S. A. and Higham, I. (2013). ‘Re-righting business’: John Ruggie and the struggle to develop international human rights standards for transnational firms. *Human Rights Quarterly* 35(2), 264-333; Kuijpers, K., van Huijstee, M., Wilde-Ramsing, J. (2014). A normative-empirical analysis of state duties and corporate responsibilities related to adverse human rights impacts on the Amazonian minerals-energy frontier. *Journal of Cleaner Production* 84, 786-796.

19 E.g. Flyvbjerg, B. 2006. Five Misunderstandings About Case-Study Research. *Qualitative Inquiry*, 12 (2), 219–245.

nonetheless, several substantial reasons motivating the selection of aid activities directed towards African mining as a case study. First, the African mining industry is often looked upon by development donors as a potential source for poverty alleviation. Yet it is one of the sectors where human rights impacts frequently occur, necessitating a heightened degree of due diligence from companies and States. Despite the diversity of national contexts and policy regimes, human rights risks may often be associated with environmental pollution of air and water, resettlement of people, impacts on culture, health and safety impacts on workers and local communities, livelihood and life of indigenous peoples, marginalisation of already vulnerable individuals and groups, influx of migrants, inflation of housing and living costs, sex work including child prostitution, drug abuse and violence.

Second, the Swedish Government, through the MoEI, has recently been promoting an agenda intended to strengthen the participation of Swedish companies, such as mining corporations, contractors, consultants and technology providers, specifically in Africa. Notably, the 2013 Minerals Strategy embodies the assumption that Swedish actors will – by bringing more advanced competencies and experiences – contribute to good governance practice in Africa.²⁰ As expressed by one civil servant in the present study, this policy direction hence in many ways inherits the potential for conflicts of interest between development, trade and business objectives: *“Many countries try to position themselves – it’s a sort of indirect global colonialism. Sweden is different – we’re more honest with the double objectives [of aid and trade]... But the self-promotion is certainly there, you shouldn’t try and hide this...”*.

20 Ministry of Enterprise and Innovation, 2013. Sveriges mineralstrategi - För ett hållbart nyttjande av Sveriges mineraltillgångar som skapar tillväxt i hela landet. Among others, the Geological Survey of Sweden (SGU) is called upon to identify – in dialogue with the Swedish International Development Cooperation Agency (Sida) – how Sweden can contribute to sustainable growth in the mining industry in developing countries. Business Sweden is expected to create a marketing platform for the internationalisation of the Swedish mining industry. These efforts shall also lever the work of the Project Export Secretariat in the Government Offices of Sweden, aiming to catalyse Swedish involvement in projects in emerging markets in the South.

Data generation relied on three principal activities:

1. An initial mapping and examination of how certain Swedish development cooperation activities are connected to business actors and in particular connected to the African mining sector, including identification of relevant State actors;
2. Systematic analysis (desktop review) of policies, general steering documents and implementing procedures for the identified state actors (ministries, agencies and companies); and
3. Qualitative assessment through interviews of how these policies and guidelines play out in select examples of concrete development cooperation activities.

The retrieval of relevant aid modalities and interventions and the identification of State institutions focus on bilateral aid.²¹ It is guided by the following key question: What types of aid has Sweden provided, focusing on activities directly or indirectly associated with the mining sector or mining-dependent societies in African countries that were, at least in part, implemented since the 2011 UN endorsement of the UNGPs? The search – which was open-ended and invited people to contribute to the search – set out to include the following categories of aid: direct support to mining industry, indirect support to mining industry, studies and evaluations, support to small-scale mining or other local enterprise development in areas affected by mining industries, and direct or indirect capacity building between Swedish and African mining industries. The study focuses on activities and institutions with an explicit business related objective and does not consider the important contributions towards human rights objectives in African mining sectors from other aid activities not directed towards businesses. This includes, *inter alia*, rule-of-law

21 The choice was made since the bilateral aid is the mode of development cooperation where the Swedish State arguably has the greatest opportunity to exert its leverage and ensure observance of its business and human rights obligations. Moreover, in general, Swedish aid via multilateral institutions such as the UN and IFIs is not ear-marked and it is thus not possible to trace the financial flows to specific activities (instead one may examine how Sweden casts its votes and otherwise seeks to influence the IFIs in their operations). In addition, in the definition of what comprises development cooperation, the study takes the point of departure of the Swedish Government's use of the OECD's definition of Official Development Assistance (ODA). Here, ODA is defined as: "...those flows to countries and territories on the DAC List of ODA Recipients... and to multilateral development institutions which are... provided by official agencies, including state and local governments, or by their executive agencies...". OECD, 2008. Is it aid? OECD Factsheet.

programs, democracy initiatives, and civil society programs. Nor do we claim that the examples we give from these institutions are exhaustive or “representative” – the purpose is to demonstrate a diversity of development cooperation modalities and ways in which businesses are involved and where human rights risks must be considered.

Initial requests for information were submitted to agencies and State-owned or controlled companies by email and subsequently explored as part of interviews. A search of relevant projects was also obtained from Sida’s archiving unit, including via the data management systems OpenAid, DOX (Sida’s document archive), and PLUS (Sida’s project database).²² On the basis of the emerging information, we selected five State agencies and State-owned or controlled companies that represent different characteristics of State institutions for further inquiry (Table 1). Several State institutions that could potentially be relevant to review were thus excluded from the study, including e.g. the Swedish Export Credit Agency (EKN) and the Project Export Secretariat.

Table 1: State institutions in focus for this study.

State institution	Type	Supervising Ministry
Sida	State Agency	MoFA
SGU	State Agency	MoEI
Business Sweden	Partially State-owned company	MoFA
Swedfund	Fully State-owned company	MoEI
SEK	Fully State-owned company	MoEI

Key informant interviews were conducted with civil servants and State-owned or controlled company staff to explore a) relevant aid modalities and activities, with emphasis on mining following the search criteria above, b) how these activities are governed, including through policies (instructions given by the Swedish State as well as

22 OpenAid (<http://www.openaid.se/>) offers an online repository of Swedish aid and is a response to the 2010 “Transparency Guarantee” (part of the International Aid Transparency Initiative) that means that all public documents and public information relevant to Swedish aid must be made available online. The search in Sida’s internal databases were conducted by Sida staff, using the key words from the questions above, truncated to search as broadly as possible (for instance searching for “mines” and as “mining”).

internal policies), implementing guidelines and practices, c) the experiences and insights of staff into their own implementation. In total, 32 people participated in interviews, representing ministries (MoFA, MoEI), State agencies (Sida, SGU), and State-owned or controlled companies (Swedfund, Business Sweden, SEK). Interview notes were taken verbatim. Draft sections of the results for each institution (sections 3.1 – 3.5 below) were shared with the respective contributors for the verification of factual content.²³

²³ Written comments and revisions directly in the respective results sections were received from: Sida, SGU, Swedfund and SEK. Business Sweden provided oral comments via telephone.

2. The UN Guiding Principles on Business and Human Rights

In 2005, UN Secretary General Kofi Annan appointed a Special Representative on the topic of Business and Human Rights (Special Representative of the Secretary General, SRSG). The task was in brief to propose a conceptual and practical solution to the problem arising when multinational enterprises systematically escape accountability for involvement in human rights violations. This issue of so-called “global corporate impunity” is well known and documented, including the situations where States have proven incapable or unwilling of fulfilling their human rights obligations, victims are left without justice or redress, and companies – especially multinationals and those operating across national borders – escape accountability. And the practical solutions to the problem were missing.²⁴

The original mandate of the SRSG – Prof. John Ruggie – was to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights; and to elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation (...).²⁵

In 2008 the SRSG published the “Protect, Respect and Remedy Framework”, setting out three key pillars that define the responsibility of States and companies (see below) to begin proposing a solution to business involvement in human rights abuse.²⁶ The UN Human Rights Council renewed the SRSG mandate to include further

24 See eg S. Joseph, ‘Taming the Leviathans: Multinational Enterprises and Human Rights’, 46 *Netherlands International Law Review* (1999) pp. 171–203; M. Addo (ed.), *Human Rights Standards and the Responsibility of Transnational Corporations* (Kluwer Law International, The Hague, 1999) pp. 259–272.

25 OHCHR, Resolution 2005/69, Human rights and transnational corporations and other business enterprises.

26 UN HRC, 2008. *Protect, Respect and Remedy: a Framework for Business and Human Rights*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. A/HRC/8/5.

elaboration of what these three pillars mean in practice.²⁷ The following three years were spent researching legal frameworks, piloting new approaches and concepts and consulting with stakeholders on views and good practice.

The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011. As discussed in brief above, they were preceded by a six years' preparatory process which included consultations across regions and with many stakeholder groups. Largely, the principles are today supported by a majority of stakeholders.²⁸

The UNGPs serve to clarify the expectations placed directly on States and businesses, respectively, through the "Protect, Respect and Remedy Framework". Although the UNGPs do not (yet) in themselves form part of binding public international law, the principles do form part of international "soft law", and global market uptake of the principles already suggest that they are shaping law in many ways e.g. through contract law.

The UNGPs three pillars, in summary, mean the following:

1) *The first pillar* outlines that States have a duty to protect human rights in accordance with all existing international human rights legal obligations, and protect individuals also from corporate related harm. The first pillar does not contain any new State obligations but does not contradict public international legal obligations for states; rather it specifies and interprets how existing obligations to protect human rights also extends to protecting people from harm induced by businesses.

2) *The second pillar* places an expectation that business should respect human rights; ie in a nutshell this means that businesses must not infringe of the human rights of individuals. In accordance with the UNGPs the "do no harm" approach cannot be offset by "doing good"

27 UN HRC, 2008. Resolution 8/7: Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

28 States and businesses generally support the principles. However, among NGOs there are divergent views. Among the criticisms are that they do not go far enough – setting the required action at "do no harm" rather than going further and requiring companies to contribute to local development and combating poverty. Many NGOs are calling for a binding treaty on business and human rights to hold companies accountable under international law.

elsewhere. Hence, generally promoting or supporting human rights is not part of the UNGPs. Corporate social investment, local economic development programs, philanthropy, charity programs etc are not part of the primary responsibility of a company or the study for this report. The explicit expectation to respect human rights placed on business is a novelty; it was the first time that the United Nations took a view that companies have direct human rights responsibilities. Concretely, companies are expected to do this through three steps: a) embed a policy commitment into company processes, b) execute ongoing human rights due diligence and c) remedy any adverse human rights impacts that they have caused or contributed to.

Human rights due diligence (HRDD) is understood as the whole process of identifying and assessing impacts, responding to them and integrating findings, tracking performance and reporting and communicating on this process to stakeholders as an ongoing process throughout.

3) *The third pillar* stresses the right to remedy for victims of corporate related human rights abuse. It places an obligation on States to fulfill this already existing obligation under international human rights law by providing remedy for human right harm inflicted by companies. It also places an expectation on companies to remedy human rights abuse where they have caused or contributed to such harm.

2.1 The UNGPs and their applicability to development cooperation

During the Mandate of the SRSG, there were no particular surveys, studies or reports on how the principles would be relevant to development cooperation, domestic development agencies, or other development cooperation organizations. In this section, we offer our interpretation of the UNGPs' applicability to State institutions involved in development cooperation. As noted above, this is part of the novelty of this study as we expect this can be of interest also to an international audience. The detailed explanations as to how this interpretation was derived is found below (Annex 1).

The first pillar places an obligation on States to protect individuals from corporate-related human rights abuse by specifying a number of

required actions by the State. Many of the principles require that the State properly instruct and capacitate State agencies to properly account for the State obligation to protect human rights. Ensuring policy coherence throughout all aspects of public policy is of course important to ensure consistency throughout the State apparatus. In the first pillar there is also a requirement that States take additional steps to protect against human rights abuses by companies that are owned or controlled by the State or receive support from the State, eg export credit agencies or beneficiary companies; for example by requiring human rights due diligence. The first pillar also requires that States in their procurement policies protect against human rights harm.

Application to ministries: The ten principles in the first pillar apply to the Swedish State, interpreted here as the government ministries. In particular in this context we have focused on the Ministry of Foreign Affairs and the Ministry of Enterprise and Innovation as the supervising ministries for the agencies and companies being examined.

Application to State agencies: All the principles in the first pillar that address “State agencies” also apply to Swedish development agencies. This includes Sida, with a sole mandate that relates to development cooperation, and SGU, with a partial mandate that relates to development cooperation.

Application to State-owned or controlled agencies: Principle 4 addresses State-owned or controlled companies and therefore applies to Swedish State-owned or controlled companies (SEK, Business Sweden, Swedfund).

We have focused on the principles of the UNGPs’ first pillar that we find to be most relevant in this context to the three above mentioned categories of actors in the context of development cooperation: State ministries, State Agencies and State-owned and Controlled Companies; UNGPs 4, 8 and 10 (in annex 1 we explain our interpretation in further detail).

Based on our reading of the UNGPs:

a) *The State (through its ministries and other institutions that it controls)* has a responsibility to protect individuals from corporate-related human rights harm that may arise through any activities in its development cooperation. The State has a responsibility to ensure that

there is capacity in development agencies to be aware of and observe their human rights obligations, eg by providing relevant training, information and support.

b) *Development cooperation agencies* are part of the State but have a separate responsibility under the UNGPs. They have a responsibility to consider human rights impacts of beneficiary companies that receive support or service from the agency (see specifically UNGP 4). This would include companies that receive services from the agencies such as through facilitation and matchmaking, and not just those that receive funding. They also have a responsibility to be informed of and act in a manner compatible with the State human rights obligations when they are in any way shaping business practices (see specifically UNGP 8).

c) *State-owned or controlled companies* under the UNGPs are expected not to cause, contribute or be directly linked to human rights abuse. Abuse by such a business entity may be attributed to the State and constitute a violation of the State obligations under international human rights law. The State will have various imperatives and reasons to ensure that State-owned or controlled companies respect human rights, and the State has a responsibility to use controls and take additional steps to protect people from human rights abuse by State-owned or controlled companies (see UNGP 4).

More specifically, we have in this study used the following interpretation of how the UNGPs apply in the context of development cooperation and aid. These summarized expectations provide the lens through which we convey the results for each State agency and State-owned or controlled company included in the study (section 4). We also return to these expectations in the conclusions and evaluate the current performance of the Swedish State and its agencies and companies (section 5).²⁹

The State (through its ministries) should (at a minimum):

1. Ensure that there is a clear commitment to consider business and human rights norms in relevant policy documents that guide its international development cooperation policy;

²⁹ A more elaborate description of how the UNGPs apply in a development cooperation context and how we have arrived at this interpretation is provided in Annex 1.

2. Provide means to ensure that State agencies with a development mandate and State-owned and controlled companies performing tasks or assignments categorized as development cooperation, are aware of and observe the Swedish State's human rights obligations including by setting out a formal and explicit expectation that they do so and ensuring that they are aware of what these obligations mean for them in practice;

3. Provide means to ensure that State agencies or State companies require HRDD in contexts that pose significant risk to human rights;

4. Exercise suitable control to ensure that business and human rights norms are implemented consistently across State institutions and activities;

5. Ensure that agencies and State-owned and controlled companies are transparent and consider the stakeholder and the broader public interest in access to information; and

6. Exercise influence to include consideration for business and human rights within multilateral institutions.

State agencies and State-owned and controlled companies should (at a minimum):

1. Provide consideration for human rights impacts in all contexts where companies are involved in development cooperation;

2. Put in place relevant policies and processes as appropriate to ensure that this is done systematically and consistently;

3. Require HRDD in contexts that pose significant risk to human rights, and elsewhere strongly encourage it;

4. Track performance of their own conduct and of the business entities that are involved in their development cooperation activities, and ensure corrective action where there is non-compliance, including termination of business relationships where so required;

5. Disclose information to stakeholders and publically report on business and human rights information relating to policy, operational procedure and their implementation; and

6. Consider the public interest in transparency and access to information before signing secrecy clauses with companies requiring limitations of transparency.

2.2 Benchmarking evolving practice

Overall, given the recent adoption of the UNGPs, very little has yet been done to apply the principles to development cooperation. This section considers what other States are doing based on their National Action Plans, what guidance the UN Working Group on Business and Human Rights has provided, what selected multilateral institutions are doing and what business and human rights expert organizations are saying and doing.

We conducted a review of current NAPs (Annex 2) to examine the degree to which State NAPs provide evidence that human rights and business norms are already incorporated into development cooperation policies, practices or agencies, by concrete examples of activities to this end; or States have the intention to incorporate human rights and business norms into development cooperation policies, practices or agencies in line with the UNGPs.³⁰ All countries reviewed do provide development cooperation with the exception of Lithuania, and therefore Lithuania has been excluded from this summary of findings.

Our review reveals that a clear majority of NAPs discusses (or at least mentions) that the UNGPs are relevant for development cooperation and that the UNGPs apply to development agencies (or at least mentions the role of development agencies). It is therefore appears to be State practice to consider how the UNGPs apply in the context of development cooperation.

In line with UNGP 4, more than a third of the States require (or commit to requiring) of companies involved in development cooperation that they respect human rights, and more than third of the States apply (or commit to applying) a due diligence procedure to companies involved in development cooperation.

In line with UNGP 10 (b), half of the State NAPs undertake a commitment to use their leverage to influence multilateral organisations to incorporate business and human rights within their mandate.

³⁰ To date, 8 countries have launched a NAP. These include: the UK, the Netherlands, Italy, Denmark, Spain, Finland, Lithuania, and Sweden.

See eg <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

In line with UNGP 8, a quarter of the States provides (or commit to providing) capacitation, information, training and support to development agencies and a quarter of the State NAPs commit to efforts to ensure policy coherence. One NAP (Norway) commits to efforts to ensure consistent application of human rights throughout the State organisation, for example when advising companies.³¹

The Swedish NAP was launched in August 2015. It is an important part of the Government's Policy for Global Development. The Swedish NAP contains many elements of good practice, and in many ways stands out in comparison with the other NAPs as can be identified in the international comparison (Annex 2). The NAP importantly notes that Sida since 2015 is mandated by the State through a formal requirement to adhere to the UNGPs, and that Sida has developed a due diligence tool. These are two of the most concrete examples provided in any of the NAPs reviewed of how a development agency is working to incorporate the UNGPs, and should certainly be seen as good practice in an international context. The NAP further notes that a seminar was organized by the State on the topic of development and business and human rights. The NAP also notes that Sida is increasingly working with the private sector to reach development goals. It specifies that sustainability issues will integrate into trade and export promotion policies.

