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Director
SDG Impact
United Nations Development Programme
One United Nations Plaza, DC1-1938
New York, NY 10017

15 May 2020

Re: UNDP's proposed SDG Impact Standards for PE Investors must incorporate an accountability framework.

Dear Ms. Boggs-Davidsen,

On 18 February 2020, the UNDP hosted a meeting with a number of organizations working at the nexus of business and human rights and the Sustainable Development Goals (SDGs), to discuss concerns about the content and development process of SDG Impact Standards for Private Equity (PE) Funds. As relayed during that meeting, as well as in a 1 December 2019 letter to UNDP Administrator Achim Steiner, deeper analysis and stakeholder input is required to properly consider an assurance or certification scheme meant to promote SDG Impact Standards. To that regard, we look forward to the release of the next consultation draft.

The proposed standards for accreditation lack a key element: the requirement that certified funds create or adhere to an existing independent accountability mechanism. Without an independent accountability mechanism, both UNDP and the certified funds would lack a necessary tool to hear from communities impacted by UNDP accredited investments. This in turn risks undermining the UN Guiding Principles on Business and Human Rights (UNGPs) by providing a weighty stamp of approval to enterprises that traditionally operate in a non-transparent manner to protect shareholder interests. **We write to require that the revised version of the standards require that funds establish new or adhere to existing independent accountability mechanisms as a condition of accreditation.**[1]

UNDP's Commitment to Environmental and Social Standards

The UNDP maintains that "social and environmental sustainability are fundamental to the achievement of sustainable development outcomes, and therefore must be fully integrated into [UNDP] Programmes and Projects." Inasmuch as the UNDP's Social and Environmental Standards "underpin [UNDP's] commitment to mainstream social and environmental

[1] Since our February meeting, we have learned that the UNDP is also in the process of developing practice assurance standards for SDG bonds, as well as a corresponding certification program. Our recommendations in this letter can also apply to that initiative.

sustainability in [its] Programmes and Projects," true commitment to the SDGs would require any UNDP certification or assurance programme to embrace the Social and Environmental Standards and safeguard against social and environmental harm. For instance, while section 18.1 of the draft SDG PE standards require investors to satisfy relevant sections of the Social and Environmental Standards, currently they neglect to impose equally necessary due diligence on the UNDP to prevent, mitigate, and address harm caused by certified or assured investors.

Further, as you have stated in the press release announcing the development of the UNDP Standards for Private Equity, the SDG Impact initiative is "focused on best practices to inform . . . impact management and measurement." As recognized by Principle 5 of the International Finance Corporation's (IFC's) Operating Principles for Impact Management, as well as Principles 27-29 of the UNGPs, a fundamental best practice in impact measurement and management is maintaining an accountability framework that captures positive and negative impacts through the lifecycle of investments.

Considering the clear intent to have accredited PE funds abide by the Social and Environmental Standards as a *baseline* requirement, as well as UNDP's commitment to best practices, we presume that the investments of all certified and assured PE funds would be subject to examination by an independent accountability mechanism. Arguably, standards with robust disclosure and reporting requirements that underpin an independent accountability mechanism are far more important than a certification framework.

Background of Accountability Mechanisms

Independent accountability mechanisms are crucial to understanding whether investments meet environmental and social standards. There is no better way for investors to know the impacts of investment projects than to hear from the individuals and communities most affected by them. Further, accountability mechanisms would serve to mitigate the inherent risk of a UNDP assurance or certification scheme "bluewashing" funds that fail to meet Social and Environmental Standards and undermine the SDGs.

As an example of how critical an independent accountability framework is for communities harmed by projects that have PE funding, please consider the case of communities aggrieved by a hydroelectric facility sited in Oaxaca, Mexico. The funding for the facility came from two sources: the United States' Overseas Private Investment Corporation (OPIC) and a U.S.-based private equity firm. According to the firm, the intent of the project was to produce and export energy to areas north of Oaxaca; however, communities near the construction site maintained that the hydroelectric facility would harm their environment, health, and physical safety.

Affected communities first attempted to raise concerns about the project's potential impacts on the environment and the wellbeing of nearby residents to governmental authorities and project contractors. When they received no meaningful response, they filed a complaint through OPIC's independent accountability mechanism. This resulted in a professionally-mediated dialogue process that included participation from the communities, the Mexican operating company, the New York based investment firm, and the accountability mechanism. Through the dialogue process, the parties reached an agreement to halt project construction, thus avoiding the most serious impacts of concern. Had an accountability mechanism not existed, the investors might not have been made aware of the true impacts of their investments.

The Ask

In short, you cannot have assurance or certification without corresponding governance. There must be an underlying accountability framework to ensure that the investment activities of certified or assured PE funds abide by the Social and Environmental Standards and SDGs. This can be accomplished in two ways: (1) UNDP can require certified firms to yield to the mandates of the Social and Environmental Compliance Unit (SECU) and the Stakeholder Response Mechanism (SRM) and update their operating procedures accordingly; and/or (2) UNDP can require PE funds to create or adhere to an existing independent accountability mechanism in order to be accredited or assured.