Similar to other NAPs however, it does not specify how policy tensions will be (or are) resolved, or how the development agency (Sida) plans to work ahead with the issues in further detail. The NAP states that Sweden will encourage organisations such as the UN, EU, OECD and the World Bank to promote corporate respect for human rights within their respective mandates. This is commendable as international good practice. There are, however, opportunities for improvement as well. For example one could have hoped for further information about how the UNGPs will apply in development cooperation, and how tensions between policy interests will be resolved practically to ensure that human rights are not only promoted when it suits trade or business interests but at all times. The

31 See Annex 2 for the results of this review; whereas other studies have reviewed current NAPs this study presents the first review specifically concerning development cooperation. See eg de Felice and Graf, 2015. The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights. *Journal of Human Rights Practice* 0(0), pp. 1–32.

Swedish State could focus additional effort on policy coherence and ensuring that the State speaks with one voice (compare with the Norwegian NAP for example). Also, it could ensure that due diligence is a requirement for all agencies conducting development cooperation mandates when they collaborate with companies. Furthermore, all agencies that have a mandate relating to development cooperation could be instructed to adhere to the UNGPs just like Sida. The comparison with other NAPs will surely provide other opportunities for improvement. Given that the UNGPs were recently endorsed by the UN Human Rights Council, we recognize that this is the beginning of a journey, and hopefully as more NAPs are developed by States across the world, there will be more focus on how the UNGPs apply in development cooperation.

The UN Working Group on Business and Human Rights has published two guidance reports to support States in developing their NAPs: *The Substantive elements to be included in a national action plan* and the final report *Guidance on National Action Plans on Business and Human Rights*.³² The documents provide very little additional guidance to States or interpretation on how the UNGPs and the State obligation to protect people from corporate related human rights harm should be applied in the context of development cooperation. The publications do reiterate that development cooperation agencies should consider the UNGPs. The first document does usefully state that NAPs should – with regard to agencies linked to the State (which includes explicit reference to development agencies) – establish whether (*development*) agencies...take into account actual and potential human rights impacts when (*providing support and services*) to projects. Additionally, it states that an assessment should identify measures that require the State agencies and business enterprises to undertake human rights due diligence on projects receiving State support, especially in cases where the nature of business operations or operating contexts pose significant risk to human rights. Hence, it would certainly be considered good practice that State and State agencies conduct a baseline study to assess whether corporate related human rights abuse is accounted for in development cooperation.

³² UN WGBHR, undated. *Substantive elements to be included in guidance on national action plans to implement the guiding principles of business and human rights*. See in particular comments and examples relating to UNGP 4, 5, 7, 8 and 10; UN WGBHR, 2014. *Guidance on National Action Plans on Business and Human Rights*.

Some multilateral institutions have incorporated the UNGPs into their existing norms or guidelines for companies. The International Finance Corporation and World Bank Group, have incorporated reference to human rights into their introduction by a generic reference to the corporate responsibility to respect human rights. Concretely, the IFC Performance Standard (1) (Identification of Risks and Impacts) outlines in a footnote (12) that *“In limited high risk circumstances, it may be appropriate for the client to complement its environmental and social risks and impacts identification process with specific human rights due diligence as relevant to the particular business”*.³³ This requirement is clearly in the spirit of the UNGPs. However, the UNGPs require companies to execute human rights due diligence on an ongoing basis, and with regard to all internationally recognized human rights. For at least these two reasons, one cannot say that the IFC performance standards are fully aligned with the UNGPs.³⁴

The OECD (Organization for Economic Co-Operation and Development) has developed various guidelines for companies on sustainability. In particular, the OECD Guidelines for Multilateral Enterprises cover a range of issues relating to responsible business behavior, including human rights. Overall, the guidelines are well aligned with the UNGPs. It has also developed sector specific guidelines that focus on particular challenges pertaining to certain industries of which various are relevant to the African mining sector: the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and Stakeholder Engagement due diligence in extractive industries.

The UN Global Compact principles do cover respect for human rights and non-complicity in human rights abuse, but also go beyond,

³³ The IFC Performance Standards (see eg <http://www.ifc.org/performancestandards>) applies to all investment and advisory clients whose projects go through initial credit review process after January 1, 2012. The IFC performance standards are hence highly relevant and often used, for supported mining projects in Africa. As is outlined below (section 4) several State-owned companies refer to the IFC Performance Standards.

³⁴ Various other actors are also of this view, see for example Amnesty Public Statement IOR80/006/2011 published on the 20th of October 2011: The Revised Sustainability Framework of the International Finance Corporation: a missed opportunity to better protect the rights of those affected by business related human rights abuses.

asking companies to also support human rights. However, public endorsement of the UN Global Compact or membership in the UN Global Compact network does not automatically lead to a full alignment with the UNGPs since there is much more detail on what the corporate responsibility to respect human rights means in the UNGPs than in the UN Global Compact ten principles.

3. Findings: policies, procedures and practices in Swedish State institutions

In this section, we first provide a summary overview of types of activities that were retrieved as examples of Swedish aid that seeks to mobilize companies to engage with the African mining sector. We also briefly introduce the institutions that are in focus in this study and how the two key ministries set out to supervise their activities. After this introduction, we delve into a detailed analysis of the performance of each of the five selected agencies and State-owned or controlled companies from the perspective of the UNGPs and our interpretation of how they apply.

State institutions examined in this study and that are active with regards to business supported development cooperation – including in the African mining sector – are both State authorities or State-owned or controlled companies. The authorities include both aid agencies (eg Sida) and agencies that are not aid agencies but have a business oriented mandate and that also, through different modalities, have been given specific tasks or have taken upon themselves to implement aid projects (eg SGU). State-owned or controlled companies can be either fully State-owned or owned in part by the State together with Swedish business sectors. Authorities are governed by the Swedish Government through a Ministry (*departement*) by means of an annual Letter of Instruction (*regleringsbrev*). The partially or fully owned or controlled State-owned companies are governed by means of the State's general owners policy as well as the specific owners' policy (*ägaransvisning*) developed by the Board of the company (Table 1).

The MoFA holds responsibility for international relations, Swedish development cooperation and export promotion. This ministry is responsible for the steering of bilateral Swedish aid (the unit U-STYR), multilateral aid (the unit UD-MU), as well as for Sweden's international human rights obligations (the unit FMR). MoFA is also responsible for coordinating the implementation of the recently launched Swedish NAP; this work is located with the unit for international trade policy (UD-IH) that also holds the responsibility for sustainable business and CSR. The MoEI is responsible for the State's steering of the 49 State-owned or controlled companies in Sweden, and also supervises some agencies, such as SGU. The State's

influence over State-owned or controlled companies is primarily exerted via the nomination of board members, the instructions provided via the State's general ownership policy and guidelines and through ongoing monitoring and evaluation activities. For instance, in 2015, the MoEI is, among other things, planning workshops for the State-owned or controlled companies on the UNGPs.³⁵

The Swedish State – through its agencies and State-owned or controlled companies – is providing bilateral support or services to business activities linked to the African mining sector through a range of modalities. These include funding or sponsoring directly to a company, non-financial support, eg by facilitating or collaborating as partners directly with a company, support to State institutions in the host/partner country, civil society capacity building, support to international governance initiatives (via OECD, EITI etc), and studies and assessments into the mining sector and/or CSR (see the list of examples in Annex 3).

3.1 The Swedish International Development Cooperation Agency (Sida)

The Swedish International Development Cooperation Agency (Sida) works on behalf of the Swedish parliament and government, tasked specifically to coordinate and implement Swedish development cooperation. Its mission is to contribute to reducing poverty in the world: *“Sida is responsible for managing grants or other financing that cost effectively contributes to reaching the targets for international development cooperation... as part of implementing Sweden’s policy for global development”*.³⁶

Sida is under the jurisdiction of the MoFA, governed by an annual Letter of Instruction. The substantial targets of development cooperation are defined by a set of strategies including the Policy for Global Development (PGD) and the Aid Policy Framework that is intended to further concretize the PGD's more general targets and translate Sweden's commitment to international agreements into national strategies. The Aid Policy Framework was launched in 2014

³⁵ MoEI, 2015. Verksamhetsberättelse för företag med statligt ägande 2014.

³⁶ SFS 2010:1080 1§.

to give enhanced direction, in response – among others – a critique from the Swedish Agency for Public Management that the governance of Swedish development cooperation was too ambiguous, with multiple overlapping steering instruments and lack of clarity from government in specifying direction.³⁷

Sida, business supported development cooperation, and mining in Africa

As the core aid agency in Sweden, Sida coordinates and implements a range of modalities that have a direct or indirect bearing on human rights in African mining. Indeed, democracy and human rights is the thematic area where Sida contributes most funding; in 2013 Sida allocated 30% of its disbursements to this.³⁸ Sida has developed several Business for Development (B4D) partnership options that potentially open private sector engagement, including in the mining sector. However, in terms of funding, contributions using the B4D modalities are small. For the Africa department in 2014 they represented only about 1% of contribution budgets.³⁹ These include the so-called Public-Private Development Partnerships (PPDP), Challenge Funds, Drivers of Change, and Innovative Finance.⁴⁰ B4D is one of several Sida-funded aid modalities motivated by the PGU's call for greater coordination between public and private actors that aims to combine aid and business interest of Swedish and African partner countries into so-called "win-win situations".

The first Public-Private Development Partnership came into being due to a proposal from Swedfund, SPE (*Svensk Projektexport*) and The Swedish Trade Council (now part of Business Sweden). The purpose of this funding modality is: "...to mobilise the private sector, in Sweden

37 Swedish Agency for Public Management, 2011. Styrning av svensk biståndspolitik - En utvärdering, p.7: "This implies that it is difficult to discern what is the intention and ambition of the government as concerns development cooperation." The framework is currently under revision.

38 Sida, undated. Democracy, Human Rights and Public Administration 2013. Portfolio overview. However, recall that this study focuses on the aid-trade nexus and does not examine the many important contributions that Sida makes through, for instance, rule of law programs, civil society support or broader capacity building.

39 Rough estimate, email correspondence with Sida staff, 2015-06-17

40 See eg <http://www.sida.se/English/Partners/Private-sector/Collaboration-opportunities/>. One further modality, Land related investments in African, is currently being considered (email correspondence with Sida staff, 2015-06-17).

*and elsewhere, to pro-actively engage in low income countries and with people in poverty through investments, trade, technology transfer, problem-solving and linkages to smaller local enterprises”.*⁴¹ Projects are implemented by a third party with costs shared in a co-funding arrangement between Sida and one or more private partners (Sida never provides finances through this modality directly to a company).⁴² There is not an exact figure for how much of the project costs are borne by Sida, but as a rule of thumb Sida’s contribution is up to 50%.

While the extractive industries have no particular mention in the guiding documents, Sida is currently involved in some initiatives with linkages to the extractive industries.⁴³ Sida has allocated funding to other Swedish agencies and State-owned or controlled companies (such as SGU, Business Sweden) in PPDPs aiming to promote the engagement of Swedish companies in African mining (see sections 3.2 and 3.3).⁴⁴ These investments are expected to complement private finance, and Sida’s involvement should have clear benefits for people in poverty.⁴⁵ Furthermore, the Swedish Leadership for Sustainable Development (SLSD) – a network of 20+ Swedish and Swedish rooted companies aiming to promote the integration of social, environmental and economic sustainability into their business models and core operations – provides an example of awareness-raising activities among companies with direct or indirect implication also for mining.⁴⁶ This network has organized at least one workshop on how Swedish private sector actors (eg equipment suppliers) active in African mining can contribute to sustainable development and improved CSR efforts.⁴⁷

Sida has explored the feasibility of financing African and international institutions that work to implement the African Mining

41 Sida, undated. Public Private Development Partnerships. Collaboration with the private sector. Guidelines. Internal document, p. 2.

42 Interview with Sida staff, 2015-06-25. In fact, the law on the implementation of the EU’s rules on state subsidies (SFS 2013:388) prohibits contracting with companies, as is the case in the B4D projects, without public procurement.

43 See eg Sida, 2014. Memo: U4 Mini – seminar on Extractive Industries, Nov. 7 2014.

44 These include MeetingPoints Mining (SGU) and MeetingPoints (Business Sweden) and are discussed in more detail below (sections 4.2 and 4.3).

45 See eg Sida, undated. Public Private Development Partnerships. Guidelines for Application.

46 Sida, undated. Swedish Leadership for Sustainable Development.

47 Interview with Sida staff, 2014-11-06 and 2014-11-20.

Vision of a *“transparent, equitable and optimal exploitation of mineral resources to underpin broad based sustainable growth and socio-economic development”*.⁴⁸ These include the African Minerals Development Centre (AMDC) and the United Nations Economic Commission for Africa (UNECA). However, during the assessment process it was decided that no specific support to AMDC would be given. Rather Sida would focus on the core support to UNECA of which AMDC is a part.⁴⁹ Moreover, a decision was taken at the end of 2014 to support a vocational training school as a Public Private Development Partnership (PPDP) in Zambia, involving the Volvo Group, Sida, United Nations Industrial Development Organization (UNIDO), a Zambian technical school, and other Zambian stakeholders.⁵⁰ The aim is to support vocational skills development for mechanics maintaining and operating heavy equipment vehicles that is relevant for the mining industry as well as other construction and earth moving activities.⁵¹ There are also discussions on establishing a CSR network for Zambia-based mining companies.⁵² Sida is also planning for an International Training Program (ITP) on Environmental Management Systems (EMS) intended to offer training activities to actors in the mining industry.⁵³

Expectations on Sida regarding business and human rights

The Letter of Instruction as well as the Government Regulation SFS 2010:1080 from the MoFA, both from 2015, require Sida to ensure that Swedish aid complies with the UNGPs, as well as OECD’s Guidelines on Multinational Enterprises and the UNGC (Table 2). The Aid Policy Framework does not provide further detail regarding the government’s instruction to Sida to comply with the UNGPs but lays out more general thematic priorities, including democracy and human rights.⁵⁴ The references to the UNGPs, and the UNGC, were

48 The African Union, 2009. Africa Mining Vision.

49 Interview with Sida staff, 2014-11-20.

50 Email correspondence with Sida staff, 2015-06-17

51 SIPU International et al. 2014. Volvo and vocational training in Zambia: Private-Public Development Partnership (PPDP) within the development of Zambia’s Mining Skills and Training Framework (MSTF). Concept paper

52 Email correspondence with Sida staff, 2015-06-17

53 Interview with Sida staff, 2014-11-06.

54 The Aid Policy Framework, p. 14.

not included in previous Government Instructions prior to 2015. These applied more general formulations referring to unspecified international human rights norms.⁵⁵

Sida's current guidelines on how to support CSR were adopted in November 2011 and – in contrast to the previous version from 2005 – include specific reference to the UN Protect, Respect and Remedy Framework.⁵⁶ The guidelines outline a range of areas where Sida can actively promote CSR activities, including in partner countries and in its own operations. It sets out a number of opportunities for Sida proactively to contribute to enhanced CSR activities. The reference to the UN Protect, Respect and Remedy Framework is also found in the guidance documents on Sida's Human Rights-Based Approach and its application to private sector and market development.⁵⁷

In terms of human rights commitments, on a general level the guidelines encourage Sida staff to implement the measures, but applying business and human rights norms are not mandatory. This would be preferred to ensure application of the UNGPs throughout Sida's operations.⁵⁸ For instance, the guidelines note that Sida's *"...role as an authority enables it to make it easier for companies and organisations to respect and act responsibly"*.⁵⁹ An internal review of the implementation of the guidelines proposed in October 2012 that Sida revise this commitment from a non-binding "can" to a mandatory "shall". However, it was unclear if Sida currently has the capacity and competence to implement this commitment in their operations.⁶⁰

This weak interpretation of Sida's responsibility is mirrored also in the guidance specifically for Public-Private Development Partnerships,

55 For instance, the Government Instruction from 2014 only stated that investments should take place: "...in accordance with international norms and principles for responsible investments"; MoFA, 2013: Regleringsbrev för budgetåret 2014 avseende Styrelsen för internationellt utvecklingssamarbete. Regeringsbeslut III:19, 2013-12-19.

56 Sida, 2012. Guidelines for Sida's support to Corporate Social Responsibility (CSR), p. 15; Sida, 2005. Guidelines for Sida's support to Corporate Social Responsibility. Position Paper, Sida.

57 Sida, 2015a. A Human Rights Based Approach in Private Sector Collaboration; Sida, 2015b. A Human Rights Based Approach to Market Development.

58 The guidelines commonly note that "Sida can..." rather than stating mandatory commitments.

59 Sida, 2012, *supra* note 56.

60 Sida, 2012. Implementering av "Riktlinjer för Sidas arbete med CSR". Promemoria 2012-10-05 (p. 2): "The guidelines ought to be reformulated so that they take the step from a non-binding 'should' to a binding 'shall'".

where Sida emphasizes its approach as being primarily dialogical: *“Sida’s main role is to add further development value to projects through dialogue with the partner(s)... dialogue and time is at the core of Sida’s contribution, ie Sida’s “additionality”*.⁶¹ No evidence was found that the State (through the MoFA) has provided specific information, training and/or support to Sida on the UNGPs and/or how to interpret and implement its business and human rights obligations.

In table 2 below is a summary of the findings from the desktop review of policies and steering documents.

⁶¹ Sida, 2005. CSR guidelines, p. 4.

Table 2: Expectations on Sida through State policy and steering documents.

Source	What is the status of the commitment? A. Mandatory requirement ("shall") B. Aspirational. ("should") C. No information	What is the content of the commitment - does the document set out an expectation of providing consideration for business related human rights impacts? A. Yes, through an explicit expectation for the agency to observe human rights obligations. B. Indirectly eg by reference to UNGC norms or other. C. No	Does the document mention HRDD? A. Yes – mandatory reference in situations that pose significant risk to human rights. B. Yes – mandatory in other situations. C. Yes, not mandatory but encouraged. D. Indirect or similar / close reference (eg to EIA/SIA). E. No	Does the document require follow-up or reporting on performance specifically related to business and human rights? A – Yes B – No
MoFA: Annual Letter of Instr. 2015 ^(a)	A	A	E	B
The Swe Gov. Reg SFS 2010:108 ^(b)	A	A	E	B
The Swe Gov. Reg SFS 2007:515	C	C	E	B
MoFA: Aid Policy Framework 2013 ^(c)	B	B	E	B
Sida 2012: Guidelines for Sida's support to CSR ^(d)	B	A	D	B

NB: The entries imply a gradation in that A is "better" than B *within* each column; however since each question contains a different number of potential answers no comparison can be made *between* the columns.

References and comments to table 2: (a) MoFA, 2014. Regleringsbrev för budgetåret 2015 avseende Styrelsen för internationellt utvecklingssamarbete. Regeringsbeslut II:19, 2014-12-18: "*Sida shall ensure that the agency's activities are exercised according to OECD's guidelines for multinational corporations, the principles in Global Compact and the UN's principles for business and human rights*". (b) SFS 2010:1080: Förordning med instruktion för Styrelsen för internationellt utvecklingssamarbete (Sida). The instruction was updated 2015-07-06 to match (4§) the expectations placed on Sida in the Letter of Instruction. (c) The Aid Policy Framework sets out general targets for Swedish aid but it does not detail the interpretation of Sida's obligations concerning business and human rights norms. As regards control and follow up from the State, Sida has been given the assignment to formulate and report on indicators related to some of the sub-objectives in the Aid Policy Framework, however not yet sub-objective 2, and not if/how the Human Rights Based Approach/rights perspective is applied. Similarly, in the contribution management system there is statistics for all human rights issues, following Sida's Human Rights Based Approach. However, while some initial efforts have been made to review this information as concerns CSR work and collaboration with companies, no specific and systematic tracking has yet been done concerning business and human rights (email correspondence with Sida staff, 2015-06-18). (d) Sida, 2012, supra note 56, p. 3: "*Sida's and the Swedish government's work with CSR is based on John Ruggie's framework and two and other internationally recognized frameworks: The UN's Global Compact's principles for sustainable business and OECD's Guidelines for Multinational Enterprises*". "; "*In all contribution assessments, [Sida can] ensure that adequate impact assessments are performed in order to identify and handle risks and impact within the areas of the environment, human rights, gender equality, corruption, economic development and other social impacts.*" (p. 18). HRDD is introduced as a concept in the appendix but it is not explained what Sida's commitment is to HRDD (p. 25).

Sida's consideration of human rights in practice

Following Sida's Sustainability Screening Framework, a principal vehicle for Sida to implement its CSR guidelines when entering a partnership with companies is the so-called Due Diligence/Self Assessment Template. The results submitted by the company are fed into the screening undertaken by the desk officers.⁶² The assessment template covers ten so-called sustainability subject matters that have been defined on the basis of several international frameworks.⁶³ In terms of content, they bear much resemblance with the UNGC's ten principles, which also was the principal source of inspiration in the 2005 version of the CSR guidelines.⁶⁴ The Self Assessment is mandatory in Sida's contribution management system, both as a

⁶² Sida, 2013. Sida Sustainability Screening Framework.

⁶³ The Sida Sustainability Self Assessment Questionnaire; Sida, 2013. Sida Sustainability Screening Framework. Internal Guidelines: "SSSF addresses ten key sustainability related subject matters, based on international frameworks and guidelines, such as UNGP, Global Compact, OECD and ISO26000" (p. 2).

⁶⁴ The UNGC was also the principal source of inspiration for the 2005 version of the CSR guidelines and the use of the UNGC is also apparent in the Strategy for capacity development and collaboration 2011-2013, which does not mention the UNGPs.

requirement when setting up a partnership and for monitoring during the cooperation.⁶⁵

According to Sida's internal guidance on PPDPs, project proposals should evaluate, among other things, the credibility and track-record of the companies involved. In order to obtain an evaluation that is independent of the company's self-assessment, Sida may undertake external audits of the beneficiary companies.⁶⁶ However, Sida staff explained that such audits have not yet been carried out since the B4D partnerships only have been implemented for a limited number of years.⁶⁷ This provides a good opportunity for Sida to evaluate the human rights performance of beneficiary companies and once completed would certainly be a good example of how the UNGPs apply in practice in development cooperation.

The due diligence process that Sida applies is not associated with mandatory expectations for the corporate partners to live up the UNGPs, also exemplified by the fact that it does not require HRDD in high-risk situations. Sida staff explained that *"...what Sida expects from the companies is more flexible...these are new methods and we are testing how they work in practice. Possibly, we may place mandatory requirements later..."*⁶⁸ Nevertheless, commendably, Sida makes use of their leverage via the MOUs with third parties, ensuring that companies commit to promoting shared values in the projects. Yet, the MOUs reviewed do not explicitly define the human rights commitments in line with the UNGPs as could be desired. The implementing organization and Sida are subsequently jointly responsible for evaluation according to the agreements.⁶⁹

In the private sector partnerships, Sida allows partner companies to place confidentiality clauses in the due diligence assessments. All companies that Sida has collaborated with to date have done so and thus no examples of due diligence documentation could be shared for this study.⁷⁰ Sida should consider that this may compromise the public's right to information, not least in the light of the UNGPs. It should be in Sida's interest to push for transparency as far as possible,

65 Sida email correspondence, 2015-06-16

66 Sida, 2013 supra note 62.

67 Sida email correspondence, 2015-06-16.

68 Interview with Sida staff, 2015-06-25

69 Sida email correspondence, 2015-06-29.

70 Sida email correspondence, 2015-04-01.

including in situations where they collaborate in private sector partnerships.

Moreover, the risk assessments that underpinned the funding decisions for the two projects MeetingPoints Mining (MPM) and SystematicFacilitator Services (SFS) did not show explicit consideration for human rights risks linked to the projects, nor mention any specific expectations placed on SGU (as the implementing organisation), for instance in terms of training or awareness raising towards participating companies.⁷¹ The same is the case for the projects co-funded by Sida and implemented by Business Sweden (see sections 3.2 and 3.3 below).⁷² It would be suitable here that Sida places an explicit expectation of partnering or associated agencies to consider business and human rights norms when assigning tasks to other State agencies.

Sida stores information on the implementation of its Human Rights Based Approach in all projects, including the B4D modalities. However, it has not yet undertaken systematic analysis, tracking or monitoring with regards to private sector collaboration.⁷³ Sida is yet to initiate a comprehensive evaluation of its private sector collaboration and has to date only evaluated some of the B4D modalities. Some of the findings from these specific evaluations are nonetheless of interest to the present study; notably two of the evaluations suggested that Sida's human rights objectives – during project implementation – are prone to dilution relative to other objectives and interests of the implementers (e.g. environmental conservation, commercial development).⁷⁴ One evaluation concluded that “...gender issues have been less visible and human rights issues have not featured explicitly in

71 Sida promemoria no. 2010-000236 and Sida Besluts PM no. 2010-001790. These two decisions were both made prior to the adoption of the updated 2012 CSR guidelines.

72 Sida Promemoria 2007-00286212008-001286, 2009-12-14: Bidrag till MeetingPoint Botswana och MeetingPoint Namibia 2010 – 2013.

73 Interview with Sida staff, 2015-03-10 and 2015-06-25. The updated Government Instruction to Sida (May 2015) has instructed Sida to undertake a review of its private sector collaboration and it is likely that Sida as part of this task will request a strategic evaluation of these modalities. The 2012 CSR Guidelines, supra note 56, (p. 24) state that “The Unit for Capacity Development and Cooperation shall make annual compilations showing what Sida does within CSR”. However, these compilations have not yet been completed.

74 Chipeta et al., 2014. Evaluation of the Market Transformation Initiative (MTI). Final Report. 2014-02-20; Andersson et al., 2014. The Evaluation of the Challenge Fund Innovations Against Poverty, IAP. Final report, 8 July 2014.

the programme".⁷⁵ A similar observation was made by the evaluators of the MeetingPoints program: "*Regarding Human rights/democracy and gender, as well as the perspectives of rights based and poverty little direct or explicit initiatives have so far been taken*".⁷⁶ The overall evaluation of Sida's Partner Driven Cooperation (PDC) modality notes that: "*It has for many actors, especially for actors new to development cooperation, been a problem to integrate these perspectives...[and this] has not been given high priority by most partners*".⁷⁷ It can therefore be assumed that similar findings may apply in the business context – that human rights imperatives will be secondary to commercial interests in private sector collaboration unless human rights concerns are made explicit and concrete; and human rights due diligence be made mandatory, at least in high risk situations. The planned comprehensive evaluation should therefore be welcomed as means to provide focus on the risk of human rights infringements by beneficiary or companies partnering with development cooperation agencies.

3.2 The Geological Survey of Sweden (SGU)

The Geological Survey of Sweden (SGU) is an agency under the Ministry of Enterprise and Innovation and serves as "*the authority on the country's geological character and mineral management*".⁷⁸ The statutory act that instructs the agency specifies, among other things, that SGU shall "*act to create conditions for the sustainable use of the country's mineral resources and to promote sustainable growth and business in the sector. In this task is among other included to market Sweden as an attractive country for exploration...*"⁷⁹ Like other State agencies, SGU is governed by an annual Letter of Instruction, which can refer to other government policy to detail the annual tasks that the government expects SGU to implement.

⁷⁵ Andersson et al., 2014, supra note 74, p. 47.

⁷⁶ Goppers, K., 2012. Facilitating Partner-Driven Development Cooperation in Southern Africa: A Review of Sidas Meeting Point Program with the Swedish Trade Council and the Swedish Geological Survey. Report for Sida. Framework Agreement for Sida Reviews, Evaluations and Advisory Services on Results Framework, Contract number C01548, p. 30.

⁷⁷ Markensten, K., Lindström, J., 2013. Experiences and lessons learned from Partner Driven Cooperation in the seven selective cooperation countries. Sida Decentralised Evaluation 213:49. pp. 10 and 66.

⁷⁸ SFS 2008:1233 §1, Statutory Act with instruction for the Geological Survey of Sweden.

⁷⁹ SFS 2008:1233 §3, supra note 78.

SGU, business supported development cooperation, and mining in Africa

SGU has, following its statutory act, a general mandate to engage in international aid activities, ie that it “shall, to the extent it is deemed suitable relative to goals and tasks in general, participate in international cooperation and development projects”.⁸⁰ With the Minerals Policy (February 2013), the Ministry of Enterprise, Energy and Communications placed (goal 5, measure 18) an explicit expectation on SGU to identify – in dialogue with Sida – how Sweden can contribute to sustainable growth in the mining industry in developing countries.⁸¹

In this context, SGU has recently led the implementation of two aid projects that directly relate to the African mining sectors: MeetingPoints Mining (MPM) and MeetingPoints Mining – Systematic Facilitator Services (MPM/SFS) comprised of two projects funded by Sida through so-called Partner Driven Cooperation (PDC) and Business for Development (B4D) instruments, respectively.⁸² MPM received a budget of 23 M SEK and focused on work in Botswana, Namibia and South Africa during 2010-2013. MPM/SFS received 15 M SEK and focused on Zambia, Tanzania, Mozambique during 2011-2014. The two projects were partly inspired by a proposal originally developed by Swedish private sector actors, united in an initiative then known as “Mining for Development”.⁸³

The two projects were highly connected and contained roughly the same types of activities: a) facilitator service, incl. matchmakings between African and Swedish partners, private or public, b) institutional cooperation, capacity building with “sister” organisations in Botswana, Namibia, South Africa, and c) research cooperation. A stated objective was to contribute towards the overarching goals of the

80 SFS 2008:1233, *supra* note 78.

81 Ministry of Enterprise, Energy and Communications, 2014. Uppdrag att kartlägga vilka länder som utbytet inom gruv- och mineralområdet bör fördjupas med. N2014/3759/FIN.

82 See Markensten, K., Lindström, J., 2013, *supra* note 77, pp. 13-14: “Actor-driven cooperation refers to measures that stimulate cooperation activities primarily between Swedish actors and actors in low and medium income countries that build on mutual interest and an explicit division of responsibility between the actors involved and that have the potential to eventually be self-supporting relationships.”.

83 SGU. 2008. Internationellt utvecklingssamarbete inom mineralsektorn. Utredning på uppdrag av regeringen. Dnr 0-1329/2008; Global Utmaning and Raw Materials Group. 2009. Mining for Development - a preparatory study.

Policy for Global Development (PGD) and one ambition from Sida was that the projects could serve the mutual interests of African companies, Swedish companies and the partner country government, ie striking so-called “triple-win” situations.⁸⁴ Some of the work included sub-projects with relevance to promoting respect for human rights, such as enabling fair trade in gemstones and efforts to reduce environmental contamination in the Zambian copper belt.⁸⁵

Expectations on SGU regarding business and human rights

The Swedish Government – via the MoEI – has not placed any specific requirements on SGU in terms of business and human rights (Table 4). Nor do the steering documents for SGU contain reference to the more general policies, such as the PGD. SGU has itself adopted one internal policy that declares an ambition to promote responsible business behaviour, through implementation of the UN Global Compact (Table 3). No evidence was found that the State has provided specific information, training and/or support to SGU on the UNGPs and/or how to interpret and implement its business and human rights obligations.⁸⁶

In table 3 below is a summary of the findings from the desktop review of policies and steering documents.

⁸⁴ Sida Besluts PM no. 2010-001790.

⁸⁵ See eg Johansson, R. and Sandström, O. 2014. MeetingPoints Mining. Final report. SGU-rapport: Dnr 08 1174/2010; Lindahl, J., 2014. Environmental impacts of mining in Zambia. Towards better environmental management and sustainable exploitation of mineral resources. SGU-rapport 2014:22.

⁸⁶ The only example of training provided to SGU was at the Sida Partnership Forum in Härnösand, providing courses to SGU staff in more general management of aid projects and programs, such as results monitoring and anti-corruption; email correspondence with SGU staff, 2015-06-17.

Table 3: Expectations on SGU through State policy and steering documents.

Source	What is the status of the commitment? A. Mandatory requirement ("shall") B. Aspirational. ("should") C. No information	What is the content of the commitment - does the document set out an expectation of providing consideration for business related human rights impacts? A. Yes, through an explicit expectation for the agency to observe human rights obligations. B. Indirectly eg by reference to UNGC norms or other. C. No	Does the document mention HRDD? A. Yes – mandatory reference in situations that pose significant risk to human rights. B. Yes – mandatory in other situations. C. Yes, not mandatory but encouraged. D. Indirect or similar / close reference (eg to EIA/SIA). E. No	Does the document require follow-up or reporting on performance specifically related to business and human rights? A – Yes B – No
<i>Ministry of Enterprise and Innovation: Letter of Instruction 2015^(a)</i>	C	C	E	B
<i>Ministry of Enterprise and Innovation: SFS 2008:1233^(b)</i>	C	C	E	B
<i>SGU Board: Operational strategy^(c)</i>	C	C	E	B
<i>SGU Board: Sustainability vision 2014^(d)</i>	A	B	E	B
<i>SGU Board: Verksamhetspolicy</i>	C	C	E	B
<i>SGU Board: Operational plan</i>	C	C	E	B

NB: The entries imply a gradation in that A is "better" than B *within* each column; however since each question contains a different number of potential answers no comparison can be made *between* the columns.

Comments and references to table 3: (a) Ministry of Enterprise and Innovation, 2015. Letter of Instruction for the budget year 2015 regarding the Geological Survey of Sweden within budget line 24 business. (b) SFS 2008:1233 §3. (c) SGU, 2014. Operational strategy 2015, (d) SGU, 2014. SGUs hållbarhetsarbete – vision och ställningstaganden, p. 10: "In our international projects SGU shall follow and promote the UN Global Compact..."

SGU's consideration of human rights in practice

Given the near-absence of business and human rights requirements, SGU's work has few formal expectations to fulfil. However, the literature from the two aid projects MPM and MPM/SFS do not provide evidence that even the UNGC - which does contain references to human rights but cannot be said to be equal to the UNGPs - was applied in practice.⁸⁷ The risk assessment undertaken by SGU, in dialogue with Sida, focused on a more general consideration of the possibility to contribute to the implementation of the PGD.⁸⁸ SGU staff stated: *"We didn't feel that Sida told us that this is how they wanted things to be... probably they find it just as difficult as we do... seeing the link to all the [human rights] declarations that [Sweden] shall comply with".*⁸⁹ Lacking guidelines and specific practices SGU staff faced challenges regarding human rights risk: *"We had many discussions with Sida's desk officers about gender, poverty and human rights... it was hard for both them and us to know how to handle this in the projects". "...it's not easy to map risks in another country... we had to trust our gut feeling and recommendations from others".*⁹⁰

The first of two studies commissioned from SGU by the Swedish Government under the Minerals Policy to explore how to promote Swedish mining companies, contractors and service providers abroad suggested that SGU foresaw a need to develop a human rights and transparency policy if SGU was to engage more in this area.⁹¹ MPM and MPM/SFS were implemented in the absence of such policies or guidelines.⁹² SGU staff explained that due diligence procedures were perceived to be relevant only if projects would result in actual funding to private actors. SGU staff also noted that they sought to exercise their own informal screening methods when inviting a Swedish company: *"Introducing a small Swedish company to the geological survey in the [partner] country is providing a 'quality stamp'... One obviously checks that one doesn't bring any 'bad guys'... there are always someone*

⁸⁷ Eg Johansson and Sandström. 2014, supra note 85; Sandström, O. and Johansson, R. 2015. MeetingPoints Mining – Systematic Facilitator Service. Final Report. SGU report.

⁸⁸ Eg Johansson and Sandström. 2014, supra note 85.

⁸⁹ Interview with SGU staff, 2015-01-29

⁹⁰ Interview with SGU staff, 2015-01-29

⁹¹ Sandström, O. T. 2014. Mineral och utveckling. Så kan Sverige bidra till en hållbar mineralnäring i ett utvecklingsperspektiv. SGU-rapport 2014:18.

⁹² Interview with SGU staff, 2015-01-15

in-house [at SGU] *that will know...*” This internal and informal screening did not, however, result in exclusion of any Swedish companies from activities in the two projects, nor in any follow up procedure being applied.⁹³

3.3 The Swedish Trade and Invest Council (Business Sweden)

The Swedish Trade and Invest Council (Business Sweden) is a State-owned company, with 50% ownership residing with the State and 50% with the Swedish private sector, represented by the Swedish Foreign Trade Association. The Board is likewise composed of representatives from both Swedish private sector and government. The current organisation was formed in 2013 through a fusion of the Export Council and Invest Sweden. Regulated through a Government Instruction concerning export promotion, the Ministry of Foreign Affairs allocates funding to Business Sweden via Kammarkollegiet, a government agency responsible for financial management services (215 M SEK in 2015).⁹⁴ The actual content of the mandate and tasks of Business Sweden is assigned by the government on an annual basis via so-called guideline decisions. According to these guidelines, the purpose of Business Sweden’s export oriented activity is to “...stimulate economic growth and employment through supporting and promoting Swedish export and internationalisation...[and]... to work for an increased Swedish export”.⁹⁵ As such, Business Sweden does not have an explicit mandate to deliver on Swedish aid objectives.