The UNDP already has an accountability framework that could take on complaints from investment activities sanctioned or condoned by the UNDP if properly resourced, namely SECU. Inasmuch as SECU's mission encompasses investigating and raising awareness of potential non-compliance with social and environmental commitments in UNDP programmes, any harm or concerns arising from an assurance or certification programme tied to UNDP SDGs and Social and Environmental Standards would appropriately fall under its purview. SECU and its corresponding office for dispute resolution, SRM,[2] exist as fora through which individuals, communities, or other stakeholders can raise concerns when they face actual or potential harm as a result of a public or private sector project, investment, or business-related activity.

Requiring PE funds to yield to the independent oversight of SECU and SRM could address key concerns regarding the integrity of the UNDP certification or assurance scheme (assuming proper resourcing of SECU and SRM to undertake these tasks). It could provide an affordable, relatively fast, and fair platform for affected parties to raise grievances with respect to investor

[2] The mandate of the SRM states that "[It] is intended for use by external stakeholders directly affected by UNDP project implementation." This mandate could be extended to include stakeholders directly affected by projects of UNDP accredited entities, as no system is currently in place to manage issues caused by investors and bond issuers carrying the UNDP's primatur.

The SRM presently will not extend its services to "[r]equests relating to projects that are not UNDP projects, projects where UNDP is one of several partners and is not responsible for the specific issues raised, or projects where UNDP's role has ended and UNDP has no feasible pathway to address the requestor's concerns." Here, the SRM could carve out an exception for UNDP accredited entities, as the UNDP would have a feasible pathway to address stakeholder concerns -- by decertifying entities causing harm, for example.

activities, and for relevant parties to resolve disputes and remedy harm. The UNDP can utilize the already-established independent fact-finding and mediation functions, and lessons learned as a result of stakeholder feedback can be used to address risks proactively and prevent harm from escalating, leading to better investment outcomes and sustainable benefits for potentially affected individuals, local communities, and other stakeholders. A parallel framework for this concept is the Green Climate Fund's Independent Redress Mechanism, which independently reviews activities of GCF "accredited entities" to ensure adherence with the Fund's safeguard policies.

Relying on SECU and SRM to address harm caused by UNDP-accredited investors would necessitate building the capacity of the mechanisms to handle a potential influx of cases. The mechanisms would need adequate funding, staffing, and training to effectively review PE SDG impacts, and their respective policies and procedures may need updating as well.

In the alternative, UNDP should require PE funds to create or adhere to an existing independent accountability mechanism that audits the certification and assurance standards as a condition of being accredited. Because many development finance institutions have implemented accountability mechanisms to address unintended social and environmental harm, plenty models exist for an independent accountability framework for certified PE funds. PE funds could either each adhere to a separate independent mechanism, or multiple entities could adhere to a shared mechanism. An apt example of the latter is the Independent Complaints Mechanism, which serves three different financial institutions from France, Germany, and the Netherlands. Each financial institution agreed for the Independent Complaints Mechanism to audit its own safeguards policies.

Absent an accountability framework, the certification scheme risks enabling social and environmental harm. Requiring an accountability framework as a part of the certification or assurance scheme would preserve its integrity by providing affected individuals and collectives impacted by UNDP-endorsed investments with the ability to raise concerns, and by protecting against inflated reports of positive impacts. If UNDP is to exalt certain enterprises for embracing SDG Impact Standards, it must exercise due diligence in assuring that those enterprises are steadfast in their commitments. An assurance or certification scheme that does not have a corresponding accountability framework will be hard pressed to find civil society support.

Conclusion

We remain a resource as you consider how to ensure that an accountability framework applies to the certification scheme. Accountability Counsel has advised on the creation or advancement of every major independent grievance mechanism, with the goal of ensuring that they are independent, fair, transparent, professional, effective, and accessible. One tool immediately available as a resource is a research database known as the Accountability Console, a comprehensive tool for understanding and improving the field of accountability in international finance.[3]

Further, we invite you to visit a comprehensive analysis of accountability mechanisms across development finance institutions in the 2016 report Glass Half Full? The State of Accountability in Development Finance, which would be an important resource for modeling an effective accountability mechanism for certified PE investors and bonds. Any accountability framework for a certification or assurance scheme must, at a minimum, operate according to the UNGP's "effectiveness criteria," thus requiring it to be legitimate, accessible, predictable, equitable, transparent, rights compatible, and a source of continuous learning for the certifier and the certified.

When investments manifest in harm—as they can, even when investors engage in earnest due diligence—then the people harmed need a forum to raise grievances. An independent accountability framework exists for just that purpose, serving to underpin sustainable development and protect human rights. It is, therefore, critical that the UNDP require all SDG accredited PE funds and bonds to adhere to an accountability framework.

Sincerely,

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[3] Accountability Counsel maintains a database called the Accountability Console that includes all publicly available data from every grievance filed to all existing development finance mechanisms, and compares policies across these grievance mechanisms to show how they can be best used to ensure accountability for environmental and social harm. Data shows that noncompliance with safeguards can lead to forced displacement of indigenous people, violence against communities, adverse gender impacts and a range of other types of harm regardless of investment sector, and including related to investments in renewables and conservation.