Business Sweden, business supported development cooperation, and mining in Africa

The mining industry comprises one of several key areas for Business Sweden, including under the Minerals Policy, and several export promoting activities are organized with the core funding from the

93 Interview with SGU staff, 2015-01-29

94 MoFA, 2014. Regleringsbrev för budgetåret 2015 avseende anslag 2:3 Exportfrämjande verksamhet. F2014/80015/UD/FIM.

95 MoFA, 2014. Riktlinjer för budgetåret 2015 för Sveriges export- och investeringsråd avseende exportfrämjande verksamhet, p. 2.

government (ie not with development finance).⁹⁶ One such activity was the Conference “Swedish Mining Initiative”, held in Perth with, among other, Atlas Copco, Volvo, Scania and Sandvik as co-organisers.⁹⁷ In terms of aid activities, Business Sweden implemented during 2011-2013 two Partnership Driven Cooperation (PDC) projects, namely MeetingPoint Botswana and MeetingPoint Namibia.⁹⁸ The project documents were developed jointly by Business Sweden and Sida, in close collaboration with MoFA. Sida provided a total budget of 18.2 M SEK and Business Sweden co-financed up to 29.8 M SEK.⁹⁹

The objective of these two projects were: “...to increase the amount of sustainable and mutual partner driven cooperations and partnerships between companies , institutions , authorities and organisations in Sweden and Namibia/Botswana.”.¹⁰⁰ A primary motivation for Business Sweden was that these projects enabled “...relatively early engagement on emerging markets, like Namibia and Botswana”. This was valuable since Business Sweden “...does not normally have the capacity to enter immature markets proactively on a self sustainable basis”.¹⁰¹ The concept note lists mining as one of the focus areas, together with – for instance – agriculture, energy, and tourism. Activities included analysis of market opportunities, information sharing on business opportunities, delegations, workshops and trade-fairs.

⁹⁶ Business Sweden, 2014. Report on the State assignment to Business Sweden, export promotion, operational year 2014.

⁹⁷ See eg, <http://innovationbysweden.com/events/swedish-mining-2014/>

⁹⁸ Sida beslut om insattsstöd, ärendenr: 2007-002862 / 2008-001286. 2010-01-22.

⁹⁹ Sida Promemoria 2007-002862/2008-001286, 2009-12-14: Bidrag till MeetingPoint Botswana och MeetingPoint Namibia 2010 – 2013.

¹⁰⁰ Business Sweden. 2009. DRAFT - Project Document Namibia and Botswana 2009 – 2013, p. 3.

¹⁰¹ Business Sweden. 2009. DRAFT - Project Document Namibia and Botswana 2009 – 2013, p. 2.

Expectations on Business Sweden regarding business and human rights

The State has – through the general policy for State-owned companies – placed a mandatory and explicit expectation on Business Sweden to follow the UNGPs.¹⁰² The Ministry of Foreign Affairs, has reiterated this expectation on Business Sweden to observe and implement the UNGPs as well as international standards such as the OECD Guidelines (Table 4). Implementation is guided by Business Sweden's Code of Conduct that was launched in 2013 after approval by the Board, also resulting in a web-based training program and establishment of a whistle-blower function.¹⁰³ The Code of Conduct comprises the only internal policy or guideline and is based “...on the ten principles of the UN Global Compact and OECD Guidelines for multinational enterprises”.¹⁰⁴

Comparing the expectations in the guidelines from MoFA and the internal document of Business Sweden, there is thus evidence of some dilution, since the Code of Conduct does not mention the UNGPs. Similarly, the Code employs weaker terms to specify the level of attention to human rights. For instance, in contradiction with the UNGPs, the Code states that Business Sweden should not require but only “encourage the use of responsible suppliers” and then only “when possible”.¹⁰⁵

In table 4 below is a summary of the findings from the desktop review of policies and steering documents.

¹⁰² Government Offices of Sweden, 2014. Statens ägarpolicy och riktlinjer för företag med statligt ägande, p. 6: “Companies with State ownership shall work to ensure compliance with the international guidelines that exist concerning... human rights... The international guidelines are the ten principles in the UN's Global Compact, UN's guiding principles for business and human rights and OECD's guidelines for multinational corporations.”.

¹⁰³ Business Sweden, 2014. *Report on the State assignment to Business Sweden, export promotion, operational year 2013*.

¹⁰⁴ Business Sweden, 2014. Code of Conduct, Stockholm, Sept. 2014, p. 1

¹⁰⁵ Business Sweden, 2014, supra note 105, p. 5: Business Sweden should encourage responsible business behavior “when possible” and “when there is a demand”.

Table 4: Expectations on Business Sweden through State policy and steering documents.

Source	What is the status of the commitment? A. Mandatory requirement ("shall") B. Aspirational. ("should") C. No information	What is the content of the commitment - does the document set out an expectation of providing consideration for business related human rights impacts? A. Yes, through an explicit expectation for the agency to observe human rights obligations. B. Indirectly eg by reference to UNGC norms or other. C. No	Does the document mention HRDD? A. Yes – mandatory reference in situations that pose significant risk to human rights. B. Yes – mandatory in other situations. C. Yes, not mandatory but encouraged. D. Indirect or similar / close reference (eg to EIA/SIA). E. No	Does the document require follow-up or reporting on performance specifically related to business and human rights? A – Yes B – No
<i>Government Offices: The State's ownership policy</i> ^(a)	A	A	E	B
<i>MoFA: Export Guidelines for Business Sweden</i> ^(b)	A	A	E	B
<i>Business Sweden Board: Code of Conduct</i> ^(c)	B	B	E	B

NB: The entries imply a gradation in that A is "better" than B *within* each column; however since each question contains a different number of potential answers no comparison can be made *between* the columns.

References and comments to table 4: (a) Government Offices of Sweden, 2014. Supra note 102. (b) MoFA 2014, supra note 94, p. 4: "[Business Sweden] shall follow established international norms and guidelines such as OECD's guidelines for multinational corporations, UN's guiding principles for business and human rights and. the UN's Global Compact." (c) Business Sweden, 2014, supra note 104: "Our Code of Conduct is based on the ten principles of the UN Global Compact and the OECD guidelines for multinational enterprises".

Business Sweden's consideration of business and human rights in practice

As part of the two Sida co-funded projects, MeetingPoint Botswana and MeetingPoint Namibia, Business Sweden facilitated some level of dialogue on CSR, including for instance a breakfast meeting on this topic.¹⁰⁶ The final report also mentions some focus on gender equity and women's economic participation, eg by ensuring at least 50% female speakers at the events in the projects.¹⁰⁷ Business Sweden has explained that it has a strategy to include CSR as a recurrent topic in events that otherwise address other themes within its core business (ie outside aid projects).¹⁰⁸ However, overall the project documentation provides no evidence of structured efforts to implement the UNGPs – or the other standards that Business Sweden is expected to comply with. The risk analysis in Business Sweden's concept note preceding the two above-mentioned projects considered only economic and political risks and not human rights risks.¹⁰⁹ Similarly, the recent annual reporting to the Government does not consider the implementation of the UNGPs or the other international standards that Business Sweden is expected to implement.¹¹⁰

In line with the formulations in the Code of Conduct, Business Sweden does not place specific expectations on its beneficiary companies. As explained by Business Sweden staff, this policy is “*more of an internal document...*”, ie directed mostly at the internal conduct of staff than aiming to ensure implementation in the activities.¹¹¹ Business Sweden staff also explained that the notion of “CSR” in their work was largely defined by invited experts who come as speakers to seminars or by the beneficiary companies themselves: “*In seminars and meetings, we invited in CSR experts from outside...we were not focusing on the use of any specific [human rights] standard...*”.¹¹² Similarly, staff at the MoFA, tasked to guide Business Sweden's export promotion,

106 Business Sweden. MeetingPoint Botswana Annual Report 2013 and Final Report. v. 1.2. March 2014.

107 Business Sweden. MeetingPoint Botswana Annual Report 2013 and Final Report. v. 1.2. March 2014.

108 Business Sweden. 2013. Sustainability Report. A trust must be earned.

109 Business Sweden. 2009. DRAFT - Project Document Namibia and Botswana 2009 – 2013, p. 3.

110 Business Sweden, Redovisningar for export, 2013 + 2014.

111 Interview with Business Sweden staff, 2015-03-12

112 Interview with Business Sweden staff, 2015-03-12

confirmed this view that the companies were largely asked to self-define their responsibility: "...companies' experts that are versed in CSR in the mining sector – they are really skilled. They are the ones on top of [CSR] – not us".¹¹³ Business Sweden staff moreover expressed concerns that expectations to implement the UNGPs could result in overly abstract human rights demands: "Now, with the UN principles, it becomes even broader... it can become a bit theoretical. The parties [involved in Business Sweden activities] have to see a practical improvement linked to their businesses...".¹¹⁴ Arguably, this points to a need to explain how the principles apply in practice, so that staff can understand how they are supposed to integrate them into their work.

3.4 Swedfund International AB (Swedfund)

Swedfund International AB (Swedfund) is a Development Finance Institution (DFI) owned by the Swedish Government. It is a fully State-owned company with the mission to "...contribute to the goal of Sweden's Policy for Global Development (PGD) for equitable and sustainable global development...[and]... ensure, in cooperation with strategic partners, participation in investments that are not assessed to be able to be carried out with commercial financing alone".¹¹⁵ Swedfund is investing in directly owned equity, loans and guarantees, and funds (indirectly owned equities). In 2014, Swedfund's investment portfolio included 65 investments in 25 countries, the majority in Africa, with a total contracted amount of 3.503 M SEK.¹¹⁶ The Swedish State is represented by the Ministry of Enterprise and Innovation, which acts as the owner of Swedfund and is represented on the Board.¹¹⁷

113 Interview with MoFA staff, 2015-03-20

114 Interview with Business Sweden staff, 2015-03-12

115 Swedfund Owner's Instruction 2014 § 1.

116 Swedfund, 2014. Hållbart företagande – Swedfund's integrerade redovisning 2014.

117 MoEI replaced MoFA as the owner in January 2015; however MoFA continues to have some oversight concerning, among other, development policies and state supported export credits.

Swedfund, business supported development cooperation, and mining in Africa

Swedfund staff explained that they may invest in the extractive industries; for instance the European Development Finance Institution's (EDFI) Principles for Responsible Financing/Harmonized EDFI Exclusion List for co-financed projects do not exclude mining.¹¹⁸ Meanwhile, although no formal strategy exists to support the decision, Swedfund has decided not to invest in the mining industry. As expressed by Swedfund staff: *"We have chosen not to engage...[we] perceive that we don't have sufficient capacity and competence... Mines are not part of the investment strategy"*.¹¹⁹

However, Swedfund has provided financing, from 2008, into one mining related activity, namely the entity Addis Quarry Development Plc. This is a company with operations located 50km from Addis Ababa, Ethiopia engaged in mining and machinery activities, producing crushed stone and aggregate to customers in the construction sector. The quarry comprises 8,5 ha and the mining methods and production process of crushed stone aggregate involves drilling, blasting, loading, transporting, crushing, classifying, handling and sorting the crushed stone. The contract allowed for two investments up to 15 M SEK and, at least at the outset of the project, Sandvik was providing equipment to the quarry.¹²⁰

Swedfund has also invested in other projects linked to agriculture that share some characteristics with mining projects, notably by being large "green fields" projects dependent on substantial tracts of land and use of natural resources. Additionally, both raise associated human rights concerns, for example, linked to the use of and claims to land from indigenous peoples' and for community livelihoods. One example is Addax Bioenergy, an integrated agricultural and bioenergy project including sugar cane cultivation (10 000 ha lease) and ethanol refinery.¹²¹ The total investment – from multiple financiers – in the

118 European Development Finance Institutions (EDFI). Harmonized EDFI Exclusion List.

119 Interview with Swedfund staff, 2015-02-23.

120 Swedfund, 2008. Beslutspromemoria, project no. 115283. 2008-06-25.

121 The Addax Bioenergy project, including Swedfund's investments, has been subject to considerable criticism from civil society organizations concerning, among other, deepened food insecurity, land grabbing and deceptive practices associated with the contracts. See for instance Action Aid, 2013. Broken promises. The impacts of Addax Bioenergy in Sierra

project has so far been 400 M EUR, to which Swedfund contributed 10 M EUR.¹²²

Expectations on Swedfund regarding business and human rights

The State has – through the MoEI’s general policy for State-owned companies – placed a mandatory and explicit expectation on Swedfund to follow the UNGPs.¹²³ The Board of Swedfund has – through its Owner’s Instruction specific to Swedfund – not clarified this requirement further. Rather it sets a more general and indirect expectation on Swedfund to “*ensure that investments take place in accordance with international norms and principles for sustainable enterprises*”.¹²⁴ Swedfund provides the answer to how it interprets its responsibility to implement the UNGPs in its internal policies (Table 6).

Swedfund is a signatory to a number of international framework agreements, principles for responsible investment and sustainable business practices, such as the UN Global Compact and the IFC Performance Standards. The first sustainability policy was launched in 2010 and in 2014 the Board approved an updated version of this policy – which serves as an integrated human rights and sustainability policy – with a more explicit commitment to the UNGPs.¹²⁵ Swedfund has explained that the expectations on its portfolio companies have

Leone on hunger and livelihoods; Wählin, M. 2013. Utan mark, utan makt. Kvinnorna utan rätt att fatta beslut när Swedfund investerar i Addax Bioenergy i Sierra Leone. Swedwatch report no. 53; See also Swedfund’s response in Swedfund, undated. Swedfund om Swedwatches rapport: Among other, Swedfund, 2013, clarifying that land is leased with so called Acknowledgement Agreement where Addax Bioenergy has ensured that the traditional land owners get a larger portion of the leasing fee and actually receive the payments. It is also explained that use of natural resources” such as trees, bushes, crop trees, vegetables gardens etc. was compensated for according to standardized systems.

122 Bisset, R. and Driver, P., 2014. Addax Bioenergy SL (ABSL). 2013 Annual Independent Public Environmental & Social Monitoring Report. Report of Lenders’ Independent Environmental & Social Monitor, Nippon Koei UK.

123 Government Offices of Sweden, 2014. Statens ägarpolicy och riktlinjer för företag med statligt ägande, p. 6: ”Companies with State ownership shall work to ensure compliance with the international guidelines that exist concerning... human rights... The international guidelines are the ten principles in the UN’s Global Compact, UN’s guiding principles for business and human rights and OECD’s guidelines for multinational corporations.”.

124 Swedfund 2014, Owner’s Instruction, § 1.

125 Swedfund, 2014. Swedfund Portfolio Company Sustainability Report 2014; Swedfund, 2014. Annual report

gradually increased over time; one example is the recent decision to conduct risk assessments of the entire supply chains involved in a project and set expectations that clients take responsibility for first level suppliers.¹²⁶ However, when expectations change they apply only to new contracts; existing contracts are not amended.¹²⁷ The MoEI has provided some training to Swedfund on the UNGPs and how to interpret and implement its business and human rights obligations.

In table 5 below is a summary of the findings from the desktop review of policies and steering documents.

126 Eg Swedfund's Policy for Sustainable Development: "Our portfolio companies shall... conduct a risk analysis of their supply chain and customers, and where significant risks or impacts are identified, commit to apply [our] standards".

127 Swedfund, 2014. *Supra* note 125, p 41.

Table 5: Expectations on Swedfund through State policy and steering documents.

Source	What is the status of the commitment? A. Mandatory requirement ("shall") B. Aspirational. ("should") C. No information	What is the content of the commitment - does the document set out an expectation of providing consideration for business related human rights impacts? A. Yes, through an explicit expectation for the agency to observe human rights obligations. B. Indirectly eg by reference to UNGC norms or other. C. No	Does the document mention HRDD? A. Yes – mandatory ref. in sit. that pose significant risk to human rights. B. Yes – mandatory in other situations. C. Yes, not mandatory but encouraged. D. Indirect or similar / close reference (eg to EIA/SIA). E. No	Does the document require follow-up or reporting on performance specifically related to business and human rights? A – Yes B – No
<i>Gov. Offices: The State's ownership policy</i> ^(a)	A	A	E	B
<i>Owner's Instr. 2014</i> ^(b)	A	B	E	B
<i>MoEI: Articles of Assoc. 2014</i> ^(c)	A	B	E	B
<i>The Swe Gov.Reg. SFS 2008:1272, 2012:754 on Swedfund Internat. AB</i> ^(d)	C	C	E	B
<i>Swedfund: Policy for Sust. Dev.</i> ^(e)	B	B	A	B
<i>Swedfund: Code of Conduct</i> ^(f)	B	C	E	B

NB: The entries imply a gradation in that A is "better" than B *within* each column; however since each question contains a different number of potential answers no comparison can be made *between* the columns.

Comments and references to table 5: (a) Government Offices of Sweden, 2014. Supra note 123. (b) Ågaränvisning för Swedfund International AB, org. nr. 556436-2084: Owners Instruction §1: "The company shall: ...e) ensure that investments take place in accordance with international norms and principles for sustainable enterprises". (c) This document offers only a general formulation, such that (§3): "The company shall contribute to the objective of Sweden's policy for global development". (d) Förordning (2008:1272) om Swedfund International AB:s stöd till små och medelstora svenska företags investeringar i Swedfunds samarbetsländer; Förordning 2012:754 om ändring i förordningen (2008:1272) om Swedfund International AB:s stöd till små och medelstora svenska företags investeringar i Swedfunds samarbetsländer. (e) Swedfund, undated. Swedfund's Policy for Sustainable Development: P. 2: "We are committed to respect all international recognized human rights, to conduct on-going human rights due diligences in limited high risk circumstances and to engage and consult with potentially affected stakeholders". The investment standards include the UN Global Compact, UN Principles for Responsible Investment (PRI), European Development Finance Institutions (EDFI) Principles on Responsible Financing, EDFI Harmonized Environmental and Social Standards, and Harmonized EDFI Exclusion List. The performance standards include the IFC Performance Standards on Environmental and Social Sustainability and the OECD Guidelines for Multinational Enterprises. (f) Swedfund, undated. Swedfund's Code of Conduct. P. 1 "Swedfund adheres to a number of guidelines and international principles for responsible investment and sustainable business practices..."

Swedfund's consideration of human rights in practice

If a project proposal passes the initial phases in Swedfund's investment process – assessment and concept clearance – then the due diligence process is executed prior to presenting the project to the Board.¹²⁸ In the due diligence process, Swedfund's Environmental and Social Assessment Questionnaire offers a means for the potential clients to submit information for the review.¹²⁹ The appraisal is conducted on the basis of the international performance standards that Swedfund has adopted, with the IFC Performance Standards serving as the basis for the template. Swedfund staff note that in this review: "...they may not cover all human rights but those that are most relevant to guide [their] influence on companies".¹³⁰ It is the standard procedure that Swedfund ESG staff always conduct site visits to further inquire into specific issues. On the basis of the results of the due diligence assessment, Swedfund develops an ESG Action Plan, which is included in the contractual agreement with the client.¹³¹ The ESG Action Plan can include demands for specific corrective actions linked to the environmental and social risks and impacts, development of policies (eg on sustainability and anti-corruption) and appointment of point

128 Swedfund, 2014. Supra note 125.

129 Swedfund, undated. Environmental and Social Assessment Questionnaire. Internal document.

130 Interview with Swedfund staff, 2015-02-23.

131 Swedfund, 2014. Supra note 125.

persons and training needs.¹³² During project implementation, the clients are expected to submit periodic self-assessments.¹³³ As concerns exit strategies, Swedfund operates a special Technical Assistance (TA) fund to enhance quality in ESG delivery in the portfolio companies; since 2013 these funds can even be used for exited companies in order to complete ESG activities and for analyses of the results.¹³⁴

While Swedfund thus has substantial procedures in place to potentially “know” about certain human rights impacts of its investments, Swedfund’s ability to actually “show” the results of this work and allow stakeholders to make use of the knowledge emerging from its policy implementation is much more constrained. From the projects highlighted above, Swedfund was only able to provide a copy of a due diligence report in the case of Addis Quarry. Here, Swedfund undertook only a limited environmental and social due diligence process.¹³⁵ In the investment agreement, Addis Quarry Plc. committed to follow Swedfund’s sustainability policy and develop an Environmental and Social Action Plan (ESAP), to be approved by Swedfund. However Swedfund does not have copies of this document and it thus appears that the company did not comply with this requirement.¹³⁶ In the Addax Bioenergy investment the Environmental, Social, Health Impacts Assessment has – according to the company – been heralded by industry professionals as offering a “gold standard” for impact assessments.¹³⁷ Yet, as Swedfund staff respond: *“In the shareholder agreement with the company there are secrecy clauses that state that we cannot disclose information without the consent of the other shareholders”*.¹³⁸

132 Swedfund, undated. “Environmental & Social Action Plan for XXX Company prepared by Swedfund to be completed with Responsible person and approved by XXX Company”.

133 Swedfund, undated. Swedfund Self-Assessment Sustainability Report.

134 Email correspondence with Swedfund staff, 2015-06-25

135 Swedfund staff explained (interview, 2015-02-23) that the project was launched prior to the current ESG system being in place.

136 Email correspondence, Swedfund staff, 2014-04-13. However, Swedfund explains (email correspondence, 15 June 2015) that they nonetheless have a good control over the company through regular follow-up activities, including site visits 2012 and 2014 and the annual submission of ESG Monitoring Reports from the company.

137 See eg <http://www.addaxbioenergy.com/en/the-makeni-project/sustainable-investment-model/extensive-feasibility-phase.php>.

138 Email correspondence with Swedfund staff, 2015-04-13. The summary EISHA is instead posted on the Addax Bioenergy website and Swedfund has also provided the Summary

Another challenge for Swedfund is that the ability to exert leverage is constrained when engaging in large investments with co-financing from multiple lenders. According to Swedfund staff, they find it more desirable to “...invest in activities where we can have actual influence, and not just end up with 5% ownership”.¹³⁹ Similarly, Swedfund is exposed to indirect human rights risks through investments in finance institutions, such as banks in Africa, who may in turn invest in mining projects. As expressed by Swedfund staff: “We ask the banks to develop their own [human rights] policy but we are often a minor player with limited influence, compared to other investors and DFIs...”.¹⁴⁰

3.5 The Swedish Export Credit Corporation (SEK)

The Swedish Export Credit Corporation (SEK) is a fully State-owned company providing financing for Swedish exporters, their sub-contractors and foreign buyers. The Swedish State is represented by the Ministry of Enterprise and Innovation, who acts as the owner of SEK and is represented in the Board. According to the Owner’s Policy the purpose of the company is: “on commercial and sustainable grounds, to undertake credit activity with the purpose of promoting Swedish export through offering financial solutions that directly or indirectly promote Swedish export”.¹⁴¹ SEK is established as a credit agency (*kreditmarknadsbolag*) under the statutory act on banking and financial movement and is audited by the Financial Inspection.¹⁴²

The parent company is *AB Svensk Export Kredit*, domiciled in Sweden in a group consisting also of one wholly-owned subsidiary and its in turn wholly owned subsidiary.¹⁴³ SEK operates two principal lending segments: End-Customer Finance to the buyers of Swedish exporters’ goods and services, and Corporate Lending to or for the benefit of Swedish exporters.¹⁴⁴ Whereas SEK provides the financial

report from consultancy firm NKUK on the EISHA process (email correspondence, 15 June 2015)

¹³⁹ Interview with Swedfund staff, 2015-02-23.

¹⁴⁰ Interview with Swedfund staff, 2015-02-23.

¹⁴¹ Owner’s Policy for the Swedish Export Credit Corporation (SEK), 2015, §1a.

¹⁴² Bolagsordningen, §1, see also Statutory Act (SFS 2004:297) on banking and financial movement

¹⁴³ Namely *Venantius AB* and *VF Finans AB*.

¹⁴⁴ SEK. 2014. Capital adequacy and risk management report 2014 Pillar 3.

credits, the guarantees will often be provided by the Swedish Export Credit Agency (EKN) (offering up to 95% of each guarantee) or private banks (often offering the guarantee for the remaining 5%). In 2014, SEK provided a total of SEK 234.3 billion through the total credit portfolio.¹⁴⁵

SEK, business supported development cooperation, and mining in Africa

While SEK's main mandate is to operate as a purely commercial complementary source of finance, during 1984-2009 SEK was involved in the delivery of Swedish aid through the payment and administration of credits with development finance.¹⁴⁶ These credits were paid with the aim of financing "...*goods and services to partner countries in Swedish development cooperation as well as other developing countries with whom Sweden desires to initiate or deepen an economic cooperation*".¹⁴⁷ SEK was responsible for providing the actual credit while Sida subsidised the rent by means of a gift paid by the aid budget. The guarantee for the credit was provided by EKN. These aid credits represent an old aid modality that is now being phased out, with less than seven credits currently pending repayment.¹⁴⁸ Under the new legislation on aid credits that came into force in 2009, SEK has no longer any formal role – Sida provides the lending and EKN is advising on the level of the premium, but the recipient is responsible for organizing the loan on a purely commercial basis.¹⁴⁹ It has not been possible to obtain information on the credited projects from Sida or SEK/EKN for this study and it is thus not possible to know if some of these projects have involved the African mining sector.¹⁵⁰

¹⁴⁵ SEK. 2014. Årsredovisning.

¹⁴⁶ So-called *U-Krediter* and *biståndskrediter*, respectively.

¹⁴⁷ Förordning (1984:1132) om krediter för vissa utvecklingsändamål (u-krediter). 4§. "goods or services to cooperating countries for Swedish aid and to other developing countries with whom Sweden desires to commence or deepen an economic cooperation."

¹⁴⁸ Interview with Sida staff, 2015-03-31.

¹⁴⁹ Förordning (2009:320) om finansiering av utvecklingslån och garantier för utvecklingssamarbete. This lending device is termed *Fristående garantier*.

¹⁵⁰ Repeated requests were made to Sida, SEK and EKN during March-May 2015.

Expectations on SEK regarding business and human rights

The State has – through the MoEI’s general policy for State-owned companies – placed a mandatory and explicit expectation on SEK to follow the UNGPs (Table 6).¹⁵¹ The Board of SEK has, through its Owner’s Policy specific to SEK, provided some additional clarity, emphasizing, among other things, that SEK should aim to ensure compliance, where applicable, with the OECD’s Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, the Equator Principles, and observe the OECD guidelines on sustainable lending in exports to low-income countries.¹⁵²

As a State-owned complement to private financing, SEK is expected to implement the OECD Common Approaches; a set of recommendations to foster coherence in how State-supported export credits manage environmental and social due diligence. The 2012 revision of the Common Approaches saw, among other things, the inclusion of a reference to the UNGPs and a level of expectation to exercise social due diligence. The recommended standard to be applied in the Common Approaches comprise the World Bank Safeguard Policies and IFC Performance Standards.¹⁵³ SEK has through internally developed policies and guidelines clarified how it interprets these expectations, including that it “may” require of companies to undertake HRDD in high risk situations.¹⁵⁴ The MoEI has provided some training to SEK on the UNGPs and/or how to interpret and implement its business and human rights obligations.

¹⁵¹ Government Offices of Sweden, 2014, supra note 123, p. 6: “Companies with State ownership shall work to ensure compliance with the international guidelines that exist concerning... human rights... The international guidelines are the ten principles in the UN’s Global Compact, UN’s guiding principles for business and human rights and OECD’s guidelines for multinational corporations”.

¹⁵² Owner’s Instruction for AB Svensk Exportkredit (SEK), 2015: SEK shall “...aim to ensure compliance with international guidelines within the area of sustainable business relating to the environment, anti-corruption, human rights, labor conditions and business ethics. Where applicable, in its credit assessments, adhere to international frameworks such as the OECD’s Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence or the Equator Principles, and observe OECD guidelines on sustainable lending in exports to low-income countries”.

¹⁵³ OECD, 2012. Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due diligence, 28 June 2012, TAD/ECG(2012)5.

¹⁵⁴ SEK Board, undated. Policy on human rights and labour conditions.

In table 6 below is a summary of the findings from the desktop review of policies and steering documents.

Table 6: Expectations on SEK through State policy and steering documents.

Source	What is the status of the commitment? A. Mandatory requirement ("shall") B. Aspirational. ("should") C. No information	What is the content of the commitment - does the document set out an expectation of providing consideration for business related HR impacts? A. Yes, through an explicit expectation for the agency to observe human rights obligations. B. Indirectly eg by reference to UNGC norms or other. C. No	Does the document mention HRDD? A. Yes – mandatory ref in situations that pose significant risk to HR. B. Yes – mandatory in other sit. C. Yes, not mandatory but encouraged. D. Indirect or similar / close reference (eg to EIA/SIA). E. No	Does the document require follow-up or reporting on performance specifically related to business and HR? A – Yes B – No
MoEl: <i>Owner's Policy</i> ^(a)	A	B	E	B
SEK Board: <i>Articles of Association</i> ^(b)	C	C	E	B
SEK Board: <i>Code of Conduct</i> ^(c)	C	C	E	B
SEK Board: <i>Business Ethics</i> ^(d)	A	C	E	B
SEK Board: <i>Sust. Fin. Policy</i> ^(e)	B	B	E	B
SEK Board: <i>Policy on HR and labour conditions</i> ^(f)	B	A	C	B
SEK Board: <i>Transparency Policy</i> ^(g)	A	C	E	B

NB: The entries imply a gradation in that A is "better" than B *within* each column; however since each question contains a different number of potential answers no comparison can be made *between* the columns.

References and comments to table 6: (a) Owner's Instruction for SEK, supra note 152. (b) Articles of Association, 2014. <http://www.sek.se/wp-content/uploads/2014/01/AB-Svensk-Exportkredit-556084-0315-svensk.pdf> (c) SEK, 2014. Code of Conduct. (d) SEK Board, undated. Business Ethics: "...meet international principles concerning... human rights. SEK shall act ethically and transparently and place demands that our suppliers and clients comply with SEK's code of conduct." (e) SEK Board, undated. Sustainable Financing Policy: "SEK follows OECD's 'Common Approaches'. When financing Category A and B projects the projects shall fulfill the IFC's 'Performance Standards' and IFC's guidelines for environment health and safety." (f) SEK Board, undated, supra note 154. p. 1: "SEK supports the UN's framework for business and human rights... SEK applies particularly diligence when doing business in conflict zones and in countries and industries with a particularly high risk of human rights violations. SEK may in such cases require the company to undertake a human rights impact assessment". (g) SEK Board, undated. Transparency Policy, p. 1: "When financing Category A projects an environmental and social impact assessment is published prior to granting a credit or guarantee in accordance with OECD's Common Approaches... [and] SEK accounts yearly its work for sustainable development in accordance with the guidelines of the Global Reporting Initiatives (GRI)".

SEK's consideration of human rights in practice

SEK's procedure for implementing its human rights policy commitments in its lending operations consists of four steps, namely Screening, Classification, Review and Monitoring.¹⁵⁵ Through its risk management system sustainability risk are treated on par with other risks (credit, market, and operational) and are reported in an integrated fashion in the annual report.¹⁵⁶ The risk assessment – making use of a number of information tools – looks at the risks associated with the country, branch, project and client.¹⁵⁷ Before concluding a deal, SEK will – for instance – verify that the client has not previously been involved in major incidences such as violations of human rights. If the initial risk assessment reveals substantial risks then SEK's sustainability analysts will undertake further control and, if needed, an in-depth review.¹⁵⁸ This review is tailored to each case and type of risk and SEK does not follow a specific procedure.¹⁵⁹

Whereas SEK thus has an elaborate risk assessment system, SEK staff reported that they face continued need to develop their practices in two main areas, namely a) defining the responsibility that they can

¹⁵⁵ SEK, 2014, supra note 144. Moreover, SEK's risk management system is since 2015 implemented by the Risk and Compliance Committee and the Internal Control Committee. The Compliance function is responsible for monitoring and reports directly to the President and Board. The present system is the result of work undertaken since the recruitment of the first sustainability analyst in 2008.

¹⁵⁶ Interview with SEK staff, 2015-04-07

¹⁵⁷ Eg Maplecroft (<https://www.maplecroft.com/>), rerisk (<http://www.rerisk.com/>) and World Check (<https://www.world-check.com/frontend/login/>).

¹⁵⁸ See also SEK's Policy on human rights and labour conditions, supra note 154.

¹⁵⁹ Interview with SEK staff, 2015-04-07

place on their corporate clients and b) the implementation of their policy commitments in follow-up and exit strategies.

As concerns expectations on clients, SEK staff is cognizant of being exposed to secondary human rights risks through their credits. As expressed by SEK staff: *“The main challenge is linked to the indirect risks... Swedish suppliers who hold agreements with distributors in Africa don’t know where the supplies are delivered....The question is: when can we and when ought we pose which demands?”*.¹⁶⁰ In order to take this work forward, SEK is in ongoing dialogue with EKN, their corporate clients and international collaborators, including through OECD. SEK is convening branch specific dialogues with corporate clients, including in the mining industry, to clarify the sphere of responsibility under the UNGPs and practical implementation thereof: *“...a great part of the challenge is to be precise and adapt the questions [we ask to companies] to each context and the type of risk. We are on this journey now.... if one doesn’t realize that there is much to do then one hasn’t grasped the sheer scale of the challenge”*.¹⁶¹

As concerns procedures for follow-up and exit, the credit decisions signed with clients contain specific provisions and covenants that impose legal obligations on the clients to respect the international standards that SEK is committed to. Dialogue with the company, the posing of questions via the client’s bank, and proactive use of the due diligence process are the preferred ways to influence the clients. However, following the OECD Common Approaches, SEK can demand a third party investigation and can eventually terminate the loan agreement if the client breaches these standards in any part of their business operations, also in activities not directly funded by SEK. SEK staff explained that, in practice, SEK has never had reason to terminate an already signed lending agreement due to human rights or other sustainability violations. SEK has only had to make *“...’waivers’ linked to smaller deviations... In the worst cases it has concerned delayed reporting...”*.¹⁶² One reason that exits are made difficult is the existence of so-called cross-defaults in the lending agreements; if SEK were to terminate a lending agreement then other lenders are also entitled to withdraw from the project (and vice versa) thus potentially

¹⁶⁰ Interview with SEK staff, 2015-04-07

¹⁶¹ Interview with SEK staff, 2015-04-07

¹⁶² Interview with SEK staff, 2015-04-07, email correspondence 2015-06-18

resulting in a cascading effect. This will often deter lenders from terminating their contracts.

As regards transparency in the implementation of its human rights obligations, SEK staff reported that despite perceiving being transparent about their credits, the conditions posed by the rules on bank secrecy present challenges (common to the whole financial market). This secrecy clause is enshrined in the law on banking and financial movements, under which SEK staff can be held legally liable if they disclose information on their clients, including their identity and any aspect of due diligence.¹⁶³ As stated by SEK staff, bank secrecy “...is a barrier in larger perspective... the financial market is moving towards greater transparency and we are actively participating in this work, but we don’t wish to deviate too much or even risk violating bank secrecy”.¹⁶⁴

¹⁶³ Statutory Act (SFS 2004:297), on banking and financial movement.

¹⁶⁴ Email correspondence with SEK staff, 2015-06-18

4. Analysis: incorporation of the UNGPs

In this section we discuss the findings for the five agencies and State-owned or controlled companies that have been analysed above and draw conclusions as to the overall performance of these institutions as regards alignment with the UNGPs (see table 7 in the end of this section). We structure the discussion according to the explicit requirements of the UNGPs and our interpretation of how they apply in a development cooperation context (Section 3 and Annex 1). We focus specifically on the requirements relevant for bilateral development cooperation and a distinction is made in the discussion between the performance of the State (MoFA and MoEI) in supervising and controlling and the performance of its agencies (Sida, SGU) and State-owned and controlled companies (Swedfund, SEK, Business Sweden).

4.1 Does the State set out expectations to observe human rights obligations?

The UNGPs do not explicitly require the State to place expectations on its agencies and State-owned or controlled companies to observe its business and human rights obligations. However, it is a necessary prerequisite for the State to set out this expectation clearly to the agency and the State-owned or controlled company to live up to the first pillar, in particular UNGPs 2, 3, 4 and 5. *The study shows that the Swedish State (MoFA and MoEI) has set out formal and explicit expectations to implement the UNGPs for four of the five institutions studied (SGU has no such obligation)* (Table 7, results column 3). Below, we provide the findings from the detailed analysis.

The Swedish State (MoFA and MoEI) has set out formal and explicit expectation to one of the agencies concerned (Sida) but not the other (SGU). The State (MoEI) has also set out formal and explicit expectation of the State-owned or controlled companies (Swedfund, Business Sweden, SEK). Several of these expectations, on both agencies and companies, have been put in place just recently (2013, 2014, 2015). In several cases, as will be detailed below, the evidence shows that whilst the highest level of steering documents

may have been updated, these expectations have in many cases not translated into the necessary changes in internal policies, procedures and practices of agencies or companies.

In all three companies, the explicit reference to the UNGPs in the State's general ownership policy has not been translated into a commitment by the company Boards responsible for the actual steering of the companies (ie was not reaffirmed in the board's specific ownership policy). Arguably, this suggests that some level of inertia exists in responding to the guidance from the MoEI, with the more generally phrased commitments by the boards creating some ambiguity in the expectations placed on the companies.

SGU is a clear outlier as regards State expectations, not being subject to any explicit expectations as regards business and human rights obligations. This is paradoxical since agencies – under the UNGPs – face a much higher level of expectations than companies. As we return to below (section 6), it may be less surprising since SGU's primary mandate is not development cooperation.

4.2 Does the State encourage or require HRDD?

The application of HRDD by State agencies and companies is explicitly required by the UNGPs (UNGP 4). The study shows that the Swedish State does not encourage nor require HRDD of its agencies or State-owned or controlled companies; not in high risk situations or in any other situations. (Table 7, results column 4A). Below, we provide the findings from the detailed analysis.

The State (MoFA, MoEI) has largely left it to the discretion of its agencies and companies to decide whether and how they define their commitments to due diligence and impact assessment, and the content and quality of a possible such exercise. While some institutions (SEK, Swedfund) demonstrate some level of good practice through their own initiative in encouraging HRDD in limited circumstances, this represents a clear performance gap in the State's responsibility and supervision. The UNGPs will only have real effect if the State puts in

place clear requirements and implementing measures, in effect when the State goes beyond high level commitments.¹⁶⁵

4.3 Does the agency/company require HRDD?

It is a direct requirement for State agencies (UNGP 4) to encourage or require HRDD of its own conduct in contexts that pose significant risk since they form part of the “State”. By contrast, it is an indirect requirement for State-owned or controlled companies. (UNGP 4 requires this of the State to impose on the State-owned or controlled company unless it would act in a manner that would be attributable to the State; in which case it would be a direct requirement). *The study shows that the five State agencies and State-owned companies make very different commitments; some require (Swedfund) and others only encourage (SEK, Sida) of themselves to undertake HRDD while yet others (Business Sweden, SGU) make no such commitments* (Table 7, results column 4B). Below, we provide the findings from the detailed analysis.

The State agencies perform very differently on this matter; SGU does not encourage or require HRDD of its conduct at all, while Sida – although only by non-binding and aspirational commitment – does encourage that impact assessments consider human rights. A more developed practice – and clearer commitment – is found with SEK which, although only encouraging HRDD in high risk situations, is more explicit on the content. The strongest commitment and practice in this comparison is Swedfund that requires of itself that HRDD is carried out in high risk situations.

The companies that do encourage or require HRDD in high risk contexts (SEK and Swedfund) appear to do so as a result of having made internally a systematic effort with regards to integrating their human rights obligations. Since the requirement is not imposed by the State, it is not possible to attribute this achievement to the work of any one particular ministry. Rather it is an accomplishment that is due to internal work in these companies. In addition, both SEK and

¹⁶⁵ On the need for clearly defined implementing measures see also eg Addo, M. K. 2014. The Reality of the United Nations Guiding Principles on Business and Human Rights. *Human Rights Law Review* 14, 133–147; de Felice and Graf A. 2015 supra note 31.

Swedfund benefit from being part of international networks of “organizational peers” that provide support through benchmarking and exchange of practices and standards.¹⁶⁶

4.4 Does the State provide support to agencies and companies?

According to UNGP 8, it is explicitly required that the State provide the means to make the agency aware of (knowledge & information) and able to observe (to act in a manner compatible with HR obligations) its human rights obligations. It is not required for State-owned or controlled companies explicitly. But it would certainly fulfill the spirit of UNGP 4 – ie to provide support to the enterprises in order for them to respect human rights in practice. *The study shows that the ministries perform differently on this matter; MoEI provide some level of support and training to its companies while the MoFA provides no such support to its subordinate agencies and companies* (Table 7, results column 5A). Below, we provide the findings from the detailed analysis.

The Swedish State (MoFA, MoEI) does not provide support to any of the agencies reviewed for purposes of this study (Sida, SGU). In contrast, the State (MoEI) does provide some support and training on the UNGPs to two out of three State-owned or controlled companies (SEK, Swedfund). A difference was observed in the level of support that agencies and companies receive from the State; whereas MoFA provides no support to the agency (Sida) and company (Business Sweden) it oversees, MoEI provides support to two companies it controls (SEK, Swedfund). The lack of training and information is particularly problematic given the known challenges in communicating human rights obligations among practitioners who are not familiar with a rights-based perspective, including clarifying how it differs from indicator and/or target-based governance of development cooperation.¹⁶⁷

¹⁶⁶ For SEK eg as part of the OECD Common Approaches and for Swedfund eg the Association of European Development Finance Institutions (DFI).

¹⁶⁷ See eg Kemp. D. and Vanclay, F. 2013. Human rights and impact assessment: clarifying the connections in practice. *Impact Assessment and Project Appraisal* 31(2), 86–96; See also Nelson, P. J. 2007. Human Rights, the Millennium Development Goals, and the Future of Development Cooperation. *World Development* 35(12), 2041–2055: “...the human rights

Although it is required that the State provides support to the State agencies but not required that the State provide support for State-owned or controlled companies, in fact, the Swedish State provides more support to companies than to its own agencies that are supposed to carry out the public policies, including carry the legal obligation to protect people from human rights violations. This mirrors the finding of the lack of expectations placed by the State (MoEI) on SGU. Arguably, one likely reason is that the State (civil servants) appear through interviews to understand well how the UNGPs apply to companies (second pillar) but less so how the UNGPs apply to the State itself (the first pillar).

4.5 Does the agency/company consider human rights impacts?

The UNGPs directly pose a requirement for State agencies (UNGP 4) – by virtue of being part of “the State” to explicitly consider and avoid human rights related harm. For State-owned or controlled companies (UNGP 4) there is an indirect requirement. If the company is legally viewed as an actor of the State, there would be a direct requirement. *The study shows that some of the institutions – a mix of agency and companies (Swedfund, SEK, Sida) – have developed substantial procedures and practices whilst others (Business Sweden, SGU) have few if any procedures and practices in place* (Table 7, results column 5B). Below, we provide the findings from the detailed analysis.

The State-owned or controlled companies (SEK, Swedfund) score relatively well on this point – both have policies with references to the UNGPs. Sida, like Swedfund, has certain guidance and implementing procedures that references the human rights but not with as strong a commitment to the UNGPs as SEK. In contrast, Business Sweden and SGU have policies or other tools that include references to human rights but that are not fully aligned with the UNGPs or have only indirect references to human rights. With regards to the internal efforts of the companies and agencies to consider their human rights obligations, we can draw the more specific conclusions below.

standards are not indicators or goals but legally binding statements about rights to which humans are entitled by virtue of their humanity” (p. 2051).

Lack of consistency in the efforts of agencies/companies

The State institutions have adopted or incorporated into their internal normative frameworks, a host of different human rights norms (eg OECD Guidelines, the IFC Performance Standards, UNGC, etc). While there arguably may be certain strengths in allowing each institution to tailor its approach, this inconsistency results in fragmented, and possibly somewhat confusing, demands being made by the State institutions to beneficiary and other partnering companies. Combined with the fact that agencies and companies – on their own initiative – have come up with policies and practices that vary widely in quality, it suggests that a more centralized steering from the State is required if the overall performance is to be strengthened in the near future.

Insufficient coverage of human rights risks and impacts

In several cases, policy documents or staff convey the belief that implementation of these standards automatically ensures compliance with the UNGPs. As highlighted above (section 3), this is a misperception. For this reason, it is not enough for eg Swedfund or SEK to align their principles with the IFC Performance Standards. Guidelines or policies that "only" align with these standards risk missing out on important human rights aspects such as civil and political rights, or particular vulnerable groups. They will (and do) fail to execute human rights due diligence on an ongoing basis. To be considered by this study as "fully aligned" with the UNGPs, a policy or guideline needs to demonstrate that it has incorporated the main elements of the UNGPs in substance, or at the very least reference the UNGPs and acknowledge their authority as constituting the normative reference point in applying the policy or guideline.

Inadequate level of instruction to beneficiary companies

As noted, Business Sweden does not impose any requirements on beneficiary companies, and instead allows them to self-define the nature of their "CSR" responsibility. Similarly, Sida does not pose mandatory requirements on beneficiary companies and has so far relied on corporate self-assessment instead of independent evaluation

for the impact assessment. Examples were also found of agency staff making judgements regarding human rights risks based on “gut feeling” (SGU), and companies being unable to show clear procedures as to how risk assessments are tailored and adapted to each specific situation (SEK). These practices create ambiguities and point to weaknesses or gaps in the risk assessment procedures.

Lack of routines for non-financial services

While some institutions have developed routines to manage human rights risks for direct financing to beneficiary companies (SEK, Swedfund), few or no routines exist when the State agencies/companies offer non-financial services, such as facilitation and match-making (SGU, Business Sweden, Sida). Arguably, such non-financial services are thus prone to become more “subtle” modes of State influence where human rights risk assessments simply go under the radar. Moreover, we found a perception among civil servants that the UNGPs are only applicable in cases where direct financing to business is involved. This is evidence of an incorrect but perhaps not uncommon understanding of UNGP commitments (see section 3). It reinforces the need for the State to provide support and training to raise awareness of what the UNGPs mean for different State actors.

Dilution of responsibility when Sida transfers responsibility to SGU and Business Sweden

Possibly as an emergent outcome of the above findings, the consideration for human rights impacts is particular prone to dilution when the responsibility for development cooperation activities is transferred from Sida to Business Sweden and/or SGU, such as through the PDC projects examined above (section 3). In fact, there was evidence of a limited level of instruction or guidance from Sida to SGU and Business Sweden – which in turn lack policies, procedures and practices. Sida could do more to guide/instruct other agencies/companies when they take on an aid mandate just as these agencies/companies need to strengthen their policies, procedures and practices.

Inability of State institutions to show how they use leverage

The UNGPs require that when a company is linked to human rights harm, it uses leverage over the defaulting party to achieve changed behavior. If the company does not have sufficient leverage, it must strive to increase the leverage e.g. by working together with other parties towards the defaulting partner. If no change is found over time, the company may have no option than to exit the relationship. From the available information retrieved in this study, it was not clear how the State-owned or controlled companies Swedfund and SEK exert this kind of leverage through their investments. It is important that such institutions pursue an active involvement to attempt to exert leverage - and communicates with stakeholders about how this is done.

4.6 Does the State ensure that policies are implemented?

The UNGPs do not explicitly require that the State monitor to ensure that policies concerning its business and human rights obligations are implemented by agencies and State-owned or controlled companies. However, in order for the first pillar to be effective, the State will necessarily need some means of follow up and control. Moreover, UNGP 4 and 8 also implicitly assume some controls (concerning follow-up of human rights due diligence results in high risk contexts and to follow up that efforts to ensure policy coherence are effective and reach the desired objectives). *The study shows that the Swedish State (MoFA, MoEI) does not have controls or follow up processes to ensure that agencies and companies live up to the policies that commit them to respecting the UNGPs in their activities* (Table 7, results column 6A).

The absence of control is particularly noteworthy in combination with the fact that agencies and companies are largely left to develop their own interpretation of their human rights requirements. In sum, it means that the State has little if any *de facto* systematic oversight. Some agencies and State-owned or controlled companies are doing a substantial job in their business and human rights efforts. However, since the expectations are not mandatory, it depends on the good faith of the leadership and implementing staff in each agency/company. The

State does not control that such commitments are implemented, and this invariably results in a low degree of accountability.

4.7 Does the agency/company track its own performance?

The UNGPs first pillar does not explicitly require the State agencies/companies to track their own performance. However, in order for the first pillar to be effective, the State agencies – and State-owned or controlled companies where viewed as an actor of “the State” – will need some means of follow up or controls to assess that that policies are implemented. That there should be some means of control can also be implicitly assumed by UNGP 4 and 8; to follow up human rights due diligence findings in high risk contexts and to follow up those efforts to ensure effective systems for reaching the desired objective. Moreover, under the second pillar, companies – including State-owned or controlled companies – should track their performance on the management of adverse human rights impacts. *The study shows that no agency or company could demonstrate the required tracking of its own performance, despite some institutions (SEK, Swedfund) having developed some more general approaches* (Table 7, results column 6B). Below, we provide the findings from the detailed analysis.

The State-owned or controlled companies SEK & Swedfund have demonstrated that they track performance by procedures and policies but have not demonstrated what would ideally be desired – actual trends and examples specifically on business and human rights. For example, SEK was able to demonstrate policies and procedures for divestment, but could not provide examples of how and when this was applied. For a company to live up to the “know and show” requirement (UNGP 20-21) it has to be able to demonstrate trends and examples – not just the procedures intended for tracking performance. Sida has processes in place for general follow up and reporting on human rights but cannot yet demonstrate how it systematically follows up on its business and human rights commitments.

4.8 Does the agency/company disclose relevant human rights information?

The UNGPs do not explicitly require State agencies or companies to disclose relevant information relating to policy, operational procedure and their implementation (eg HRDD). However, it provides an indirect expectation because legal and procedural transparency is part of the foundational principles of the UNGPs, according to UNGP 1 (commentary). Moreover, the Swedish State and all State agencies are bound by the principle of public disclosure (*Offentlighetsprincipen*) and hence transparency is the prerequisite for State action.¹⁶⁸ State-owned or controlled companies may have no legal obligation to disclose its documentation under Swedish law. Nevertheless it is required by UNGP 21 to demonstrate progress – “to know and show”. Furthermore, for State-owned or controlled companies the UNGPs require that (all) companies communicate with stakeholders adequately on their HRDD processes (UNGP 21). *The study shows that whereas all agencies and companies examined did disclose policies (most of them found on their websites), only one of the five institutions (Swedfund) was able to disclose selected requested operational procedures and how they were implemented* (Table 7, results column 7). Below, we provide the findings from the detailed analysis.

No agency or company was able to disclose a full, relevant HRDD report. Swedfund received the best rating on this question, because they did provide one copy of a (limited) due diligence report. However they did not disclose all the requested reports. The State agencies that are bound by the Swedish constitution and the Swedish principle of public access to information, a foundational principle of the UNGP (UNGP1), were not able to communicate relevant information. This is remarkable and a finding in itself and should prompt the State to scrutinize this matter further. The companies studied here scored better than the State agencies with regards to transparency – additionally remarkable.

During consultations, staff at the agencies and companies referred to various secrecy clauses in investment, lending, and financing

¹⁶⁸ See *Tryckfrihetsförordningen* (SFS 1949:105), 2nd chapter. Exception to this rule is outlined in *Offentlighets och sekretesslagen* (SFS 2009:400). The Aid Policy Framework (p. 42) also places particular emphasis on the so-called “transparency guarantee” in Swedish aid.

agreements as a barrier to disclosure. One conclusion to be drawn from this is that business-supported development cooperation modalities – under the present mode of implementation – is compromising the ability of Swedish State institutions to observe one of their important responsibilities under the UNGPs and Swedish law. Since the right to information comprises one of the assumed cornerstones of most recent transparency initiatives, this furthermore offers additional understanding as to why such transparency and accountability initiatives have had limited impact to date.¹⁶⁹ Moreover, it appears that Swedish State institutions have not yet considered the ways that contracts and agreements can be used to overturn such general secrecy clauses, eg bank secrecy. The IFC Compliance Advisor Ombudsman has previously suggested that this is possible; eg in noting that the IFC itself has been unable to clarify how regulatory constraints can prevent public disclosure of information regarding investment projects so that the IFC cannot require regular disclosure in its contracts with beneficiary companies.¹⁷⁰

Below is a summary of the performances of state institutions.

¹⁶⁹ See eg McGee, R. 2013. Aid Transparency and Accountability: ‘Build It and They’ll Come’? *Development Policy Review*, 31(S1), 107-124

¹⁷⁰ Office of the Compliance Advisor Ombudsman (CAO) for the International Finance Corporation (IFC), 2014. *CAO Investigation of IFC Environmental and Social Performance in relation to: Investments in Banco Financiera Comercial Hondureña S.A.* CAO Investigation of IFC, CAO Ref: C-I-R9-Y13-F190. Among other, the report notes, concerning financial intermediaries (p. 36): “The lack of disclosure of information about projects financed by IFC Banking clients...is thus a matter of concern. In making these observations, CAO notes IFC’s view that there are regulatory constraints preventing public disclosure of information regarding projects that IFC’s commercial banking client’s finance. As part of this compliance process, CAO requested information from IFC on regulatory constraints to disclosure.... At the time of writing CAO had not received a response on this point... In this context, it is unclear to CAO why IFC cannot require regular disclosure...”.

Table 7: Summary results of the performance of State institutions

Note: "State institution" here is defined as either a State Agency (i.e. Sida or SGU) or a State-owned or controlled company (i.e. Swedfund, Business Sweden or SEK). "State" here is defined as either of the two ministries: Ministry of Foreign Affairs or Ministry of Enterprise and Innovation. Policy refers to a high level public commitment that is communicated internally and externally (comparing with UNGP 16.d), guidelines / guidance refers to documents operationalizing policies, HRDD refers to the whole process of impact assessment, management of impacts, tracking performance and continuous communication with stakeholders. A star has been awarded to the actor that performs best for each particular question; typically A is the best option followed by B and thereafter C, etc. Only for question 5.B. are multiple answers of equal value (in principle, the more letters A through E that an institution receives - the better. F is second best). In question 5 A all institutions receive a "B", since the Swedish NAP represents one such example.

1	2	3 (State)	4. A (State)	4. B (State Agency/Company)	5. A (State)
Agency or State-owned or Controlled Company	Reports to State Ministry	Has the State set out a formal and explicit expectation or obligation for the agency/company to observe HR obligations and BHR soft law norms? Yes, explicit and mandatory (eg through legislation) Yes, explicit and aspirational No, implicit but mandatory. No, unclear and implicit (eg reference to UN Global Compact or "sustainability" or "social") No, no reference found.	Does the State encourage or require HRDD (in contexts that pose significant risk)? Yes, HRDD is always required by the State Yes, HRDD is encouraged by the State. Yes, HRDD is required in contexts that pose significant risks by the State. No, HRDD is not explicitly encouraged or required by the State.	Does the agency/company encourage or require HRDD (in contexts that pose significant risk)? Yes, agency requires itself to do HRDD on its own projects Yes, agency encourages itself to do HRDD on its own projects. No, no information has been given to evidence that the agency encourages or requires itself to do HRDD on its own projects.	Does the State provide means to make the agency/company aware of (<i>knowledge & information</i>) and observe (<i>refers to act in a manner compatible with HR obligations eg tools or resources eg training and support</i>) its human rights obligations? Yes, the State provides information, training and support Yes, the State provides at least one of the following: information, training or support. No, no information has been given to evidence that the State does not provide information, training or support.
Sida	MoFA	A*	D	B	B
Swedfund	MoEI	A*	D	A*	B
SGU	MoEI	E	D	C	B
Business Sweden	MoFA	A*	D	C	B
SEK	MoEI	A*	D	B	B

Table 7 (continued)

	5. B (State Agency/Company)	6. A (State)	6. B (State Agency/Company)
Agency or State-owned or Controlled Company	<p>Is the agency/company itself providing consideration for human rights impacts?</p> <p>Yes, Policy that references or is based on the UNGPs: The agency has adopted a policy or standard for its own conduct.</p> <p>Yes, Guidance that references or is based on the UNGPs: The agency has developed guidance for its own conduct.</p> <p>Yes, Implementing measure that references or is based on the UNGPs: The agency has put a particular process in place for its own conduct eg risk assessment, self-assessment questionnaire.</p> <p>Yes, Training that is based on the UNGPs. The agency provides training for its staff.</p> <p>Yes, Other support that references or is based on the UNGPs: The agency provides other type of support.</p> <p>No, but other implicit: eg other policy or tool that is only implicitly covering human rights eg broader concepts of “social” or “sustainability” or “CSR” or reference to UNGC or only some human rights (eg IFC-standards alignment)</p> <p>No. The agency has not evidenced that it is doing any of A-F.</p>	<p>How does the State exercise control that policies are implemented?</p> <p>Clear information about follow up on a recurring basis.</p> <p>Sanctions apply at recurring non-compliance.</p> <p>Clear information about follow up on a recurring basis but no sanctions apply at recurring non-compliance.</p> <p>No control or follow up.</p>	<p>How does the agency track its performance on business and human rights?</p> <p>Clear policies and procedures for follow up on human rights eg divestment policies and operational procedures, and ability to demonstrate trends or statistics and examples</p> <p>Clear policies and procedures for follow up on human rights eg divestment policies and operational procedures, but no ability to demonstrate trends or statistics and examples.</p> <p>Some level or implicit policies for follow up on human rights; or collection of data that is not organized/ analysed.</p> <p>Anecdotal information about what happens with human rights non-compliance.</p> <p>No information has been provided to evidence that it tracks human rights performance.</p>
Agency, Sida	B, C	C	C
State-Owned company, Swedfund	A, F	C	E
Agency, SGU	F	C	E
Business Sweden	F	C	E
State-owned Company, SEK	A, B, C*	C	B*

Table 7 (continued)

	7 (State Agency/Company)	Number of times best score was recieved
Agency or State-owned or Controlled Company	Does the agency/company disclose relevant human rights information relating to policy, operational procedure and their implementation (eg HRDD)? A. Disclosure on all relevant policies, operational procedures (relating to human rights) and implementation of them (eg HRDD-reports). B. Disclosure on selected requested relevant policies, operational procedures (relating to human rights) and implementation of them (eg HRDD-reports). C. Disclosure on relevant operational procedures (relating to human rights) & policies but not of their implementation (eg HRDD). D. Disclosure on relevant policies but not on operational procedures (relating to human rights) or their implementation (eg HRDD). E. No disclosure at all.	Number of times that the State Agency or State-owned or Controlled Company is “best performing” relative to the other actors in this study (marked by * in the ratings)
Agency, Sida	C	1
State-Owned company, Swedfund	B*	3
Agency, SGU	D	0
Business Sweden	D	1
State-owned Company, SEK	D	3

5. Conclusions

The study finds many examples of policy commitments as well as diligent efforts in agencies and State-owned or controlled companies. The observed good practices in the State institutions appear to reflect results of systematic internal efforts with regards to implementation of their human rights obligations. In several cases, this must be assumed to be due to internal work in the institutions and not in response to specific requirements posed by the State ministries. Nonetheless, the Swedish State and its agencies and companies still have much work left to fully align their policies, procedures, and practices to the UNGPs. None of the agencies and State-owned or controlled companies has fully incorporated the UNGPs into their policies, procedures and practices.

It is thus possible to conclude that the desire to promote business-supported aid in Swedish development cooperation is – at present – prone to run ahead of the ability of State institutions to implement the Swedish State's duty to meet their business and human rights obligations and prevent related human rights harm. This applies to development cooperation in general and to the support to businesses in the African mining sector – which comprised the case study for our analysis – in particular. Without proper policies, procedures and practices, the Swedish State is exposing itself to the risk that agencies and State-owned or controlled companies unknowingly compromise the State's human rights obligations when engaging businesses as an engine for development. We thus recommend that the State, through its ministries, ought to look at the findings of this study, step up the requirements pertaining to HRDD, provide training and information, and implement control to ensure that policy commitments are implemented. For the agencies and State-owned or controlled companies, the main performance gaps that could be addressed relate to the exercise of HRDD, concrete procedures for considering human rights risks, and disclosure of information.

Overall, these are the key conclusions that we draw from the findings (as summarised in Table 7):

The ministries have made policy commitments but could do more to support and monitor their subordinate institutions

The ministries have – for four of the five State institutions examined – put in place a policy commitment to implement human rights obligations with regard to corporate related harm. However, they have largely left to the discretion of agencies and companies to decide whether and how they define and implement these commitments. Clearly, unlike many other countries that have large ministries, the Swedish system is constituted by small ministries and large independent agencies. This rather unique dualistic public management system means that Swedish public authorities enjoy a relatively independent position in relation to the ministries that tend to provide only indirect steering as regards policy implementation.¹⁷¹ Moreover, we acknowledge that there are different views on how agencies and State-owned or controlled companies are best governed, including the desired degree of steering from the ministries. Still, the absence of controls or follow up processes to ensure that agencies and companies live up to their policies is problematic and reflects a non-incorporation of the UNGPs. Moreover, comparing the efforts by the two State ministries, the MoEI scores the same as the MoFA in terms of setting a clear and mandatory expectation to adhere to the UNGPs. However, the MoEI scores higher than MoFA in terms of providing knowledge eg through training and support for the subordinate institutions in terms of how the UNGPs are to be interpreted and applied.

The main development agency (Sida) has developed substantial procedures and practices but still has work to left to incorporate the UNGPs

Sida has clearly been instructed to implement the UNGPs and gave evidence of developed policies, procedures and practices to this end. However, the internal policy commitment in Sida to the UNGPs is ambiguous and it is unclear if it fully aligns with the requirements of the UNGPs. Moreover, Sida seems to struggle with some level of confusion between what comprises its possibilities to promote

171 Andersson, 2004. *Tudelad trots allt - dualismens överlevnad i den svenska staten 1718-1987*, Doctoral dissertation, Political Science, Stockholm University.

voluntary CSR solutions throughout its modalities and its duty as a State agency to “know and show” that its beneficiary or else partnering companies are not implicated in any human rights harm. Like other institutions, it also was unable to disclose relevant documents on the actual implementation of policies and procedures. We are therefore suggesting that, equal to corporate responsibility to respect human rights, State agencies should have a duty to know and show that they are not implicated in human rights harm. There are parallels to draw between the State agency responsibility under the first pillar and the corporate responsibility to respect human rights in the second pillar.

New actors in development cooperation perform poorest

The study found a relatively poor performance on the part of SGU and Business Sweden. One possible explanation why SGU and Business Sweden perform worse than the other institutions examined is that both are relatively new actors to development cooperation, and development is not at the core of either organisation. In fact, Business Sweden does not have an aid mandate and SGU has only a vaguely formulated mandate to engage internationally, and only recently received specific instructions from the MoEI. This legacy may also be a reason why SGU and Business Sweden have been subject to less pressure from civil society organizations. In comparison, both SEK and Swedfund have historically been exposed to civil society critique of their operations and impacts on human rights. It is well documented that such external pressure helps drive institutional changes in policies and practices.¹⁷² Their core activities may also be perceived as more directly relevant to both development cooperation and business and human rights.

172 See eg Lawrence, R. 2008. NGO Campaigns and Banks: Constituting risk and uncertainty. In: Wood, D. (ed.), *Hidden Hands in the Market: Ethnographies of Fair Trade, Ethical Consumption, and Corporate Social Responsibility*. Research in Economic Anthropology, Volume 28, 241–269. As an example of NGO evaluations of SEK see for instance, Eklöf, G. 2013. Export till priset av mänskliga rättigheter? Uppföljning november 2013. Diakonia and Amnesty International.

The State-owned or controlled companies in some regards performed better than the agencies

Comparing State agencies and State-owned or controlled companies, the best relative scores were received by SEK and Swedfund based on their own actions to implement business and human rights norms. Many good practices can be identified here. Swedfund has a mandatory requirement to conduct HRDD in high risk human rights situations, has an exit strategy, and disclosed more information than any other agency or company. SEK explained several ways in which it is putting the UNGPs into practice by a variety of procedures including a policy statement, guidance and implementation measures based on or referencing the UNGPs, as well as policies and procedures for follow up with projects where there is non-compliance on human rights.

The business and human rights discourse is erroneously perceived by civil servants to be more relevant for companies than State agencies

The better performance of State-owned or controlled companies compared to agencies does reflect that there has, internationally and in Sweden, simply been more uptake of the UNGPs' second pillar regarding the corporate responsibility to respect human rights and more practice shared globally amongst peers than is the case for the first pillar. In fact, it points to a larger finding in the study, namely that the business and human rights discourse is perceived by the State and civil servants to be more directly relevant for companies than governments and agencies, and for direct financing than other kinds of services. However, given that the State should focus mainly on the first pillar, it is arguably disappointing that a State with a high human rights reputation such as Sweden has not fostered a more thorough degree of responsibility by its State agencies. One would normally assume that agencies are in the frontline in observing the State's human rights obligations. Indeed, it should be expected that State agencies perform better than State-owned or controlled companies for the mere reason that they are actors of the State; they do not just have a soft law responsibility to ensure protection of human rights but also a legal duty under public international law to do so.

Sweden should be commended for the launch of the NAP that in comparison with other NAPs provides a deeper level of detail of how the UNGPs apply in a development cooperation context

Commendably, Sweden is among the first eight countries in the world that has adopted a National Action Plan (launched August 2015) outlining the intended implementation with regards to business and human rights in accordance with the UNGPs. Various good practices are noted in Annex 3 where Sweden is has received second most “yes” scores in the comparison with other NAPs. Sweden is the “second best” as per our examination of all NAPs to date. Moreover, there appears to be a general awareness amongst many of the individuals interviewed in the State agencies and companies of the importance of the topic, and a willingness to improve performance on to adherence to the UNGPs. This willingness is crucial for the success of the implementation of the UNGPs ahead. Several of the action points in the plan resonate with our findings, including the call for ongoing needs assessment in SEK and Swedfund (p. 28), the need to strengthen the knowledge base in Swedish embassies (p. 28), that Business Sweden will be instructed to strengthen its efforts (p. 29), and the plan to continue to integrate human rights considerations in the steering of the State-owned or controlled companies (p. 29). An opportunity: the performance gaps identified in this study should be able to feed directly into the Government’s implementation of these action points, in particular providing concrete detail as to what the enactment of these action points could mean in practice.

The NAP contains a number of weaknesses and more is needed to address current performance gaps

Overall, however, the plan shares some of the weaknesses observed in the current performance of the State institutions, specifically the limited recognition of the responsibility of the State to implement the first pillar among its ministries and agencies and in a systemic manner. Among other things, whereas a workshop series is planned on the UNGPs for State-owned or controlled companies (p. 29), the plan disregards the need for training for State agencies, despite the observed performance gaps in the present study. Similarly, no specific actions are mentioned for SGU, despite that this study found this

agency to be lacking much of necessary policy and procedure to put responsibilities into practice. Moreover, specifically relevant to development cooperation, the plan notes the past measures taken by Sida but declares no intention to further strengthen Sida's work (p. 24), despite the clear opportunities for improvement found in this study. Finally, throughout the plan, HRDD is only expected by State institutions "where appropriate" and no requirements are specified in line with the UNGPs. As noted above, the UNGPs clearly state that HRDD is required at least in situations of significant human rights risk.

Detailed recommendations to each of the State institutions examined and their supervising ministries are included below (Annex 4).

List of abbreviations

AMDC - African Minerals Development Centre

B4D - Business for Development

CSR - Corporate social responsibility

DA – Development agency

DR Congo – Democratic Republic of the Congo

EBA - Expert Group for Aid Studies

EDFI - European Development Finance Institution

EITI - Extractive Industries Transparency Initiative

EKN - Export Credit Agency

ESG - Environmental, Social and Governance

FDI – Foreign direct investment

HRDD – Human rights due diligence

IFC - International Finance Corporation

MoEI - Ministry of Enterprise and Innovation

MoFA - Ministry of Foreign Affairs

MPM/SFS - MeetingPoints Mining – Systematic Facilitator Services

NAP - National Action Plan on Business and Human Rights

OECD - Organization for Economic Cooperation and Development

OHCHR – Office of the High Commissioner for Human Rights

PDC - Partner Driven Cooperation

PGD - Policy for Global Development

PPDP - Public-Private Development Partnerships

SEK - Swedish Export Credit Corporation

SGU - the Geological Survey of Sweden

Sida - The Swedish International Development Cooperation Agency

SRSG - Special Representative of the Secretary General

Swedfund - Swedfund International AB

UNECA - United Nations Economic Commission for Africa

UNGC – UN Global Compact

UNGPs - United Nations Guiding Principles on Business and Human Rights

Annex 1: Application of the UNGPs to development cooperation

This annex provides a more detailed description of how the authors have interpreted and considered the UNGPs relevant to development cooperation. It explains how the authors came to the summarized interpretative points (section 4) and how the conclusions in the report were reached. This part of the study may be useful to those that are particularly interested in how each UNGP would apply in a development cooperation perspective. The interpretations are made based on the authors' understanding of the UNGPs and their Commentaries (2011) and the OHCHR Interpretative Guide (2012) as well as the OHCHR FAQ (2014). These interpretations below are non-exhaustive.

The UNGPs' first pillar, principles 1-10, address the role of State in protecting individuals from corporate related human rights harm. All of these ten principles are applicable to development cooperation. For the purposes of this study, this report has in particular focused on principles 4, 8 and 10 as applicable by the following way of reasoning.

UNGP 4: *States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate by requiring human rights due diligence.*

UNGP 4 is relevant to development cooperation in the following way:

- All companies have a direct responsibility under the second pillar. In addition, acts of Swedish State-owned and controlled companies like Business Sweden, SEK and Swedfund may be attributed to the Swedish State, and abuse of human rights obligations may entail a violation of the Swedish State's own international legal obligations.
- The Swedish State should, through policies, legislation and regulation, ensure that respect for human rights is implemented by the Swedish State-owned or controlled companies including Business Sweden, SEK and Swedfund. Government ministries including MoEI should ensure that

effective human rights due diligence is implemented and ensure other relevant scrutiny and oversight.

- Development agencies like Sida or SGU do indeed provide service or support to business activities. Where they do, they should explicitly consider actual and potential adverse impacts on human rights of beneficiary enterprises or any other businesses that they collaborate with not least to ensure that human rights are safeguarded in the country receiving development cooperation.
- State ministries including both MoFA and MoEI should encourage, and in high risk situations, require human rights due diligence by the development agencies e.g. Sida and SGU and by the beneficiary companies.
- The State agencies like Sida and SGU should encourage, and, in situations of significant human rights risk, require human rights due diligence by the business enterprises that they collaborate including from beneficiary companies receiving the support.

UNGP 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support. (Policy Coherence)

UNGP 8 will be relevant to development cooperation in the following way:

UNGP 8 is relevant where State ministries like MoFA and MoEI, and agencies with a development cooperation mandate like Sida and SGU shape business practices. "Shaping business practices" is in the UNGP FAQ publication by the OHCHR (2014) is further explained; "*a range of governmental departments, agencies and other institutions (in a State will be) involved in shaping business conduct*", for example "*labour departments, agencies tasked with overseeing corporate law or securities regulation, investment, export credit and insurance agencies, trade bodies and so on*". An example "*is export promotion agencies which should be aware of the responsibility of the State to set out clearly the expectation that companies domiciled in its territory or jurisdiction should respect human rights throughout their operations... (which)... implies taking appropriate steps to ensure that business operations or*

projects that receive credit or support have proactively identified and mitigated human rights risks arising from the project". Development agencies are shaping business conduct when, for instance, they draft the terms and conditions or MoU for a public-private sector partnership, create reporting tools for private partners, commission or design studies into business opportunities, or set agendas for match-making meetings between African and Swedish companies. State-owned or controlled companies are shaping business conduct when they define terms and conditions for investment contracts, provide reporting templates for corporate clients, or set agendas and define studies into business opportunities in developing countries.

- The State ministries MoFA and MoEI should ensure that Sida and SGU receive relevant information, training and support in implementing the UNGPs.
- The State ministries MoFA and MoEI should ensure that Sida and SGU and any other agencies that fulfill development cooperation mandates are aware of and observe the State human rights obligations. In more detail, this means:
- Vertical policy coherence: The Swedish State should have necessary policies, laws and processes in place to implement the business and human rights norms; policies – meaning for example (noted here as good practice) to place a requirement in the MoFA Letter of Instruction to Sida to adhere to the UNGPs or MoEI placing a requirement in the ownership policy, laws and statutory orders and processes – meaning for example (noted here as good practice) the due diligence process that Sida applies when partnering with a private actor.
- Horizontal policy coherence: The Swedish State should support and equip all departments and agencies like Sida and SGU that shape business practices to be informed of and act in a manner compatible with the Swedish State human rights obligations.
- The ministries including MoFA and MoEI have an obligation to make the agencies e.g. Sida and SGU *aware of the obligations* – this means to have sufficient knowledge and relevant information about what the obligation means in practice and how it applies to the different aid modalities and activities. For example, by clarifying that it is not only when a company is receiving money that due diligence has to be

applied but rather in all types of corporate partnerships, the State should clarify the whole the range of situations where the UNGPs may apply. Providing information and training are relevant activities by the ministries including MoFA and MoEI to support the agencies to be aware of the obligation.

- The ministries including MoFA and MoEI have an obligation to make the agencies *observe* the human rights obligations – this means to actually act in accordance with the human rights obligations. To act in accordance with international human rights obligations obviously requires that the agency firstly is aware of what it means, and therefore is a prerequisite for being able to act in accordance with the obligation. The ministries will, however, have to provide additional forms of support to the agencies to be able to support them in observing their human rights obligations – in addition to providing information and training. Therefore, it is not enough to just “host a seminar”. The State needs to continuously follow up and evaluate the performance of the agencies (and State-owned and controlled companies) and ensure that corrective action where performance is not satisfactory.

An example of how ministries can support agencies like Sida or SGO to act in accordance with the Swedish State’s human rights obligations, is that the ministries could ensure a focal point that provides interpretation to the agencies on how to apply the principles consistently and coherently across work areas and development cooperation policy. The NAP of Norway commits to such a practice and the authors believe this is a good way of providing support to the agencies to ensure that they can observe human rights obligations.

UNGP 10. *States, when acting as members of multilateral institutions that deal with business-related issues, should:*

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where*

requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

UNGP 10 is relevant to development cooperation in the following way:

UNGP 10 b) is relevant where Sweden is a member of a multilateral institution and where that institution is dealing with business-related issues. In such instances, Sweden should promote the business and human rights agenda within the respective mandates of those organisations.

UNGPs 5 and 7 would also be relevant in a development cooperation context, but this study has not examined Swedish State adherence to them in further detail. Nevertheless they merit mention in this context, below.

UNGP 5. *States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights. (State Business Nexus)*

UNGP 5 would be relevant where a development agency, State-owned or controlled company or other State supported entity with a developmental mandate contracts directly with a company to provide a service e.g. capacity building. This study has not focused on procurement activities but indeed UNGP 5 applies more broadly and therefore reinforces UNGP 4.

UNGP 7: When Swedish development cooperation or development agencies conduct activities in conflict affected areas, special provisions should apply taking into account UNGP 7. The Swedish State should act to ensure that business enterprises operating in those contexts are not involved with gross human rights abuses. This means that the Swedish State should inter alia; deny access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; ensure that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business

involvement in gross human rights abuses. This includes the need for fostering closer cooperation between development agencies, foreign and trade ministries, export finance institutions in the capital and foreign embassies as well as between host government actors; engage at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; provide adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.

Annex 2: Review of NAPs

The UN Working Group on Business and Human Rights calls on all States to adopt National Action Plans (NAPs). A NAP should explain how the State is implementing or intends to implement the UNGPs. Since the UNGPs apply explicitly to development agencies, it could well be expected that NAPs contain useful information on how States are implementing or intend to integrate the UNGPs in development cooperation or aid. Therefore, this study has examined those NAPs that States have published to date. The review of NAPs reveals that:

- A majority of NAPs (6 out of 9) discuss or mention the relevance of UNGPs to ODA policies or development cooperation.
- A majority of NAPs (6 out of 9) discuss applicability of the UNGPs to development agencies (DAs) or mention the role of DAs.
- Almost half of the NAPs reviewed (4 out of 9) express a commitment by the State to influence multilateral organisations to incorporate human rights and business (UNGP 10).
- Some NAPs (3 out of 9) state that companies involved in development cooperation efforts (e.g. beneficiary companies or other forms of partnerships) are explicitly required to respect human rights or express a commitment to this. (UNGP 4)
- Some NAPs (3 out of 9) state that companies involved in development cooperation are required to demonstrate due diligence or that the state agency applies a due diligence process on companies engaged in development cooperation, or commitment to do this. (UNGP 4)
- A few NAPs (2 out of 9) provide capacitation, information training and support to DAs, or commit to this. (UNGP 8)
- A few NAPs (2 out of 9) commit to efforts to ensure policy coherence. (UNGP 8)
- One NAP commits to efforts to ensure consistent application of human rights throughout State organisations, e.g. when advising companies. (UNGP 8)
- One NAP mentions that companies increasingly are involved in development cooperation.

	A. NAP discusses or mentions the relevance of UNGPs to ODA policies or development cooperation.	B. NAP discusses applicability of the UNGPs to dev. agencies (DA) or mentions role of DA.	C. NAP expresses that companies are increasingly involved in dev. coop.	D. NAP expresses that companies involved in dev. coop. efforts (e.g. beneficiary companies or other forms of partnerships) are explicitly req. to respect human rights or commitment to this. (UNGP 4)	E. NAP expresses that comp. involvee in dev. coop. are req. to demonstrate due diligence or State agency applies due diligence proc on comp engaged in dev coop, or commitment to do this. (UNGP 4)	F. NAP provides capacitation, information training and support to dev agency, or commits to this. (UNGP 8)	G. NAP commits to efforts to ensure consistent application of human rights throughout State organisation, e.g. when advising companies. (UNGP 8)	H. NAP commits to efforts to ensure policy coherence (UNGP 8)	I. NAP expresses commitment to influence multilateral organisations to incorporate human rights and business. (UNGP 10)
Norway	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Spain	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes
Sweden	Yes	Yes	No	No	Yes	Yes	No	No	Yes
Denmark	Yes	Yes	No	Yes	Yes	No	No	No	No
Finland	Yes	Yes	No	No	No	No	No	No	Yes
UK	No	Yes	No	No	No	No	No	No	No
Italy	Yes	No	No	No	No	No	No	No	No
Netherlands	No	No	No	No	No	No	No	No	No
Lithuania	No	No	No	No	No	No	No	No	No
<i>Number of Action Plans</i>	6	6	1	3	3	2	1	2	4

Sources: see list references to NAP on the following page.

List of references to NAP:

Norway: https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/naringsliv/ud_naeringsliv_og_menneske_uu-versjon2.pdf

Spain: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

Sweden: <http://www.regeringen.se/contentassets/1012abb0e5a84defa089a77eb6a5ee21/handlingsplan-for-foretagande-och-manskliga-rattigheter.pdf>

Denmark: http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf

Finland: http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf

UK: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1.pdf

Italy: <http://www.ohchr.org/Documents/Issues/Business/NationalPlans/NationalPlanActionItaly.pdf>

Netherlands: http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/verenigde_staten_van_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf

Lithuania: http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf

Annex 3: Examples of activities funded by Swedish development cooperation

This list provides *examples* that were retrieved during interviews and the desktop analysis; including from the compilation of data extracted from Sida databases. Focus is on activities implemented since the launch of the UNGPs. The search through Sida databases (OpenAid, DOX, PLUS) was conducted by Sida archivists (excel file provided by email, 2015-01-23); other sources comprise principally of interviews and email correspondence with desk officers at Sida, MoFA, and the Embassies in the DR Congo and Zambia.

Modality	Example of activity	Funder	Lead impl. institution	Geogr. scope	Period	Financing
<i>Direct corporate sponsoring</i>	Addis Quarry Development Plc.: invest in a comp. with mining & machinery activities, producing crushed stone & aggregate to customers in the constr. sector.	Swedfund	Swedfund	Ethiopia	2008-ongoing	15 M SEK committed
	Aid related loans and credits (eg <i>U-krediter</i>)	Sida	EKN,SEK	Global	No info obtained	No info obtained
<i>Non-financial facilitating or match-making</i>	MeetingPoints Mining (MPM): partnership driven coop. focusing on matchmaking between Swe and African mining comp.	Sida	SGU	Botswana, Namibia, South Africa	2010-2013	23 M SEK disbursed
	MeetingPoints Mining - Systematic Facilitator Service (MPM/SFS): similar to MPM above.	Sida	SGU	Zambia, Tanzania, Mozambique	2011-2014	15 M SEK (disbursed)

	MeetingPoint Botswana and MeetingPoint Namibia, both Partnership Driven Coop. (PDC) projects.	Sida	Business Sweden	Namibia, Botswana	2011-2013	18.2 M SEK co-fin. up to 29.8 M SEK by Business Sweden) (disbursed)
<i>Support to regional and State institutions</i>	Support to African Minerals Development Centre (AMDC), via the United Nations Economic Commission for Africa (UNECA).	Sida	UNECA	Regional	No info obtained	No info obtained
<i>Support to international governance initiatives</i>	Support to OECD work with conflict minerals	MoFA	OECD	Regional	2013-2014	1.4 M SEK (disbursed)
	Extractive Industries Transparency Initiative (EITI)	MoFA	The EITI Secr.	Regional	2011-2012 2012-2013 2013-2014	2.6 M SEK 2.5 M SEK 3.8 M SEK (disbursed)
<i>Civil society capacity building</i>	<i>Support to Global Witness</i>	Swedish Embassy in Kinshasa	Global Witness	DR Congo	2013-2014	12.75 M SEK committed
	<i>The Carter Center Human Rights program</i>	Swedish Embassy in Kinshasa	Carter Center	DR Congo	2013-2015	25 M SEK committed
<i>Studies and assessments</i>	<i>Mapping of CSR in mining and the supply chain</i>	MoFA	Zambia Assoc. of Chambers of Comm. and Ind. (ZACCI), in coop. with the Swedish Embassy in Lusaka	Zambia	2015	110 000 SEK disbursed

Annex 4: Detailed recommendations

Based on the interpretation of the UNGPs for development cooperation offered in this study and the review of the performance of Swedish ministries, agencies and State-owned or controlled companies, we list here the recommendations for improvement. The specific opportunities for a ministry, agency or State-owned or controlled company to strengthen its own performance can be discerned from the above analysis (especially the summary in Table 7). In effect, this proposed list of actions points reflects what is, for the State institutions examined in this study, the minimum requirements for a full alignment with the UNGPs (see section 2.1 for the list of these minimum requirements).

The Ministry of Foreign Affairs could consider (as the key coordinating Ministry for the implementation of the UNGPs):

- To ensure that the implementation of the National Action Plan (NAP) focuses on application of the duty to protect human rights, in effect the first pillar. The NAP should follow evolving international practice ie as expressed in the UN guidance documents published on the matter (referenced herein). Implementation of the NAP could have a coordinating cross-Ministry working group to ensure that all relevant ministries are engaged in the effective implementation of the principles. See Norway's NAP for an example of this. For example, the Ministry of Justice may need to be involved e.g. to ensure that there are no legal barriers to fully implementing the UNGPs. A baseline assessment could advantageously include both a legal review and a more generic policy review, including addressing potential and actual policy tensions between trade, private sector and human rights.
- To review, from a legal point of view, why State agencies are struggling with the issue of transparency and disclosure to stakeholders. The Swedish constitution protects the right to public access to official documents which stands in contrast to many findings of this report. This matter should be investigated to ensure that all agencies apply the same principles to assure that as much information as possible is

disclosed. The Ministry of Justice should be involved as necessary.

- To ensure full integration of business and human rights norms into Swedish development cooperation policy and practice. To facilitate a common understanding of the content of the UNGPs, the following could be considered: making Sida the lead agency for interpretation of what the UNGPs mean in practice for development cooperation, including guiding other agencies and companies that have a development policy mandate.
- To ensure that there is consistent application of the principles in practice, notably and for example: consistent requirement on when a HRDD is voluntary and when it is mandatory; consistent requirements on what constitutes a HRDD (process steps and substantive issue coverage); clarification of which substantive human rights issues (e.g. how all internationally recognized human rights apply in different context) should be covered by a HRDD; common understanding of what consists "high human rights risk", principles for follow up; and principles for divestment.
- To ensure that all agencies and State-owned or controlled companies have a mutual understanding of what the UNGPs mean and how they apply. Therefore the Ministry may want to train and explain to the agencies and companies respectively how they apply, and what they mean in practice since the UNGPs are relatively abstract in their wording. For this purpose, the Ministry may want to consider, together with Sida, creating a focal point that could provide this interpretation and be in charge of disseminating information between ministries, agencies and companies as relevant. This focal point could ensure that ministries, agencies and companies are aware of their obligations and support them in observing their obligations (which includes providing knowledge, information, tools, resources, training, etc.).
- To put in place measures for systematic oversight and control for whether policies concerning business and human rights

obligations are implemented by agencies and State-owned companies, including ensuring that sanctions are enforced where agencies or companies are engaged with parties that are found to be in repeated non-compliance of human rights norms without intention of improvement of their human rights performance.

The Ministry of Enterprise and Innovation could consider:

- To ensure that there is consistent application of the principles in practice, notably and for example: consistent requirement on when a HRDD is voluntary and when it is mandatory, consistent requirements on what constitutes a HRDD (process steps and substantive issue coverage), clarification of which substantive human rights issues should be covered by a HRDD, common understanding of what consists "high human rights risk", principles for follow up, and principles for divestment.
- To place an explicit and mandatory expectation on the State agency SGU to observe its business and human rights obligations through the Letter of Instruction or equal appropriate instrument, including by providing awareness on how the principles apply to them, and support them in embedding and integrating all the relevant elements of the first pillar (inter alia knowledge, information, tools, resources and training).
- To put in place measures for systematic oversight and controls if policies concerning business and human rights obligations are implemented by agencies and State-owned companies, including ensuring that sanctions are enforced where agencies or companies are involved in repeated non-compliance without intention of improvement.

The Swedish International Development Cooperation Agency (Sida) could consider:

- To update its policies including guidance material to be fully aligned with the UNGPs, in particular the first pillar, and including a mandatory commitment to HRDD in high-risk situations.
- To ensure that utilized or referenced standards or catalogues of rights have proper coverage of all internationally recognized human rights risks and impacts, not only selected ones;
- To clarify and strengthen the instruction to and control of beneficiary companies, for instance by placing specific and explicit requirements of HRDD and its coverage through contracts, Memoranda of Understanding (MoUs) or other legal / quasi-legal instruments;
- To develop routines for human rights due diligence and, in particular, human rights risk assessment for non-financial services, such as facilitation and match-making;
- To improve the level of instruction or guidance to other agencies or State-owned companies when they take on an aid mandate linked to but separate from or in collaboration with Sida (eg SGU and Business Sweden) to ensure an equally diligent process and consistent application of human rights obligations and evolving soft law principles;
- To put in place procedures to follow up on its business and human rights commitments including an action plan for use of leverage when a partner fails to live up to human rights norms, and a definition of how and when termination with a defaulting partner takes place;
- To improve transparency and strengthen disclosure of relevant human rights information, particularly on actual

implementation of policy and operational procedure (e.g. HRDD).

The Geological Survey of Sweden (SGU) could consider:

- To ensure a commitment to apply business and human rights obligations and soft law norms, and clarify in relevant policies and procedures how it is providing consideration for human rights impacts;
- To update its policies and procedures with an expectation to conduct HRDD and making this a mandatory commitment in high-risk situations;
- To ensure that adopted standards have proper coverage of all internationally recognized human rights and impacts;
- To clarify and strengthen the instruction to and control of beneficiary companies to reflect an expectation to conduct HRDD; and
- To develop routines for human rights risk assessment for non-financial services, such as facilitation and match-making.

The Swedish Trade and Invest Council (Business Sweden) could consider:

- To ensure a commitment to apply business and human rights obligations and soft law norms, and clarify in relevant policies and procedures how it is providing consideration of human rights impacts;
- To update its policies with an expectation to conduct HRDD and making this a mandatory commitment in high-risk situations;

- To ensure that adopted standards have proper coverage of all internationally recognized human rights risks and impacts;
- To clarify and strengthen the instruction to and control of beneficiary companies to reflect an expectation to conduct HRDD; and
- To develop routines for human rights risk assessment for non-financial services, such as facilitation and match-making

Swedfund International AB (Swedfund) could consider:

- To ensure that adopted or utilized standards or catalogues of rights have proper coverage of all internationally recognized human rights risks and impacts;
- To ensure that the procedures for tracking performance also cover corporate related human rights risk; and
- To strengthen disclosure of relevant human rights information, particularly on actual implementation of policy and operational procedure (in particular relating to HRDD);
- To ensure that it has a strategy for how it uses leverage towards business partners that fail in their responsibility to respect human rights – this strategy should be aligned with the UNGPs.

The Swedish Export Credit Corporation (SEK) could consider:

- To update its policies with a mandatory commitment to HRDD in high-risk situations;
- To ensure that adopted or utilized standards or catalogues of rights have proper coverage of all internationally recognized human rights risks and impacts;

- To clarify in its procedures how human rights risk assessments should be tailored and adapted to typically and specifically relevant situations;
- To ensure that the procedures for tracking performance also covers corporate related human rights risk;
- To strengthen disclosure of relevant human rights information, particularly on actual implementation of policy and operational procedure (eg HRDD);
- To ensure that it has a strategy for how it uses leverage towards business partners that fail in their responsibility to respect human rights – this strategy should be aligned with the UNGPs.

Implications specifically for international organizations:

- The UN Working Group on Business and Human Rights could provide guidance eg in the form of additional commentary to the UNGPs on how the State should apply the first pillar in the context of development cooperation and aid, and possibly other policy domains;
- Multilateral development organizations could usefully provide guidance on how the UNGPs apply in the context of increased private sector involvement in development activities, in particular so called public private partnerships.
- States developing National Action Plans could describe and outline how its development cooperation and aid integrates with business and human rights norms.

Previous EBA-reports

2015:07, *Making development work: the quality of government approach*, Bo Rothstein and Marcus Tannenberg

2015:06, *Now open for business: joint development initiatives between the private and public sectors in development cooperation*, Sara Johansson de Silva, Ari Kokko and Hanna Norberg

2015:05, *Has Sweden injected realism into public financial management reforms in partner countries?* Matt Andrews

2015:04, *Youth, entrepreneurship and development*, Kjetil Bjorvatn

2015:03, *Concentration difficulties? An analysis of Swedish aid proliferation*, Rune Jansen Hagen

2015:02, *Utvärdering av svenskt bistånd – en kartläggning*, Expertgruppen för biståndsanalys

2015:01, *Rethinking Civil Society and Support for Democracy*, Richard Youngs

2014:05, *Svenskt statligt internationellt bistånd i Sverige: en översikt*, Expertgruppen för biståndsanalys

2014:04, *The African Development Bank: ready to face the challenges of a changing Africa?* Christopher Humphrey

2014:03, *International party assistance – what do we know about the effects?* Lars Svåsand

2014:02, *Sweden's development assistance for health – policy options to support the global health 2035 goals*, Gavin Yamey, Helen Saxenian, Robert Hecht, Jesper Sundewall and Dean Jamison

2014:01, *Randomized controlled trials: strengths, weaknesses and policy relevance*, Anders Olofsgård.